2013 Uniform Multifamily Rules

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

EQUAL HOUSING OPPORTUNITY

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Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1. Purpose.

The rules in this chapter apply to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establish the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program, including but not limited to, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This rule does not apply to any project-based rental or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this rule remain subject to this rule.

§10.2. General.

(a) These rules may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally, Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

(1) deadlines for filing Applications and other documents;

(2) any additional submission requirements that may not be explicitly provided for in this chapter;

(3) any applicable Application set-asides and requirements related thereto;

(4) award limits per Application or Applicant;

(5) any federal or state laws or regulations that may supersede the requirements of this chapter; and

(6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(b) Due Diligence and Applicant Responsibility. 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, rent and income limits, 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 multifamily rules 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 multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this rule.

§10.3. Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property

administered by Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code, Chapter 2306, Internal Revenue Code (the "Code"), §42, the HOME Final Rule, and other Department rules as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. 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 Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in an Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(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, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code, §42(i)(1) and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP Developments that fail to meet program requirements. During the Affordability Period the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, 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 if the Development is proposed to be placed in service prior to December 31, 2013 or such timing as deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress;

(ii) forty basis points over the current applicable percentage for 70 percent 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 basis points over the current applicable percentage for 30 percent 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.

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

(7) Bank Trustee--A bank authorized to do business in this state, with the power to act as trustee.

(8) 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.

(9) 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.

(10) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(11) 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.

(12) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(13) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(14) 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.

(15) 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).

(16) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(17) 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 Texas Water Code, §17.921; or

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

(18) Commitment (also referred to as Contract)--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 from the Department will be made available.

(19) Commitment of Funds (also referred to as an Obligation)--Occurs when the Development is approved by the Department and a Commitment is executed between the Department and a Development Owner or

Applicant. For the HOME Program, this occurs when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS).

(20) Committee—See *Executive Award and Review Advisory Committee*

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

(22) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

(23) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(24) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(25) Contract--See *Commitment*.

(26) Contractor--See *General Contractor.*

(27) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, 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 but are not limited to the managers, managing members, any members with 10 percent 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.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) 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.

(30) 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.

(31) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(32) 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.

(33) 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 a developer fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control and receiving less than 10 percent of the total Developer fee.

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

(35) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This

includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(36) 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, or post award documents as required by the program.

(37) Development Owner (also referred to as "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 and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(38) Development Team--All Persons or Affiliates thereof that play a role in the Development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(39) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(40) Economically Distressed Area--An area that has been identified by the Water Development Board as meeting the criteria for an economically distressed area under Texas Water Code, §17.921.

(41) 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.

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

(43) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(44) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(45) Executive Award and Review Advisory Committee (also referred to as the "Committee")--The Department committee created under Texas Government Code, §2306.1112.

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

(47) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement; or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(48) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(49) General Contractor (including "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. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(50) 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 or Control of the limited liability company.

(51) 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.

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

(53) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(54) 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 percent of Gross Demand.

(55) 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.

(56) 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.

(57) HTC Development (also referred to as "HTC Property")--A Development using Housing Tax Credits allocated by the Department.

(58) HTC Property--See *HTC Development.*

(59) Hard Costs--The sum total of Building Cost, Site Work costs, Off-Site Construction costs and contingency.

(60) Historically Underutilized Businesses (HUB)--A business that is a Corporation, Sole Proprietorship, Partnership, Limited Liability Company, or Joint Venture in which at least 51 percent of the business is owned, operated, and actively controlled and managed by a minority or woman and that meets the requirements in Texas Government Code, Chapter 2161.

(61) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(62) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

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

(64) Housing Quality Standards (HQS)--The property condition standards described in 24 CFR §982.401.

(65) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(66) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(67) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

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

(69) 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.

(70) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(71) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(72) Market Rent--The achievable rent for a unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location, age, unit amenities, utility structure and common area amenities.

(73) Market Study—See *Market Analysis.*

(74) 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.

(75) 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 (30 points) in accordance with the Material Noncompliance provisions, methodology, and point system in Subchapter F of this chapter (relating to Compliance Monitoring);

(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 (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 (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 (80 points); and

(C) for all programs, a Development will be in Material Noncompliance if the noncompliance is stated in Subchapter F of this chapter to be in Material Noncompliance.

(76) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(77) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(78) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(79) 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.

(80) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(81) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(82) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer and other utilities to provide access to and service the Site.

(83) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(84) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(85) Owner—See *Development Owner.*

(86) 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.

(87) Persons with Disabilities--With respect to an individual, means that such person has:

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

(88) Physical Needs Assessment--See *Property Condition Assessment.*

(89) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(90) 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.

(91) Primary Market (PMA)--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(92) Primary Market Area—See *Primary Market.*

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

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

(94) 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.

(95) 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.

(96) 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 §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(97) Qualified Contract (QC)--A bona fide contract to acquire 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 LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(98) Qualified Contract Price (“QC Price”)--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(99) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(100) Qualified Elderly Development--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of “housing for older persons” under the federal Fair Housing Act.

(101) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706 and §2306.6729, and §42(h)(5) of the Code.

(102) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(103) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(104) 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. At least one unit must be reconstructed in order to qualify as Reconstruction.

(105) 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.

(106) Related Party--Includes certain individuals or entities as defined in Texas Government Code, §2306.6702. 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.

(107) 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 proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval;

(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.

(108) Report--See *Credit Underwriting Analysis Report.*

(109) Request--See *Qualified Contract Request.*

(110) 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.

(111) Right of First Refusal--An Agreement to provide a right to purchase the Property to a nonprofit or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(112) 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 the Texas Rural Development Office of the USDA, other than an area that is located in a municipality with a population of more than 50,000.

(113) Secondary Market (SMA)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(114) Secondary Market Area—See *Secondary Market.*

(115) 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.

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

(117) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, and underground utilities.

(118) 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 and Treasury Regulation 1.42-14.

(119) 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.

(120) 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 proposed and expected to be debt free or have no foreclosable or noncash flow debt unless the development is a Tax Exempt Bond Development with a project based rental assistance contract that assures a contract rent for a majority of the units, in which case the Development is treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). 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.

(121) Target Population--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.

(122) 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.

(123) Tax Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax Exempt Bonds.

(124) 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 Subchapter F of this title, and published on the Department's web site (www.tdhca.state.tx.us).

(125) Third Party--A Person who is not:

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

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

(C) anyone receiving any portion of the administration, contractor or 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 percent ownership interest in any of the entities are identified in subparagraphs (A) – (C) of this paragraph.

(126) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation and financing of the Development.

(127) 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 twenty-four (24) months; and

(B) is owned by a Development Owner that includes 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 kitchen facilities.

(128) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(129) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(130) Unit--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.

(131) Unit of General Local Government--A city, town, county, village, tribal reservation or other general purpose political subdivision of the State. For purposes of §11.9 of this title (relating to Competitive HTC Selection Criteria) Unit of General Local Government shall have the meaning given in that section.

(132) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than one-hundred twenty (120) square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.

(133) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent 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 such development stabilized in the Market Study.

(134) Urban Area--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 paragraph (112)(B) of this subsection or eligible for funding as described by paragraph (112)(C) of this subsection.

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

(136) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(137) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation §1.42-10 and §10.607 of this chapter (relating to Utility Allowances).

(138) 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.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Re-use and Target Population fail to fully account for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was

submitted). Staff's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A determination cannot be challenged by any other party.

§10.4. Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section 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 prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

(1) Full Application Neighborhood Organization Request Date. The request must be sent no later than fourteen (14) calendar days prior to the submission of Parts 5 and 6 of the Application for Tax Exempt Bond Developments or at Application for other programs.

(2) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. Such deadline will generally be defined in the applicable NOFA.

(3) Notice to Submit Lottery Application Delivery Date. No later than December 14, 2012, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(4) Applications Associated with Lottery Delivery Date. No later than December 28, 2012 Applicants that participated in the BRB Lottery must submit the complete tax credit Application to the Department.

(5) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(6) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable). For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(7) Market Analysis and Site Design and Development Feasibility Report Delivery Date. For Direct Loan Applications, the Market Analysis and Site Design and Development Feasibility Report must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Market Analysis and Site Design and Development Feasibility Report must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments 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 floodplain 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 Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the Unit of General Local Government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments.

(2) Mandatory Site Characteristics. Developments Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) services. Only one service of each type listed in subparagraphs (A) - (S) of this paragraph will count towards the number of services required. A map must be included identifying the Development Site and the location of the services by name. All services must exist or, if under construction, must be under active construction, post pad (*e.g.* framing the structure) 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;

(O) city hall;

(P) county courthouse;

(Q) fire station;

(R) police station; or

(S) public transportation stop.

(3) Undesirable Site Features. Development Sites with the undesirable features identified in subparagraphs (A) - (H) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA are exempt. For purposes of this requirement, the term 'adjacent' means 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 undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (H) of this paragraph, staff may request a determination from the Board as to whether such feature is unacceptable. If the Board determines such feature or Site is ineligible the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(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;

(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 in which 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 in which the buildings are located within the accident zones or clear zones for commercial or military airports;

(G) Developments 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 Local Government Code, §243.002; or

(H) Any other Site deemed unacceptable, which would include, without limitation, those containing an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(4) Undesirable Area Features. If the Development Site is located between 301 feet – 1,000 feet of any of the undesirable area features in subparagraphs (A) – (H) of this paragraph, the Applicant must disclose the presence of such feature to the Department. The standard to be applied in making a determination under this paragraph is whether the undesirable area feature is of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria). For a Housing Tax Credit Application the Applicant is required to disclose the presence of such feature at the time the pre-application (as applicable) is submitted to the Department so as to expedite the review of such information. For all other types of Applications, and for those Housing Tax Credit Applicants who did not submit a pre-application, the Applicant is required to disclose the presence of such feature at the time the Application is submitted to the Department. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application.

Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the Board pursuant to §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of Site ineligibility and termination of the Application cannot be appealed.

(A) A history of significant or recurring flooding;

(B) Significant presence of blighted structures;

(C) Fire hazards that could impact the fire insurance premiums for the proposed Development;

(D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports;

(E) A hazardous waste site or a source of localized hazardous emissions, whether corrected or not;

(F) Heavy industrial use;

(G) Active railways (other than commuter trains); or

(H) Landing strips or heliports.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(i) Developments comprised of 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);

(ii) Any Development with any building(s) with four or more stories that does not include an elevator;

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

(iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(v) A Development seeking Housing Tax Credits that is reasonably believed by staff to clearly not 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; or

(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d), requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Qualified Elderly Developments.

(i) 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;

(ii) 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; or

(iii) Any Qualified Elderly Development (including Qualified Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) **Development Size Limitations**. The minimum Development size will be 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas will be limited to 80 Units. Other Developments do not have a limitation as to the number of Units.

(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 Building Costs and Site Work. If financed with USDA the minimum is $19,000 and for Tax-Exempt Bond Developments, less than twenty (20) years old, the minimum is $15,000 per Unit. These levels must be maintained through the issuance of IRS Forms 8609 or at the time of the close-out documentation, as applicable.

(4) **Mandatory Development Amenities**. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must provide all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (C) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. These amenities must be at no charge to the tenants.

(A) All 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 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 or LED light 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 or Efficiency 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 one and a half (1.5) spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly.

(5) **Common Amenities.**

(A) All Developments must provide sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) – (vii) of this subparagraph. For Developments with at least 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

(i) Developments with 16 Units must qualify for one (1) point;

(ii)Developments with 17 to 40 Units must qualify for four (4) points;

(iii) Developments with 41 to 76 Units must qualify for seven (7) points;

(iv) Developments with 77 to 99 Units must qualify for ten (10) points;

(v) Developments with 100 to 149 Units must qualify for fourteen (14) points;

(vi) Developments with 150 to 199 Units must qualify for eighteen (18) points; or

(vii) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be 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) will only qualify for points under one category:

(i) Full perimeter fencing (2 points);

(ii) Controlled gate access (2 points);

(iii) Gazebo w/sitting area (1 point);

(iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(v) Community laundry room with at least one washer and dryer for each 25 Units (3 points);

(vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);

(vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);

(viii) Swimming pool (3 points);

(ix) Splash pad/water feature play area (1 point);

(x) 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 commercial use grade or quality. 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);

(xi) 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);

(xii) Furnished Community room (2 points);

(xiii) Library with an accessible sitting area (separate from the community room) (1 point);

(xiv) Enclosed community sun porch or covered community porch/patio (1 point);

(xv) Service coordinator office in addition to leasing offices (1 point);

(xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);

(xvii) Health Screening Room (1 point);

(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(xix) Horseshoe pit, putting green or shuffleboard court (1 point);

(xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot; (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or

(xxii) 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 clause (xxi) of this subparagraph is not selected;

(xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(xxiv) 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);

(xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);

(xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);

(xxvii) Common area Wi-Fi (1 point);

(xxviii) Twenty-four hour monitored camera/security system in each building (3 points);

(xxix) Secured bicycle parking (1 point);

(xxx) Rooftop viewing deck (2 points); or

(xxxi) 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. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) – (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the nine (9) items listed under items (-a-) - (-i-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this item;

(-a-) at least 20 percent 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;

(-b-) 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;

(-c-) 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;

(-d-) all of the HVAC condenser units are located so they are fully shaded 75 percent of the time during summer months (i.e. May through August);

(-e-) install Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) 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;

(-h-) 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;

(-i-) 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).

(6) **Unit Requirements**.

(A) **Unit Sizes**. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

(i) five hundred (500) square feet for an Efficiency Unit;

(ii) six hundred (600) square feet for a one Bedroom Unit;

(iii) eight hundred (800) square feet for a two Bedroom Unit;

(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;

(B) **Unit Amenities**. Housing Tax Credit Applications may select amenities for scoring under this section but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax Exempt Bond Developments must include enough amenities to meet a minimum of (7 points). Applications not funded with Housing Tax Credits (*e.g.* HOME Program) must include enough amenities to meet a minimum of (4 points). The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Compliance Period. 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).

(i) Covered entries (0.5 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) Microwave ovens (0.5 point);

(iv) Self-cleaning or continuous cleaning ovens (0.5 point);

(v) Refrigerator with icemaker (0.5 point);

(vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);

(vii) Laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (1.5 points);

(viii) Thirty (30) year shingle or metal roofing (0.5 point);

(ix) Covered patios or covered balconies (0.5 point);

(x) Covered parking (including garages) of at least one covered space per Unit (1.5 points);

(xi) 100 percent masonry on exterior (2 points) (Applicants may not select this item if clause (xii) of this subparagraph is selected);

(xii) Greater than 75 percent masonry on exterior (1 point) (Applicants may not select this item if clause (xi) of this subparagraph is selected);

(xiii) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);

(xiv) 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) (1.5 points);

(xv) High Speed Internet service to all Units (1 point);

(xvi) Desk or computer nook (0.5 point)

(7) **Tenant Supportive Services**. The supportive services include those listed in subparagraphs (A) – (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of (8 points); Applications not funded with Housing Tax Credits (e.g. HOME Program or other Direct Loans) must include enough amenities to meet a minimum of (4 points). The points selected 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 §10.614 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. 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.

(A) joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc. (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) 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 or online course is not acceptable (1 point);

(H) annual health fair (1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized team sports programs or youth programs offered by the Development (1 point);

(K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);

(L) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (2 points);

(N) twice monthly arts, crafts and other recreational activities such as Book Clubs and creative writing classes (2 points);

(O) annual income tax preparation (offered by an income tax prep service) (1 point);

(P) monthly transportation to community/social events such as lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc. (1 point);

(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);

(R) specific and pre-approved caseworker services for seniors, Persons with Disabilities or Supportive Housing (1 point);

(S) 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

(T) any of the 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 unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point).

(8) **Development Accessibility Requirements**. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) – (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development 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.

(B) New Construction (excluding New Construction of non-residential buildings) Developments 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.

(C) The Development Owner 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)).

Subchapter C
Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules

§10.201. Procedural Requirements for Application Submission.

The purpose of this section is to identify the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no evaluation was performed by the Department. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete and receipted and meet all of the Department's criteria with all the required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed to have not made an Application.

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

(C) The Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete Application to the Department. Each copy should be in a single file and individually bookmarked in the order as required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g. Third Party Reports) outside of the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant sees fit.

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

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications that receive a Certificate of Reservation from the Texas Bond Review Board (TBRB) on or before November 15 of the prior program year will be required to satisfy the requirements of the prior year QAP and Uniform Multifamily Rules. 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 Uniform Multifamily Rules.

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

be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. Those Applications designated as Priority 3 must submit Parts 1 - 4 within fourteen (14) calendar days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. The remaining parts of the Application and any other outstanding documentation, regardless of TBRB Priority designation, must be submitted to the Department at least seventy-five (75) calendar days prior to the Board meeting at which the decision to issue a Determination Notice would be made.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that 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 meet the requirements described in subparagraphs (A) and (B) of this paragraph:

(A) 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 which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (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 §10.203 of this chapter (relating to Public Notifications. (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number. 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; or

(B) if there are changes to the Application as referenced in subparagraph (A) of this paragraph 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.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal or cancellation. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. Applications believed likely to be competitive are sometimes referred to as Priority Applications. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be Priority Applications may change from time to time. The Department shall underwrite

Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

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

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

(i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the Texas Bond Review Board (TBRB); and

(ii) For all other Developments, the date the Application is received by the Department; and

(iii) Notwithstanding the foregoing, 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.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints.

(7) 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 to resolve inconsistencies in the original Application. Staff will request the deficient information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, or if an e-mail address is not provided in the Application, by facsimile to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post award submissions. Issues initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, based upon a review of the response provided by the Applicant. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. However, final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) Administrative Deficiencies for Competitive HTC and Rural Rescue Applications. Unless an extension has been timely requested and granted; and 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. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom

mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice then a late fee of $500 for each business day the deficiency remains unresolved will be assessed and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination.

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

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

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

(9) Challenges to Opposition for Tax-Exempt Bond Developments. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the challenger must declare the basis for the challenge. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any support for accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder, chose by the Department, for review and a determination. The determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications.

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. If such ineligibility is determined by staff to exist, then prior to termination the Department will send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed below include those requirements in §42 of the Internal Revenue Code, Texas Government Code, Chapter 2306 and other criteria considered important by the Department and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) – (M) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member

is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) 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; (§2306.6721(c)(2))

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

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

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

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

(F) has been identified by the Department as being in Material Noncompliance or has repeatedly violated the LURA or 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 Subchapter F of this chapter (relating to Compliance Monitoring) and remains unresolved; (§2306.6721(c)(3))

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

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733 , or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations and the Party is on notice that such deobligation results in ineligibility under these rules;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of these rules and will subject the Applicant to the assessment of administrative penalties under Chapter 2306 of the Texas Government Code and this title; or

(L) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, voluntarily or involuntarily, that has terminated within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be terminated based upon factors in the disclosure. If, not later than 30 days after the date on which the

Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the Executive Director makes an initial determination that the person or persons should not be involved in the Application, that initial determination shall be brought to the Board for a hearing and final determination. If the Executive Director has not made and issued such an initial determination on or before the day thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) – (v) of this subparagraph shall be considered:

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

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

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

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

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

(M) has worked or works to create opposition to any Application, excluding any challenges filed pursuant to §11.10 of this title (relating to Challenges of Competitive HTC Applications), has formed a Neighborhood Organization (excluding any allowable technical assistance), has given money or a gift to cause the Neighborhood Organization to take its position as it relates to §11.9(d)(1) of this title (relating to Competitive HTC Selection Criteria).

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

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

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

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

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year

period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; (§2306.6703(a)(1)); or

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

§10.203. Public Notifications. (§2306.6705(9))

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted and for all other Applications no older than three (3) months prior to the date the Application is submitted. If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application. However, re-notification is required by all 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 percent. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(1) Neighborhood Organization Requests.

(A) In accordance with the requirements of this subparagraph, the Applicant must request from local elected officials a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site. No later than the Full Application Neighborhood Organization Request Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) or §10.4 of this chapter (relating to Program Dates), as applicable, the Applicant must email, fax, or mail with return receipt requested a completed Neighborhood Organization Request letter as provided in the Application to the local elected official, as applicable, based on 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 its ETJ, 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.

(B) The Applicant must list, in the certification form provided in the Application, 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.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) – (H) of this paragraph whose jurisdiction is over or whose boundaries include the Development Site. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a

certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted.

(A) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

(B) Superintendent of the school district;

(C) Presiding officer of the board of trustees of the school district;

(D) Mayor of the municipality;

(E) All elected members of the Governing Body of the municipality;

(F) Presiding officer of the Governing Body of the county;

(G) All elected members of the Governing Body of the county; and

(H) State Senator and State Representative.

(3) Contents of Notification. The notification must include, at a minimum, all information described in subparagraphs (A) – (F) of this paragraph:

(A) the Applicant's name, address, individual contact name and phone number;

(B) the Development name, address, city and county;

(C) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(D) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(E) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and

(F) the total number of Units proposed and total number of low-income Units proposed.

§10.204. Required Documentation for Application Submission.

The purpose of this section is to identify the documentation that is required at the time of Application submission unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated below is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, as provided in the Application, must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification. Applicants are encouraged to read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

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

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Texas Government Code, Chapter 552 and the Texas Public Information Act.

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

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

(E) The Development Owner 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.

(F) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(G) 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 as further described in Texas Government Code, §2306.6734.

(H) 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.

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

(2) Certification of Principal. This form, as provided in the Application, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Architect Certification Form. This form, as provided in the Application, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Designation as Rural or Urban. Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B) for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Notwithstanding the foregoing, an Applicant proposing a Development in a place listed as urban by the Department may be designated as located in a Rural Area if the municipality has less than 50,000 persons, as reflected in Site Demographics and Characteristics Report, and a letter or other documentation from USDA is submitted in the Application that indicates the Site is located in an area eligible for funding from USDA in accordance with Texas Government Code, §2306.004(28-a)(C). For any Development not located within the boundaries of a municipality, the applicable designation is that of the closest municipality or place.

(5) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application. Experience of multiple parties may not be aggregated to meet this requirement.

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

(i) an experience certificate issued by the Department in the past two (2) years prior to the beginning of the Application Acceptance Period; 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 and Contractor;

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

(III) AIA Document G702--Application and Certificate for Payment;

(IV) Certificate of Occupancy;

(V) IRS Form 8609, (only one per development is required);

(VI) HUD Form 9822;

(VII) Development agreements;

(VIII) Partnership agreements; or

(IX) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), 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.

(6) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) deed(s) of trust on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance; or

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

(I) have been executed by the lender;

(II) be addressed to the Development Owner;

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

(IV) include anticipated interest rate, including the mechanism for determining the interest rate;

(V) include any required Guarantors; and

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

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified in the Application. Acceptable documentation shall include a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application.

(C) Owner Contributions. If the Development will be financed through more than 5 percent of Development Owner contributions, a letter from a Third Party CPA must be submitted that verifies the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed. Additionally, a letter from the Development Owner's bank or banks must be submitted that confirms sufficient funds are available to the Development Owner.

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

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

(iv) anticipated developer fees paid during construction and anticipated deferred developer fees; and

(v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. The information provided must be consistent with all other documentation in the Application.

(7) Operating and Development Cost Documentation.

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

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.607 of this chapter (relating to Utility Allowances).

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

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules.

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

(i) Applicants must also provide a detailed cost breakdown of projected Site Work costs, if any, prepared by a Third Party engineer. If any Site Work costs exceed $15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. 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.

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

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

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

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

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

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

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

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

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

(iv) for Qualified Elderly or Supportive Housing Developments, identification of the number of existing tenants qualified under the Target Population elected under this chapter;

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

(vi) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

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

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

(A) A site plan which:

(i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(ii) identifies all residential and common buildings;

(iii) clearly delineates the flood plain boundary lines and shows all easements;

(iv) if applicable, indicates possible placement of detention/retention pond(s); and

(v) indicates the location of the parking spaces.

(B) Building floor plans. Submitted for each building type and include square footage. Adaptive Reuse Developments are only required to provide building plans delineating each Unit by number and type; and

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

(D) Elevations. Elevations must be submitted for each building type and include a percentage estimate of the exterior composition and proposed roof pitch. Rehabilitation and Adaptive Reuse Developments may submit photographs if the Unit configurations are not being altered and after renovation drawings must be submitted if Unit configurations are proposed to be altered.

(9) Site Control.

(A) Evidence that the Development Owner has the ability to compel legal title to a developable interest in the Development Site or, Site Control must be submitted. 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. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) – (iii) of this subparagraph must be provided:

(i) a recorded warranty deed with corresponding executed settlement statement; or

(ii) a contract for lease with a minimum term of forty-five (45) years and is valid for the entire period the Development is under consideration for Department funding; or

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

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

(10) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) – (D) of this paragraph.

(A) No Zoning Ordinance in Effect. The Application must include 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.

(B) Zoning Ordinance in Effect. The Application must include a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include a signed release that was provided to the Unit of General Local Government agreeing to hold the Unit of General Local Government and all other parties harmless in the event that the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. The Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, 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 clauses (i) - (iv) of this subparagraph:

(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.

(11) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months old as of the close of the Application Acceptance Period then a letter from the title company indicating that nothing further has transpired on the commitment or policy must be submitted.

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

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

(12) Ownership Structure.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer 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) Previous Participation. Evidence must be submitted 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 (regardless of any Ownership interest or lack thereof) receiving more than 10 percent 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 Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed and authorize the parties overseeing such assistance to release compliance histories to the Department.

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

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

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

(ii) The Nonprofit Participation exhibit as provided in the Application;

(iii) A Third Party legal opinion stating:

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

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

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

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

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

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

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

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

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

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4) then they must disclose in the Application the basis of their nonprofit status.

§10.205. Required Third Party Reports.

The Environmental Site Assessment, Property Condition Assessment and Appraisal (if applicable) must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates) and §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis Report and Site Design and Development Feasibility Report must be submitted no later than the Market Analysis and Site Design and Development Feasibility Report Delivery Date as identified in §10.4 of this chapter and §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline the Application will be terminated. 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. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

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

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

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

(2) Market Analysis. This report, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then an updated Market Analysis from the Person or organization which prepared the initial report must be submitted. 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.

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

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

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

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then an updated PCA from the Person or organization which prepared the initial report must be submitted. 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. For Developments which require a capital needs assessment from USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, any Application claiming any portion of the building acquisition

in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then an updated appraisal from the Person or organization which prepared the initial report must be submitted. 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. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

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

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

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey no older than six (6) months to the beginning of the Application Acceptance Period; or Category 1B - Standard Land Boundary Survey no older than twelve (12) months from the beginning of the Application Acceptance Period).

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development and building coded ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of, retaining walls, set-back requirements and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

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

§10.206. Board Decisions. (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant’s inability to demonstrate compliance with program requirements. The recommendation with amendments, if any, approved by the Board, will supersede any conflicting information in the Application.

§10.207. Waiver of Rules for Applications.

(a) General Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Restrictions and Requirements), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). An Applicant must request a waiver or pre-clearance, as applicable based on the requirements stated herein, in writing at or prior to the submission of the pre-application for Competitive Housing Tax Credit Applications and Tax Exempt Bond Developments where the Department is the Issuer. For all other Applications, the waiver request must be submitted at the time of Application submission. Regarding waivers, the request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701 are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program. Regarding pre-clearance determinations, the request should include sufficient documentation in order for the Board to make a determination (e.g. detailed information regarding site features or community revitalization plans) and should reference the section of the rules which calls for such determination. Where appropriate the Applicant is encouraged to submit with the requested waiver or pre-clearance any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development. Any waiver or pre-clearance, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved.

(b) Waivers and/or Pre-Clearance Granted by the Executive Director. The Executive Director may waive or grant pre-clearance as provided in this rule. Even if this rule grants the Executive Director authority to waive or pre-clear a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver or pre-clear any item to the extent such requirement is mandated by statute. Denial of a waiver and/or pre-clearance by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(c) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters B, C, E, and G of this chapter except no waiver shall be granted to provide forward commitments or if it is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules. A requested waiver must establish how the waiver is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law or purpose or policy set forth in Texas Government Code, Chapter 2306. In this regard, the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, and 2306.6701 are general in nature and apply to the role of the Department and its programs, including the tax credit program, taken as a whole and the Board does not view the fact that an outcome requiring a waiver would be consistent with any of those enumerated policies or purposes as establishing a presumption that specific transaction must be granted a waiver in order for the program, as a whole, to be consistent with those policies and purposes.

Subchapter D - Underwriting and Loan Policy

§10.301. General Provisions.

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

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

§10.302. Underwriting Rules and Guidelines.

(a) **General Provisions**. Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code (the "Code"), 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 Code, resulting in a Credit Underwriting Analysis Report used by the 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 timeframes 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 §10.3 of this chapter (relating to Definitions). 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 Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and

based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure 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 §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst, and other market data sources.

(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 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. Qualified Elderly Developments and 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) **Effective Gross Income (EGI)**. The Underwriter independently calculates EGI. If the EGI estimate provided by the Applicant is within 5 percent 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 Development type, 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 percent 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 percent 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**. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.

(ii) Property tax exemptions or a Proposed Payment In Lieu Of Tax (PILOT) agreement 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**. Include only compliance fees charged by the Department and are considered in calculating the Debt Coverage Ratio.

(iv) **Cable Television Expense**. Includes fees charged directly to the Development Owner 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 percent of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the

Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) **Net Operating Income**. The difference between the EGI and total operating expenses. If the first year stabilized NOI figure provided by the Applicant is within 5 percent 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 percent 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-Housing 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 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 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 Direct Loans;

(II) a reclassification of Direct Loans to reflect grants, if permitted by program rules;

(III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause:

(I) reclassification of Department 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 Direct Loans;

(III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the gap/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 percent of the Underwriter's estimates.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent 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 development 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 percent 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 §10.306(a)(5) of this chapter (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 §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include 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 §10.304 of this chapter. 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 (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;

(iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or

(iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development 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.** The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms and supporting documentation.

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

(4) **Building Costs**.

(A) **New Construction and Reconstruction**. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard.

(B) **Rehabilitation and Adaptive Reuse**.

(i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.

(ii) The Underwriter will use cost data provided by the Property Condition Assessment (PCA). In the case where the PCA 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 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 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7 percent or 10 percent 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. Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16 percent on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18 percent on Developments with Hard Costs at $2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) **Developer Fee.**

(A) For Housing Tax Credit Developments, the Developer fees and Development Consultant fees included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less.

(B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and

(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.

(D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) **Financing Costs**. 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 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 reasonable and well documented. Reserves do not include capitalized asset management fees or other similar costs.

(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 aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s). 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 this chapter;

(B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;

(D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process 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, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

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

(1) **Floodplains**. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) the Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) the Development must be designed to comply with the QAP, as proposed.

(2) **Proximity to Other Developments**. The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.

(3) **Supportive Housing**. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:

(A) **Operating Income**. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

(B) **Operating Expenses**. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments 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: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) **Total Housing Development Costs**. For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

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

(i) **Feasibility Conclusion**. An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) **Gross Capture Rate**. The method for determining the Gross Capture Rate for a Development is defined in §10.303(d)(11)(F) of this chapter. 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 percent for the total proposed Units; or
   (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
   (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
   (D) targets Persons with Disabilities and the Gross Capture Rate exceeds 30 percent.
   (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 §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
      (ii) Existing Housing. The proposed Development is comprised of existing affordable housing which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.
(2) **Deferred Developer Fee**. Applicants requesting an allocation of tax credits where the estimated deferred Developer fee, based on the 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 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.
(4) **Initial Feasibility**. The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
(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 criteria 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 percent of the Units and a firm commitment with terms including Contract Rent and number of Units is submitted at Application.
(ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.
(iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units.
(iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.
(v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. Market Analysis Rules and Guidelines.

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

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

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

(1) 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 timeframes in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(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**. A Secondary Market Area is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one 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) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and

(I) monthly rent and Utility Allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities; and

(xi) for rental developments only, the occupancy and turnover.

(10) **Market Information**.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

(i) total housing;

(ii) 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 described in §10.302(d)(1)(C) of this chapter (relating

to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:
(i) number of Bedrooms;
(ii) quality of construction (class);
(iii) Target Population; and
(iv) Comparable Units.

(C) **Absorption**. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) **Demographic Reports**.
(i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
(iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts 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 a Qualified Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.
(I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.
(II) Target. If applicable, adjust the household projections for the Qualified Elderly or Persons with Special Needs targeted by the proposed Development.
(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).
(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:
(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for 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 percent of Gross Demand.

(iii) **Potential Demand**. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Qualified Elderly Developments:

(-a-) minimum eligible income is based on a 50 percent rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households.

(iv) **Demand from Secondary Market Area:**

(I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;

(II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and

(III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(v) **Demand from Other Sources:**

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) **Employment**. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area.

(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 §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.
  (i) The Department recommends use of HUD Form 92273.
  (ii) A minimum of three developments must be represented on each attribute adjustment matrix.
  (iii) Adjustments for concessions must be included, if applicable.
  (iv) Total adjustments in excess of 15 percent must be supported with additional narrative.
  (v) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) **Effective Gross Income**. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) **Demand:**
  (i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and
  (ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(E) **Relevant Supply**. The Relevant Supply of proposed and unstabilized Comparable Units includes:
  (i) the proposed subject Units;
  (ii) Comparable Units with priority over the subject that have made application to the Department and have not been presented to the 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 §10.302(i) of this chapter 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.

§10.304. Appraisal Rules and Guidelines.

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

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

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

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

(1) **Title Page**. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.
(2) **Letter of Transmittal**. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.
(3) **Table of Contents**. Number the exhibits included with the report for easy reference.
(4) **Disclosure of Competency**. Include appraiser's qualifications, detailing education and experience.
(5) **Statement of Ownership of the Subject Property**. Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.
(6) **Property Rights Appraised**. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.
(7) **Site/Improvement Description**. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.
    (A) **Physical Site Characteristics**. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.
    (B) **Floodplain**. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) **Zoning**. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) **Description of Improvements**. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) **Environmental Hazards**. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (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.

§10.305. 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 ESA 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 the Department 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 the Department. 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 ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

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

(1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;
(2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
(3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;
(4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for 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 Development 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 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.

§10.306. Property Condition Assessment Guidelines.

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

details all Rehabilitation costs and projected repairs and replacements through at least twenty (20) years. The PCA must also include discussion and analysis of:

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

(2) **Code Compliance**. The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property;

(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 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 percent 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) 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 the Department 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.

§10.307. Direct Loan Requirements.

Direct Loans through the Departments must be structured according to the criteria as identified in paragraphs (1) - (5) of this section:

(1) the interest rate may be as low as zero percent provided all applicable program requirements are met as well as requirements in this subchapter. In the case of HOME funds, to the extent Match in an amount less than 5 percent of the HOME funds is provided, an interest rate no lower than 2 percent may be requested;
(2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years;
(3) the loan shall be structured with a regular monthly payment beginning at the end of the construction period and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing; and
(4) the loan shall have a deed of trust with a permanent lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing. Notwithstanding the foregoing, the loan shall have a lien position that is superior to any other sources for financing that have soft repayment structures, non-amortizing balloon notes, are deferred forgivable loans or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing.
(5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (C) of this paragraph:

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

(B) a letter from the Applicant, Developer or Development Owner's bank(s) confirming funds equal to 10 percent of the Total Housing Development Cost are available; or

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

Subchapter E - Post Award & Asset Management Requirements

§10.400. Purpose.

The purpose of this chapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This chapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

(a) 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 staff makes a recommendation that is clearly documented to the Board based on the need to fulfill the goals of the applicable multifamily program as expressed herein and other applicable Department rules, and the Board accepts the recommendation.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all provision of law and rule, including compliance with the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, completion of underwriting and satisfactory compliance with the results thereof, full and satisfactory addressing of any Administrative Deficiencies and conditions of award, Commitment, Contract or any other matters.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) 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 Application process for the Development;

(2) 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;

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) 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.

(e) Direct Loan Commitment. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan or award and provide the loan terms. The

Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. The Commitment shall have a deadline for the loan closing to occur no more than six (6) months from execution of the Commitment, which may be extended in accordance with the provisions in this chapter.

§10.402.Housing Tax Credit and Tax Exempt Bond Developments.

(a) Commitment. For Competitive HTC Developments the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and 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 Subchapter D of this chapter (relating to Underwriting and Loan Policy) and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended without prior Board approval for good cause.

(b) Determination Notices. For Tax Exempt Bond Developments the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also 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 the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for under the Bond Reservation or if the financing or development change significantly as determined by the Department.

(c) 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 necessary by the Department, as required by §42(m)(2)(D) of the Code. Increases to the amount of tax credits that exceed 110 percent 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 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director. Increases to the tax credit amount are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Certificate of Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Texas Secretary of State. If the entity is newly registered in Texas and the Certificate of Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Certificate of Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Certificate of Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice 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 the Person(s) 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;

(5) evidence of satisfaction of 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; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments).

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan (as further described in the Tax Exempt Bond Process Manual);

(B) certifications 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;

(C) certifications that 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; and

(D) evidence that the financing has closed, such as an executed settlement statement.

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than two (2) years from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). 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, in the form prescribed by the Department in the Multifamily Programs Procedures Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) 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 has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination staff is directed to award the credits to other qualified Applicants based on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different 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) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, Site Control must be identical to the Development Site that was submitted at the time of Application submission as determined by the Department.

(4) Evidence that the Development Owner is in good standing as documented by a Certificate of Account Status from the Comptroller and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(5) 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.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, the Development Owner must incur more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the 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 Percent Test Documentation Delivery Date as identified in §11.2 of this title. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (5) of this subsection, along with all information outlined in the Post Carryover Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) – (5) of this subsection as well as all other conditions placed upon the Application in the Commitment. Documentation to be submitted includes:

(1) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site;

(2) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties or other conditions on or affecting the Development that 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 Post Carryover Activities Manual;

(4) certification 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 of the Development architect or engineer responsible for Fair Housing compliance at Department-approved Fair Housing training, relating to design issues, for at least five (5) hours on or before the time the 10 Percent Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10 Percent Test Documentation; and

(5) a Certification from the lender and syndicator identifying all Guarantors known at that time.

(h) Construction Status Report. Within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, and every quarter thereafter all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection unless changes to the original submissions of paragraphs (1) and (2) of this subsection have occurred, in which case such amendments shall also be submitted with the subsequent report. Construction status reports shall be due by the tenth day of the first day of each quarter (January, April, July, and October) and continue on a quarterly basis until the entire development is complete and all units are placed in service, whereupon a final report will be due. The construction report submission consists of:

(1) the executed partnership agreement with the investor (identifying all Guarantors) or other documents setting forth the legal structure and ownership;

(2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(3) the most recent AIA G702 and G703 certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and

(4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). The Department will generate a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to, specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities. The executed LURA and all exhibits will be sent to the Development Owner whereupon the Development Owner will then execute the LURA and have the fully-executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA or has alternative arrangements which are acceptable to the Department and approved by the Executive Director.

(j) Cost Certification. The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(II) of the Code to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (G) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxii) of this subparagraph, and pursuant to the Post Carryover Activities Manual:

(i) Carryover Allocation Agreement/Determination Notice and Election Statement;

(ii) Development Owner's Statement of Certification;

(iii) Development Owner Summary;

(iv) Evidence of Nonprofit and CHDO Participation;

(v) Evidence of Historically Underutilized Business (HUB) Participation;

(vi) Development Summary with Architect Certification (including a list of 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 Pro forma;

(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; and

(xxii) TDHCA Compliance Workshop Certificate.

(C) received written notice from the Department that all deficiencies noted during the final construction inspection have been resolved in accordance with Subchapter F of this chapter (relating to Compliance Monitoring);

(D) informed the Department of and received written approval for all amendments and ownership transfers relating to the Development in accordance with §10.405 of this

chapter (relating to Amendments) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)); (§2306.6731(b))

(E) submitted to the Department the recorded LURA in accordance with subsection (i) of this section;

(F) paid all applicable Department fees, including any past due fees; and

(G) 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 Development, as described in this chapter.

§10.403. Direct Loans.

(a) Loan Closing. In preparation for closing any Direct Loan the Development Owner must submit the items described in paragraphs (1) - (10) of this subsection:

(1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director may approve a closing to move forward without the closing on other sources. The Executive Director may require a personal guarantee from a Principal of the Development Owner for the interim period;

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

(3) Owner/General Contractor agreement and Owner/architect agreement;

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

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

(6) a budget that includes the amount of Development funds specifying the acquisition cost, construction costs, developer fees, other soft costs and Match to be provided. The sources of funds used to finance the Development must be submitted. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of environmental clearance;

(8) verification of HUD Site and Neighborhood clearance;

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

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

(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited to a promissory note, deed of trust, construction loan agreement, LURA, and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliate grants the Department any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the program's requirements. The construction loan agreement shall provide for a construction or development period of eighteen (18) months from the actual date of loan closing at which point the permanent loan repayment period will begin. An extension of the construction or development period of not more than six (6) months may be approved for good cause by the Executive Director or designee at any time during the construction or development period. Extensions longer than six (6) months or requests other than during the construction or development period may only be approved by the Board for good cause.

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

(1) except for disbursements for acquisition and closing costs, a down-date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion;

(2) for hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) the Department may require that sufficient funds be held back from initial disbursement to allow for periodic disbursements as may be necessary to meet federal requirements;

(4) if applicable, up to 90 percent of Development funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match, including the date of provision, prior to release of the final 10 percent of funds. If funds are utilized for acquisition costs, a contract between the Development Owner and the Person providing the Match which specifies the terms of the Match provision may be accepted;

(5) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an

inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement of developer fees if it is determined that the Development is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

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

(7) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must generally include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(8) include the withholding of 10 percent of the construction contract for retainage. Retainage will be held until at least thirty (30) calendar days after all of the items described in subparagraphs (A) - (D) of this paragraph are received:

(A) completion of construction;

(B) a final inspection, after which receipt, a clearance is issued by the Department;

(C) labor standards final wage compliance report;

(D) receipt of certificates of occupancy for New Construction or a certification of completion from the Development architect for Rehabilitation; and

(9) for final disbursement requests, the Development Owner must submit documentation required for Development completion reports which may include documentation of full compliance with the Uniform Relocation Act and any other applicable relocation requirements.

§10.404. Reserve for Replacement Requirements.

(a) Maintenance. 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 Texas Government Code, §2306.186. 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) Escrow Agent to Reserve Funds. 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 Texas Government Code, §2306.186.

(1) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust 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 periodically, 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 Texas Government Code, §2306.186 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 trust indenture or tax credit syndication, or where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development 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 Development 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) Final Certification Submission. 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 Development 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 (if applicable);

(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 indicating:

(A) the Development Owner has met all established reserve for replacement requirements; or

(B) the plan of action to bring the Development in compliance with all established reserve for replacement requirements.

(d) Repair Reserve. If the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development 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. The Development Owner shall submit on an annual basis within the Department's required Development Owner's Financial Certification packet a signed certification by the First Lien Lender including:

(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

(4) 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) - (e) of this section; and

(C) failure to make a required deposit.

(e) Reserve Account. 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, not less than $250 per Unit; or

(3) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, the Development Owner of a multifamily rental housing Development shall contract for a Third-Party Property Condition Assessment and the Department will re-evaluate the annual reserve requirement based on the findings and other support documentation. Submission by the Development Owner to the Department will occur within thirty (30) days of completion of the Property Condition Assessment and must include the complete Property Condition Assessment, the First Lien Lender and/or Development Owner response to the findings of the Property Condition Assessment, documentation of repairs made as a result of the Property Condition Assessment, and documentation of adjustments to the amounts held in the replacement Reserve Account based upon the Property Condition Assessment. A Property Condition Assessment will be conducted:

(A) at appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department; or

(B) at least once during each five (5) year period beginning with the eleventh (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.

(f) Land Use Restriction Agreement (LURA). A Land Use Restriction Agreement or restrictive covenant between the Development Owner and the Department must require:

(1) the Development 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 percent 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 Development Owner to continue making deposits until the earliest of:

(A) the date on which the Development 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 the end of the Affordability Period specified by the Land Use Restriction Agreement or restrictive covenant; or the end of the repayment period of the first lien loan.

(g) Change of Ownership Responsibilities. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section.

(h) Penalties and Material Non-Compliance. If a request for extension or waiver is not approved by the Department then a penalty of up to $200 per dwelling Unit in the Development and/or characterization of the Development as being in Material Non-Compliance, as defined in §10.3 of this chapter (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, if required;

(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) Development Owner fails to make a required deposit;

(5) Development Owner fails to contract for the Third-Party Property Condition Assessment as required under this section; or

(6) Development Owner fails to make necessary repairs in accordance with the 3rd party property condition assessment or §10.616 of this chapter (regarding Property Condition Standards).

(i) Department-Initiated Repairs. The Department or its agent may make repairs to the Development if the Development 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 Development Owner's failure to comply with federal, state, and/or local health, safety, or building code. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(1) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and the funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Development Owner or Developer; or

(2) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(j) Exceptions to Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) Recording or amendments that do not result in a change to the LURA. (§2306.6712) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development and for Competitive HTC Applications, and reallocates the credits to other Applicants on the waiting list.

(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 item that received points, or if the change would significantly affect the most recent underwriting analysis, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.

(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(5) of this chapter (relating to Required Documentation for Application Submission). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. 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. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and

Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(3) 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 percent 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 percent;

(G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;

(H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Restrictions and Requirements) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or 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) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, 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 Department staff that the Unit adjustment is necessary for the continued feasibility of the Development; and

(B) if it is determined by the Department that an 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.

(b) Amendments to the LURA. Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, or a delay in the Right of First Refusal (ROFR) requirements. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement or loan modification or other condition recommended by the Department's Asset Review Committee. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed.

(1) the Development Owner must submit a written request accompanied by an amendment fee as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;

(2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;

(3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;

(4) at least seven (7) business days before the Board meeting when the Development Owner would like the Board to consider their request, the Development Owner must hold a public hearing. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and

(5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(c) Amendments to Direct Loan Terms. An Applicant may request a change to the terms of a loan or loan commitment. Any such request will be fully vetted and Applicants are encouraged to make such requests in a timely manner providing sufficient time for the Department staff to review and, if necessary, underwrite the changes. The Executive Director or authorized designee may approve amendments to loan terms as described in paragraphs (1) - (5) of this subsection. Board approval is necessary for other any changes:

(1) extensions of up to twelve (12) months to the loan closing date in the loan Commitment. An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) extensions of up to six (6) months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;

(4) changes to the loan amortization or interest rate that cause the annual repayment amount to change less than 20 percent; and

(5) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, 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.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. A Development Owner must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of the Development. If the transfer is the result of an involuntary removal of the general partner by the investment limited partner, notice shall be provided as soon as possible, considering the sensitive timing and nature of this decision. Department approval must be requested for any new member to join in the ownership of a Development, except for changes to the limited partner or other partners affiliated with the investment limited partner. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer, except where the transfer is an Affiliate of the Development Owner, if such entity contains no new members, or a non-Controlling Related Party for estate planning purposes. The Executive Director may not unreasonably withhold approval of the transfer.

(b) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than to an Affiliate or non-Controlling Related Party for estate planning purposes included in the ownership structure) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development

Owner can provide evidence that a hardship is creating the need for the transfer (e.g. potential bankruptcy, removal by a partner, etc.). The Development Owner and the proposed transferee must provide the Department with a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(c) Documentation Required. A Development Owner 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, to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. All transfer requests must disclose the reason for the request. The Development Owner shall certify that the tenants in the Development have been notified in writing of the transfer no later than thirty (30) calendar days prior to the approval of the transfer request to the Department. Within five (5) business days 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 Department's programs, LURAs and eligibility under this chapter. If the Department determines that the transfer, involuntary removal or replacement, was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendations to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to §60.309 of this title (relating to Debarment).

(d) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) 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

(2) 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.

(e) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). 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 Development Owner unless such ownership transfer is approved by the Department.

(f) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407. Right of First Refusal.

(a) General. This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal to a Qualified ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c) or tenant organizations. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under this the LURA. All requests for Right of First Refusal (ROFR) submitted to the Department, regardless of existing regulations, must adhere to this process. A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a LURA includes a provision creating a ROFR, a Development Owner may not request a Qualified Contract until the requirements outlined in this section have been satisfied. The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, Department staff will not approve an ownership transfer to an entity that controls a Property in Material Noncompliance as defined in §10.3 of this

chapter (relating to Definitions). However, an entity that controls a Property in Material Noncompliance that wishes to pursue the acquisition of a Department-administered Property may follow the procedures outlined in Subchapter F of this chapter (relating to Compliance Monitoring). Satisfying the ROFR requirement does not terminate the LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal of the Property or an executed purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement;

(2) the Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization without going through the ROFR process outlined herein. To proceed with the ROFR request, submit the notice of intent and all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to a for-profit entity, the Development Owner shall provide a notice of intent to the Department of said determination to sell the Development and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified Nonprofit Organization or tenant organization that has a limited priority in exercising a ROFR to purchase the Development, the Development Owner must first offer the Property to this entity. If the nonprofit entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the notice of intent to sell the Property. The Department will determine from this documentation whether the ROFR requirement has been met. In the event that this organization is not operating when the ROFR is to be made, the ROFR must be provided to another Qualified Nonprofit Organization. Upon review and approval of the notice of intent and denial of offer letter, the Department may notify the Development Owner in writing that the ROFR requirement has been satisfied. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) documentation verifying the ROFR offer price of the property;

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months from the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (regarding Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) any recent Physical Needs Assessment conducted by a Third-Party that is less than one (1) year old from the date of the submission of the request and in the Development Owner's possession;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

(11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within five (5) business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the nonprofit buyer list maintained by the Department to inform them of the availability of the Property for the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ROFR Organization, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the organization selected by the Development

Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) and (2) of this subsection:

(1) if the LURA requires a ninety (90) day ROFR posting period, within ninety (90) days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the nonprofit fails to consummate the purchase, the ROFR requirement will be deemed met;

(C) if an offer from a nonprofit is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the ninety (90) day period;

(D) if no bona fide offers are received during the ninety (90) day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section shall be given within two (2) years before the expiration as required by Texas Government Code, §2306.6726. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the notice of intent shall be given within two (2) years before the date upon which the Development Owner intends to sell the Development. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified Nonprofit Organization that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Nonprofit Organization or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a tenant organization approved by the Department; and

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the

Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose;

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified Nonprofit Organization, tenant organization or the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the minimum purchase price.

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

(1) Prior to closing a sale of the Property, the final settlement statement and final sales contract with all amendments must be submitted to the Department. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, the Department will notify the Development Owner in writing that they may sell the Property or request a Qualified Contract pursuant to §10.408 of this chapter (relating to Qualified Contract Requirements). If the Development Owner proceeds with a sale of the Property, prior to such sale, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)).

(2) If the closing price is materially less than the amount identified in the sales contract or appraisal that submitted in accordance with subsection (c)(2)(A) - (E) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

(1) the best interests of the residents of the Development;

(2) the impact the decision would have on other Developments in the Department's portfolio;

(3) the source of the data used as the basis for the Development Owner's appeal;

(4) the rights of nonprofits under the ROFR;

(5) any offers from an eligible nonprofit to purchase the Development; and

(6) other factors as deemed relevant by the Executive Director.

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) Eligibility. A Development Owner may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year proceeding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(3) Development Owners who received an allocation of credits on or after January 1, 2002 are not eligible to request a Qualified Contract. (§2306.185)

(c) Preliminary Qualified Contract Request. A Development Owner is eligible to file a pre-request any time after the end of the year proceeding the last year of the Initial Affordability Period.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Property does not have any outstanding instances of noncompliance, with the exception of the physical condition of the Property;

(B) there is a Right of First Refusal (ROFR) connected to the Property that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(D) the Development Owner has all of the necessary documentation to submit a Request.

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the property (non-TDHCA); and

(D) local code compliance report within the last twelve (12) months or HUD-certified UPCS inspection.

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) The documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) consistent with Subchapter D of this chapter;

(H) a current property condition assessment consistent with Subchapter D of this chapter;

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6 percent of the QC Price.

(3) Within ninety (90) days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month;

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price; and

(4) the QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. The Department will then assess if the prospective purchaser is a Qualified Purchaser. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) allow access to the Property and tenant files;

(2) keep the Department informed of potential purchasers; and

(3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at the QC Price, the Development Owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. Although the Development Owner is obligated to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period. Once the Department presents a QC to the Development Owner, the possibility of terminating the Extended Use Period is removed forever and the Property remains bound by the provisions of the LURA.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit evidence, in the form of a signed certification and a copy of the letter to be created by the Department, that the tenants in the Development have been notified in writing that the LURA has been terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance with the physical condition of the Property.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will implement modified

compliance monitoring policies and procedures. Refer to the Extended Use Period Compliance Policy in Subchapter F of this chapter (relating to Compliance Monitoring) for more information.

Subchapter F - Compliance Monitoring

§10.601. Purpose and Overview.

(a) This subchapter satisfies the requirement of Internal Revenue Code (the "Code") §42(m)(1)(B)(iii) to provide a procedure that will be followed for monitoring for noncompliance with the provisions of the Code and to notify the Internal Revenue Service (IRS) of such noncompliance. This subchapter is consistent with requirements established under applicable state and federal laws, rules, and regulations. The Department will monitor in accordance with this subchapter. Nothing in this subchapter serves to waive, alter, or amend the requirements of any duly recorded Land Use Restriction Agreement (LURA). A party to a LURA wishing to have the LURA amended must submit a formal request to the Department, and the Department will review any such request to determine if it is acceptable and, if acceptable, specify any appropriate requirements for, or conditions, or limitations on any such amendment. The Department monitors rental Developments receiving assistance under:

(1) the Housing Tax Credit Program (HTC);

(2) the HOME Investment Partnerships Program (HOME);

(3) the Tax Exempt Bond Program (BOND);

(4) the Housing Trust Fund Program (HTF);

(5) the Tax Credit Assistance Program (TCAP);

(6) the Tax Credit Exchange Program (Exchange); and

(7) the Neighborhood Stabilization Program (NSP).

(b) All Developments monitored by the Department are subject to the Department's enforcement rules, found in Chapter 60, Subchapter C of this title (relating to Administrative Penalties).

(c) Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The Compliance Division monitors to ensure Owners comply with the program rules and regulations, Texas Government Code, Chapter 2306, the LURA requirements and conditions, and representations imposed by the Application or award of funds by the Department. This subchapter does not address forms and other records that may be required of Development Owners by the IRS or other governmental entities, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

§10.602. Construction Monitoring.

(a) The Department will monitor the entire construction phase for all applicable requirements according to the level of risk. After Final Construction during the Affordability Period, the Department will periodically monitor the Development to assure that the initial compliance review was correct.

(b) Owners are required to submit evidence of final construction within thirty (30) days of completion in a format prescribed by the Department. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(c) The Department will conduct a final inspection after receipt of notification of final construction. During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility laws. In addition, a Uniform Physical Condition Standards inspection may be completed.

(d) Owners will be provided a written notice after the final inspection. If any deficiencies are noted, a corrective action period will be provided.

(e) Forms 8609 and final retainage will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

(f) During any construction inspection, if the Owner and the Department are unable to agree that an identified issue is a violation, the Owner must request Alternative Dispute Resolution (ADR). The process for engaging ADR is outlined in §10.622 of this chapter (relating to Alternative Dispute Resolution).

§10.603. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed no later than September 1st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data. Under special circumstances, the Department may, at its discretion, waive the online reporting requirements where a hardship can be demonstrated. In the absence of a written waiver, all Developments are required to submit reports online.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (c) of this section. For example, if a Development is awarded funds in calendar year 2007, the first report is due in 2009. The AOCR is comprised of five sections:

(1) Part A "Owner's Certification of Program Compliance." All Development Owners must annually certify to compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. In addition, Owners are required to report on the race and ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance. HTC Developments during the Compliance Period will also be required to provide the name and mailing address of the syndicator in the Annual Owner's Compliance Report;

(2) Part B "Unit Status Report." All Developments must annually report the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations;

(3) Part C "Housing for Persons with Disabilities." The Department is required to 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. The questions on Part C satisfy this requirement;

(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide the data requested in the Owner's Financial Certification; and

(5) Part E "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(c) Parts A, B, C and E of the Annual Owner's Compliance Report must be provided to the Department no later than the last day in April of each year, reporting data current as of December 31st of the previous year (the reporting year). Part D, "Owner's Financial Certification," which includes the current audited financial statements and income and expenses of the Development for the prior year, must be submitted to the Department no later than the last day of April, each year.

(d) Any Development for which the AOCR, Part A, "Owner's Certification of Program Compliance," is not received or is received past the due date will be considered not in compliance with this section. If Part A is incomplete, improperly completed, or is not submitted by the Development Owner, it will be considered not received and not in compliance with this section. The Department will report to the IRS on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any HTC Development that fails to comply with this requirement.

(e) Department staff will review Part A of the AOCR for compliance with the requirements of the appropriate program. If it appears that the Development is not in compliance based upon the report, the Owner will be given written notice and provided a corrective action period to clarify or correct the report. If the Owner does not respond to the notice, the report will be subject to the sanctions listed in subsections (f) and (g) of this section.

(f) If any required section, or sections (Parts A, B, C, D and/or E) of the report are not received on or before the deadline for submission specified in subsection (c) of this section, a notice of noncompliance will be sent to the Owner, specifying a corrective action deadline. If the report is not received on or before the corrective action deadline, the Department shall:

(1) For all HTC Developments, issue Form 8823 notifying the IRS of the violation; and

(2) For all Developments, score the noncompliance in accordance with §10.621 of this chapter (relating to Material Noncompliance Methodology).

(g) The Department may assess and enforce the sanctions described in paragraphs (1) and (2) of this subsection against an Owner who fails to submit all or any part of the AOCR on or before the due date of each year and has multiple, consistent, and/or repeated violations of failure to submit all or any part of the AOCR by the due date each year:

(1) a late processing fee in the amount of $1,000; and/or

(2) a HTC Development that fails to submit the required AOCR for three (3) consecutive years may be reported to the IRS as no longer in compliance and never expected to comply.

(h) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

(i) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(j) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(k) Exchange developments must submit Form 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) thirty (30) days after the Department issues the executed form(s).

§10.604. Recordkeeping Requirements.

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §10.603 of this chapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must retain records as required by the specific funding program rules and regulations. In general, retention schedules include but are not limited to the provision of subsections (c) - (f) of this section.

(c) HTC records must be retained for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for NSP and HOME rental Developments must comply with the provisions of 24 CFR §92.508(c), which generally requires retention of rental housing records for five (5) years after the Affordability Period terminates.

(e) Housing Trust Fund (HTF) rental Developments must retain tenant files for at least three (3) years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including, but not limited to, the Application and Development costs and documentation, must be retained for at least five (5) years after the Affordability Period terminates.

(f) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

§10.605. Notices to the Department.

(a) If any of the events described in paragraphs (1) - (4) of this subsection occur, written notice must be provided to the Department within the respective timeframes:

(1) Written notice must be provided at least thirty (30) days prior to any sale, transfer, or exchange of the Development or any portion of the Development;

(2) Notification must be provided within thirty (30) days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster);

(3) Owners of Bond Developments shall notify the Department of the date on which 10 percent of the Units are occupied and the date on which 50 percent of the Units are occupied, within ninety (90) days of such dates; and

(4) Within thirty (30) days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure.

(b) Owners are responsible for maintaining current information (including contact persons, physical addresses, mailing addresses, email addresses, and phone numbers) for the Ownership entity and management company in the Department's Compliance Monitoring and Tracking System (CMTS). Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely on the information supplied by the Owner in CMTS to meet this requirement.

§10.606. Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program, using the definitions of annual income described in HUD Handbook 4350.3 as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing Form 8823, the Department will evaluate annual income consistent with the IRS Guide. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in.

(b) The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form.

(c) The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's income certification form will be accepted.

§10.607. Utility Allowances.

(a) The Department will monitor to determine if HTC, HOME, BOND, HTF, NSP, TCAP, and Exchange properties comply with published rent limits which include an allowance for tenant paid utilities. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on an allocation method or "ratio utility billing system" (RUBS), this monthly amount will be considered a mandatory fee. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, Owner may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than the allowable limit. For HOME, BOND, HTF, and NSP buildings, Owners may account for utilities paid directly to the Owner or to a third party billing company in their utility allowance. Where residents are responsible for some, or all, of the utilities -- other than telephone, cable, and internet -- Development Owners must use a utility allowance that complies with both this section and the applicable program regulations. An Owner may not change utility allowance methods or start charging residents for a utility without written approval from the Department. *Example 607(1): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website.*

(b) Rural Housing Services (RHS) buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(c) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed by HUD (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings.

(d) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in paragraphs (1) - (5) of this subsection:

(1) The utility allowance established by the applicable Public Housing Authority (PHA) for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development. If the PHA publishes different schedules based on building type, the Owner is responsible for implementing the correct schedule based on the Development's building type(s). *Example 607(2):> The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consist of twenty buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each building type.* In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency on an ongoing basis. If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility. If an Owner chooses to implement a methodology as described in paragraph (2), (3), (4), or (5) of this subsection, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received. In general, if the property is located in an area that does not have a municipal, county or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. In the event the property is located in an area without a clear municipal or county housing authority the Department may permit the use of another housing authority's utility allowance schedule on a case by case basis. Prior approval from the Department would be required and the owner would be required to obtain approval on an annual basis;

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: http://www.powertochoose.org/ to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must be signed by the utility provider representative and specifically include all "component charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(3) The HUD Utility Schedule Model. A utility estimate can be calculated by using the "HUD Utility Schedule Model" that can be found at http://www.huduser.org/portal/resources/utilmodel.html (or successor Uniform Resource Locator). The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, on a CD, within the timeline described in subsection (f) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(4) An Energy Consumption Model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of building location. The ninety (90) day period after which the new utility allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate; and

(5) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method."

(e) For a Development Owner to use the Actual Use Method they must:

(1) Provide a minimum sample size of usage data for at least 5 Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. *Example 607(3): A Development has 20 three bedroom/one bath Units, and 80 three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units.* If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(2) Scan the information in subparagraphs (A) - (E) of this paragraph onto a CD and submit it to the Department no later than the beginning of the ninety (90) day period in which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. *Example 607(4): The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2010. The data provided is from February 1, 2009 through January 31, 2010. The Owner must submit the information to the Department no later than March 31, 2010 for the information to be valid*;

(A) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the actual kilowatt usage for each month of the twelve (12) month period for each Unit for which data was obtained, and the rates in place at the time of the submission;

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data;

(C) All documentation obtained from the utility provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(D) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(E) Documentation of the current utility allowance used by the Development;

(3) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the guidelines described in subparagraphs (A) - (E) of this paragraph;

(A) If data is obtained for more than 20 percent or 5 of each Unit Type, all data will be used to calculate the allowance;

(B) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged;

(C) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e. kilowatts over the last twelve (12) months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(D) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(E) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance;

(4) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in paragraph (2) of this subsection;

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent; and

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance.

(f) Effective dates. If the Owner uses the methodologies as described in subsection (b), (c), or (d)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. For methodologies as described in subsection (d)(2) - (5) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance. With the exception of the methodology described in subsection (d)(5) of this section, if a response is not received from the Department within the ninety (90) day period, the Owner may temporarily use the submission as a safe harbor until the Department provides written authorization (the Owner cannot assume that the allowance is approved by the Department but can operate in good faith prior to notification). Failure to submit the proposed utility allowance to the Department and make it available to the residents will result in a finding of noncompliance.

(g) Requirements for Annual Review. Owners utilizing the methods described in subsections (b) and (c) of this section must demonstrate that the utility allowance has been reviewed annually. Any change in the method described in subsection (d)(1) of this section can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. Owners utilizing the methods described in subsection (d)(2) - (5) of this section must submit to the Department, once a calendar year, copies of the utility estimate and simultaneously make the estimate available to the residents by posting the estimate in a common area of the leasing office at the Development. Changes in utility allowances cannot be implemented until the estimate has been submitted to the Department and made available to the residents by posting in the leasing office for a ninety (90) day period. The back-up documentation required by the methodology the Owner has chosen must be submitted to the Department for approval no later than October 1st; however, the Department encourages Owners to submit documentation prior to the October 1st deadline in order to ensure that the Department has adequate time to review and respond to the Owner's estimate.

(h) Combining Methodologies. With the exception of HUD regulated buildings and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, gas, etc.). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(i) Increases in Utility Allowances for Developments with HOME and NSP funds. Unless otherwise instructed by HUD, the Department will permit owners to implement changes in utility allowance in the same manner as Housing Tax Credit (HTC) Developments.

(j) The Owner shall maintain and make available for inspection by the tenant the data upon which the utility allowance schedule is calculated. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the Owner and tenant.

(k) In general, the Department permits Owners to select the method for establishing a utility allowance. However, in accordance with the HOME Final Rule 24 CFR §92.252(c) and as adopted by Texas NSP, the Department has the right to calculate the utility allowance for HOME rental Developments. In addition, the Department will select the method for establishing the utility allowance for Housing Tax Credit properties who’s LURA terminated early.

(l) If Owners want to utilize the HUD Utility Schedule Model or the Energy Consumption Model to establish the initial utility allowance for the Development, prior to the commencement of leasing activities, the Owner must submit utility allowance documentation for Department approval.

(m) The Department will review utility allowances for reasonableness by comparing the allowance to other available data. If the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

§10.608. Lease Requirements.

(a) Eviction, termination, refusal to renew a lease. For HTC Developments, Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.

(b) For HOME and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) prohibits Owners from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253).

(c) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.

(d) HTC and BOND Developments must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) All owners must provide prospective households with a Department approved fair housing disclosure notice. This notice must be executed by the household no more than thirty days and no less than three days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a unit on a Development administered by the Department, including households transferring units within the same Development.

(g) For HOME and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355 and §570.487(c))

§10.609. Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP, and BOND Developments.

(a) Recertification Requirements for 100 percent low income HTC, Exchange and TCAP Developments:

(1) Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTC Developments perform annual income recertifications. Households will maintain the designation they had at initial certification;

(2) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self certification from each household that reports the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). In addition, the self certification will collect information about student status to establish ongoing compliance with the HTC program. The Development must collect this self certification information on the Department's Annual Eligibility Certification (AEC) form and must maintain the certification in all household files; and

(3) One-Hundred percent low income HTC Developments that are not required to complete annual income recertifications but voluntarily continue to do so must obtain the AEC form described in paragraph (2) of this subsection and maintain it in all household files. The Department will not review recertification documentation during a monitoring review unless noncompliance is identified with the initial certification. Failure to complete the AEC form will result in a noncompliance finding under, "Failure to maintain or provide Annual Eligibility Certification" and scored in the Department's Compliance Status System as applicable.

(b) Recertification Requirement for Mixed Income HTC, Exchange and TCAP Developments. HTC projects (as defined on Part II question, 8b of IRS Form 8609) with Market Units must complete annual income recertifications. Section 10.610 of this chapter (relating to Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments) sets out the requirements for maintaining compliance with the Available Unit Rule.

(c) Student Requirements for HTC, Exchange and TCAP Developments. Changes to student status reported by the household at anytime during their occupancy or on the AEC require the Owner to determine if the household continues to be eligible under the HTC program. During the Compliance Period, if the household is comprised of full-time students, the household must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. During the Compliance Period, noncompliance with this section will result in the issuance of IRS Form 8823 reporting noncompliance under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable. Regardless of the requirements stated in a LURA, after the Compliance Period, the Department will not monitor to determine if households meet the student requirements of the Housing Tax Credit program.

(d) Recertification Requirements for 100 percent low income BOND Developments. If 100 percent of the Units are set-aside for households at 60 percent or 50 percent of Area Median Income, regardless of the requirements in the LURA, recertifications are not required.

(e) Recertification Requirement for mixed income BOND Developments. If less than 100 percent of the Units are set-aside for households at 60 percent or 50 percent Area Median Income, Low Income households must be recertified to establish compliance with the Available Unit Rule. Regardless of the requirements stated in the LURA, Eligible Tenants (as defined in the Development's LURA) do not need to be annually recertified.

(f) Student Requirements for 100 percent low income BOND Developments. One-hundred percent low income Bond Developments must continue to annually screen households for student status. Bond Developments that do not also have Housing Tax Credits must use the Department's Certification of Student Eligibility form and it must be maintained in the household's file. Bond developments layered with HTCs may use the Annual Eligibility Certification to annually screen for student status. Changes to student status that the household reports at anytime during their occupancy or during annual screening for student status, require the Owner to determine if the household continues to be eligible under the Bond program. If the household is comprised of full-time students then the household must meet a program exception, which must be documented and maintained in the household's file.

(g) Student requirements for mixed income BOND Developments. Mixed Income Bond Developments must annually screen low income households for student status during the recertification process. If the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. Noncompliance with this section will result in a noncompliance finding under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable.

(h) Recertification Requirements for HOME Developments:

(1) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.203 and §92.252 of the HOME Final Rule, regardless of the requirements stated in a LURA, recertification requirements will be monitored as shown in paragraph (2)(A) - (F) of this subsection;

(2) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2001 will have the sixth year of the affordability period determined in *Example 609(1):*

(A) Year 1: May 15, 2001 - May 14, 2002;

(B) Year 2: May 15, 2002 - May 14, 2003;

(C) Year 3: May 15, 2003 - May 14, 2004;

(D) Year 4: May 15, 2004 - May 14, 2005;

(E) Year 5: May 15, 2005 - May 14, 2006;

(F) Year 6: May 15, 2006 - May 14, 2007;

(G) Year 7: May 15 2007 - May 14, 2008;

(H) Year 8: May 15, 2008 - May 14, 2009;

(I) Year 9: May 15 2009 - May 14, 2010;

(J) Year 10: May 15 2010 - May 14, 2011;

(K) Year 11: May 15 2011 - May 14, 2012; and

(L) Year 12: May 15 2012 - May 14, 2013.

(3) In the scenario in paragraph (2) of this subsection, all households in HOME Units must be recertified with source documentation between May 15, 2006 to May 14, 2007 and between May 15, 2012 and May 14, 2013. In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME funds, *Example 609(1): a household moved into a HOME unit on June 10, 2010, the household's self certification must be completed by June 10, 2011, and the household must be recertified with source documentation effective June 10, 2012*. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's income certification form will be accepted. Noncompliance with this section will result in a noncompliance finding of, "Owner failed to maintain or provide tenant annual income recertification" and scored in the Department's Compliance Status System as applicable. If the household reports on their self certification that their household income is above the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then a recertification with verifications is required.

(i) Recertification Requirements for One-Hundred Percent HTF Developments. Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTF Developments performed annual income recertifications. The household will maintain its initial low-income designation at move-in and throughout the household's occupancy, i.e., Extremely Low Income (ELI), Very Low Income (VLI) and Low Income (LI), provided that the Owner does not charge gross rent in excess of the applicable rent limit.

(j) Recertification Requirements for HTF Developments with Market Units. HTF Developments with Market Units in one or more buildings (as evidenced in their LURA) must perform annual income recertifications of all households residing in HTF Program Units. The HTF program requires Developments to comply with the Available Unit Rule. If a household's income exceeds 140 percent of the recertification limit (highest income tier), the household must be redesignated as over income (OI) and the Next Available Unit on the Development must be leased to a household with an income and rent less than the EVI, VLI, and LI limit depending on what designation the Development needs to maintain compliance with the LURA. The OI household may be redesignated in accordance with lease terms as Market once the OI Unit is replaced with another low-income Unit.

(k) Recertification Requirements for HTF Developments with Market units and other Department administered multifamily rental programs. HTF Developments with other Department administered programs will comply with the requirements of the other program. *Example 609(2): If a Development is a mixed income HTF and 100 percent low income HTC, all households must be certified at move in. Then, once a calendar year, in accordance with the HTC requirements, the AEC must be obtained. It is not necessary to complete a full income recertification of the households designated under the HTC program.*

(l) Recertification Requirements for NSP Developments. NSP Developments are not required to perform annual recertifications unless the LURA specifically requires recertifications.

(m) If a Development is required to perform an annual income recertification of a low-income household for a TDHCA program, the AEC is not also required. *Example 609(3): If a Development has TDHCA HOME funds and Housing Tax Credits, the owner must obtain an Income Certification form from each household designated under the HOME program. Since the property is required to obtain the Income Certification form, the AEC is not required. Example 609(4): A mixed income Development was awarded Housing Tax Credits in 1990 and in 2011. Since the 2011 allocation requires all low-income households to be recertified, §10.620(b)(12) of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period) does not apply.*

§10.610. Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments.

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 or 40/60 (20 percent of the Units restricted to the 50 percent income and rent limit, or 40 percent of the Units restricted at the 60 percent income and rent limits). The minimum set-aside elected sets the maximum income and rent limits for the low-income units on the Development. Many Developments have additional income and rent requirements (i.e., 30 percent, 40 percent and 50 percent) that are lower than the minimum set-aside requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA. The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met.

(b) For 100 percent HTC Developments that are not required to perform annual recertification, regardless of the requirements stated in the Development's LURA, the additional rent and occupancy restrictions will be monitored as follows:

(1) Households initially certified at the 30 percent income and rent limits. Households will maintain their designation they had at initial move-in. The Unit will continue to meet the 30 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 30 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 30 percent limit;

(2) Households initially certified at the 40 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 40 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 40 percent limit; and

(3) Households initially certified at the 50 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 50 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 50 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 50 percent limit.

(c) Mixed Income HTC Developments with Market Units will be monitored as follows:

(1) The HTC program requires Mixed Income Developments with Market Units to comply with the Available Unit Rule. When a household's income at recertification exceeds 140 percent of the applicable current income limit elected by the minimum set-aside, the owner must comply with the Available Unit Rule and lease the next available unit (same size or smaller) in the building to a low-income household to maintain compliance. For HTC Developments that are required to perform annual recertifications, the additional rent and occupancy restrictions will be monitored as follows;

(A) Households initially certified at the 30, 40 or 50 percent income and rent limits,

(B) Households will maintain the designation they had at initial move in unless the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside. The Unit will continue to meet the designation from the initial certification provided that the Owner does not charge gross rent in excess of the additional rent and occupancy rent limit,

(C) The household will not be required to vacate the Unit for other than good cause. When the household vacates the Unit, the next available Unit on the Development must be leased so as to meet the Development's additional rent and occupancy restrictions, and

(D) If the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside, the household must be redesignated as over income (OI) and the Next Available Unit Rule must be followed. *Example 610(1): A household was initially certified at the 40 percent income limit at move in. The household's income increases at recertification above the 40 percent income limit to the 50 percent income limit. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge rent in excess of the 40 percent rent limit. When the household vacates the Unit, the Next Available Unit on the Development is leased to a household with an income and rent less than the 40 percent limits.*

(2) This subsection does not require HTC Developments to lease more Units under the additional occupancy restrictions than established in their LURA. *Example 610(2): If a Development is required to lease 10 units at the 40 percent income and rent levels and has satisfied the requirement, the owner is not required to offer the 40 percent rent to other households, even if their income is less than the 40 percent income limit.*

(d) Units at 80 percent area median income and rent on HTC developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10 percent of the development's Market Rate units to households at 80 percent income and rents. This section provides guidance for implementation. If the LURA requires 10 percent of the Market Rate units be leased to households at 80 percent income and rent limits, the owner must certify the 80 percent households at the time of move in only. Recertifications will not be required. Student rules do not apply to units occupied by 80 percent households. Noncompliance with the requirement to lease to 80 percent households is not reportable to the IRS on Form 8823 but will be cited and scored as noncompliance under the event "Development failed to meet additional State required rent and occupancy restrictions".

§10.611. Household Unit Transfer Requirements for All Programs.

(a) Household Transfers for One-Hundred percent HTC, Exchange, and TCAP Developments. For HTC Developments that are 100 percent low-income, a household may transfer to any Unit within the same project, as defined as a multiple building project on Part II, question 8b of the IRS Form 8609. If the Owner elected to treat each building as a separate project, as defined on Part II, question 8b of the 8609 form, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the Development.

(b) Household Transfers for Mixed Income HTC, Exchange and TCAP Developments. For HTC Developments that are Mixed Income with Market Units, a household may transfer to another building in the same project, as defined as a multiple building project on Part II of the IRS Form 8609 if the household was not over income (OI) at the time of the last annual income recertification. If the Owner elected to treat each building as a separate project, as defined on Part II of the IRS Form 8609, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the Development.

(c) Household transfers for BOND, HTF, HOME, and NSP. For BOND, HTF, HOME, and NSP Developments, households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved onto the Development. If the Development is layered with Housing Tax Credits, default to transfer guidelines under the HTC rules.

(d) Household Transfers in the Same Building for all Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The unit designations will swap status. *Example 611(1): Building 1 has 4 low-income Units. Units 1 through 3 are occupied by low-income households and Unit 4 is a vacant low-income unit. The household in Unit 2 moves to Unit 4 and the Unit designations swap status. Unit 2 is now a vacant low-income unit.*

§10.612. Requirements Pertaining to Households with Rental Assistance.

(a) The Department will monitor to ensure Development Owners comply with Texas Government Code, §2306.269 and §2306.6728, regarding residents receiving rental assistance under Section 8, U.S. Housing Act of 1937 (42 U.S.C. §1437f).

(b) The policies, standards and sanctions established by this section apply only to:

(1) multifamily housing developments that receive assistance described in subparagraphs (A) and (B) of this paragraph, from the Department on or after January 1, 2002; (§2306.185)

(A) a loan or grant in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal possession of the Development; or

(B) 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;

(2) multifamily rental housing Developments that applied for and were awarded housing tax credits after 1992;

(3) housing developments that benefit from the incentive program under Texas Government Code, §2306.805; and

(4) housing Developments that receive funding from the NSP program or the HOME program (24 CFR §92.252(d)).

(c) Owners of multifamily rental housing developments described in subsection (b) of this section are prohibited from:

(1) excluding an individual or family from admission to the Development because the individual or family participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f), or other federal rental assistance program; and

(2) 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 2.5 times the individual's or family's share of the total monthly rent payable to the Owner of the Development. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding $2,500 per year.

(d) To demonstrate compliance with this section, Owners shall:

(1) State in their leasing criteria that the Development will comply with state and federal fair housing and antidiscrimination laws;

(2) Apply screening criteria uniformly (rental, credit, and/or criminal history), including employment policies, and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules; and

(3) Approve and distribute an Affirmative Marketing Plan that will be used to attract prospective applicants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, familial status, or religious affiliation. Racial groups to be marketed to may include White, African American, Native American, Alaskan Native, Asian, Native Hawaiians or Other Pacific Islanders. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. The Affirmative Marketing Plan must be provided to the property management and onsite staff. Owners are encouraged to use HUD Form 935.2A, and may use any version of this Form as applicable. The Affirmative Marketing Plan must identify:

(A) which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach. All Developments must select persons with disabilities as one of the groups identified as least likely to apply. When identifying racial/ethnic minority groups the Development will market to, factors such as the characteristics of the housing's market area should be considered. *Example 612(1): An Owner obtains census data showing that 6.5 percent of the city's total population are identified as Asian Americans. However, the Owner's demographic data for the Development shows that zero Asian American households are represented. The Owner chooses to identify Asian American groups as one of the groups least likely to apply at the Development without special outreach;*

(B) procedures that will be used by the Owner to inform and solicit applications from persons who are least likely to apply. Specific media and community contacts that reach those groups designated as least likely to apply must be identified (community outreach contacts may include neighborhood, minority, or women's organizations, grass roots faith-based or community-based organizations, labor unions, employers, public and private agencies, disability advocates, or other groups or individuals well known in the community that connect with the identified group(s). *Example 612(2): An Owner has identified the disabled as least likely to apply and has decided to send letters on a quarterly basis to the Case Manager at a non-profit organization coordinating housing for developmentally disabled adults. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired;*

(C) how the Owner will assess the success of Affirmative Marketing efforts. Affirmative Marketing Plans should be reviewed on an annual basis to determine if changes should be made and plans must be updated every five (5) years to fully capture demographic changes in the housing's market area;

(D) records of marketing efforts must be maintained for review by the Department during onsite monitoring visits. *Example 612(3): The Owner keeps copies of all quarterly correspondence mailed to the contacts or community groups identified in the Affirmative Marketing Plan. The letters are dated and addressed and show that the Owner is actively marketing vacancies, or a waiting list to the groups identified in the Owner's plan*. Failure to maintain a reasonable Affirmative Marketing Plan and documentation of marketing efforts on an annual basis will result in a finding of noncompliance;

(E) if a Development does not have any vacant units, Affirmative Marketing is still required and Owners must maintain a waiting list. If a Development does not have any vacancies and the waiting list is closed, Affirmative Marketing is not required; and

(F) in accordance with 24 CFR §92.253(d) of the HOME Final Rule and as adopted by Texas NSP, Owners of HOME and NSP Developments must maintain a written waiting list and tenant selection criteria. Failure to maintain these documents will result in a finding of noncompliance.

§10.613. Onsite Monitoring.

(a) The Department may perform an onsite monitoring review of any low income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low income Development. The Department will conduct:

(1) the first review of HTC, Exchange and TCAP Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) the first review of all other Developments as leasing commences;

(3) subsequent reviews at least once every three years during the Affordability Period;

(4) a physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units; and

(5) limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least forty-eight (48) hours notice will be provided).

(c) The Department will perform onsite file reviews and monitor:

(1) a sampling of the low income resident files in each Development, and review the income certifications;

(2) the documentation the Development Owner has received to support the certifications; and

(3) the rent records and any additional information that the Department deems necessary.

(d) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the income certification, the documentation the Development Owner has received to support that certification, and the rent record for any low income tenant.

(e) The Department will select the Low Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

§10.614. Monitoring for Social Services.

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during onsite visits beginning with the second onsite review, and must be submitted to the Department upon request. *Example 614(1): The Owner's LURA requires provision of onsite daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services. Example 614(2): The Owner's LURA requires a monetary amount to be expended on a monthly basis for supportive services. The Owner maintains a copy of an agreement with a Supportive Service provider and documents the amount expended to evidence compliance with this requirement.*

(b) A substantive modification of the scope of tenant services requires Board approval. Such requests must comply with procedures in §10.405 of this chapter (relating to Amendments). It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

§10.615. Monitoring for Non-Profit Participation or HUB Participation.

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm this requirement is being met throughout the development phase and ongoing operations of the Development. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB is in good standing with the Texas Secretary of State and/or IRS as applicable and materially participating. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If an Owner wishes to change the non-profit, or HUB, prior approval from the Department is necessary. The Annual Owner's Compliance Report also requires Owners to certify to compliance with this requirement. Failure to comply with the requirements of this section shall result in a finding of noncompliance. In addition, the IRS will be notified if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(c) The Department does not enforce partnership agreements or determine equitable fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction.

§10.616. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. The Department may contract with a third party to complete UPCS inspections.

(b) HTC Development Owners are required by Treasury Regulation 1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department will evaluate UPCS reports in the manner described in paragraph (1) of this subsection:

(1) A finding of Major Violations will be cited if:

(A) Life threatening health, safety, or fire safety hazards are reported on the Notification of Exigent and Fire Safety Hazards Observed form and are not corrected within twenty-four (24) hours of the inspection with notification of correction submitted to the Department within seventy-two (72) hours of the inspection. Failure to notify the Department of correction within seventy-two (72) hours of the correction of any exigent health and safety or fire safety hazards listed on the Notification will result in a finding of Major Violations of the UPCS for the Development; or

(B) An overall UPCS score of less than 70 percent (69 percent or below) is reported.

(2) A finding of Pattern of Minor Violations will be assessed if an overall score between 70 percent and 89 percent is reported; or

(3) Findings of both Major and Minor Violations will be assessed if deficiencies reported meet the criteria for both.

(d) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time (including smoke detectors and blocked egresses) to the IRS on Form 8823. Accordingly, the Department will submit Form 8823 for any UPCS violation. However, if the violation(s) does not meet the conditions described in subsection (c)(1) or (2) of this section, the issue will be noted in the Department's compliance status system as Administrative Reporting and no points will be assigned in the Department's compliance status evaluation of the Development. Non-HTC Developments that do not meet thresholds for Major and Pattern of Minor Violations as described in subsection (c)(1) or (2) of this section and correct all life threatening health, safety, and fire safety hazards noted at the time of inspection as directed in subsection (c)(1)(A) of this section will not receive findings for UPCS inspections. Items noted that do not exceed thresholds for Major and Pattern of Minor Violations must be corrected by submission of an Owner's Certification of Repair within the ninety (90) day corrective action period.

(e) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards (examples of such documentation include work orders, photographs, and/or invoices to third party repair specialists).

(f) The Department will provide to the Owner in writing a ninety (90) day corrective action period to respond to a notice of noncompliance for violations of the UPCS. The Department will not grant extensions unless there is good cause and the Owner clearly requests an extension during the corrective action period. The Department will respond to an owner's request for an extension within five (5) business days. Under no circumstances will the corrective action period exceed six (6) months.

(g) 24 CFR §92.251 of the HOME Final Rule requires rental property assisted with HOME funds to be maintained in compliance with all local codes and HQS (24 CFR §982.401). To meet this requirement, beginning the second year after completion of construction or rehabilitation, all HOME rental Development Owners must annually complete an HQS inspection of all HOME assisted Units. Any noted deficiencies must be repaired. The Department will review HQS inspection sheets for all Units for compliance with this requirement during onsite monitoring visits.

(h) Selection of Units for inspection:

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than thirty (30) days; and

(2) Units vacant for more than thirty (30) days are assumed to be ready for occupancy and will be inspected. No deficiencies will be cited for inspectable items if utilities are turned off and the inspectable item is present and appears to be in working order.

§10.617. Notice to Owners.

The Department will provide written notice to the Development Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, or program rules and regulations, including §42 of the Code. Correspondence from the Department may be sent electronically to the email addresses in the Compliance Monitoring Tracking System. If sent electronically, a paper copy will not be mailed unless specifically requested. The notice will specify a correction period during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six (6) months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period. If any communication to the Development Owner under this section is returned to the Department as refused, unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner. The Development Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Development Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).

§10.618. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit (HTC). Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions (HTC). If the Owner agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable limit. *Example 618(1): For Code §42 purposes, the maximum allowable limit is 60 percent. However, the Owner agreed to lease some Units to households at the 30 percent income and rent limits. It was discovered that the 30 percent households were overcharged rent. The Owner will be required to reduce the current amount of rent charged and refund the excess rents to the households.*

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses. The amount of time Development staff spends on checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add $5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. *Example 618(2): A Development's out of pocket cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult*. Should an Owner desire to include a higher amount to cover staff time, prior approval is required and wage information and a time study must be supplied to the Department. Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category Gross rent(s) exceeds tax credit limits. The noncompliance will be corrected on January 1st of the next year. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year.

(d) Rent or Utility Allowance Violations on Non-HTC Developments and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess rent collected must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be dispersed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments:

(1) 100 percent HOME assisted Developments. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to 30 percent of the household's adjusted income;

(2) HOME Developments with any Market Rate units. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the comparable Market rent; and

(3) HOME Developments layered with other Department affordable housing programs. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the rent allowable under the other program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC Developments). Revenue Rulings 92-61 and 2004-82 provide guidance on employee occupied units. Provided that all the criteria in the Rulings are met, if the owner of the Development does not charge the employee for rent, the unit will be removed from the numerator and denominator of the applicable fraction to determine compliance. If the owner charges the employee any amount of rent, the Department will evaluate the eligibility of the household. If the household's income exceeds the maximum allowable limit or there is any other noncompliance, the event will be cited, scored and reported to the IRS on Form 8823 as appropriate.

§10.619. Notices to the Internal Revenue Service (HTC Properties).

(a) Even when an event of noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than forty-five (45) days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance.

(b) The Department will retain records of noncompliance or failure to certify for six (6) years beyond the Department's filing of the respective IRS Form 8823. The Department will retain the AOCRs and records for three years from the end of the calendar year the Department receives the certifications and records.

(c) The Department will send the Owner of record copies of any IRS Forms 8823 submitted to the IRS. Copies of Forms 8823 will be submitted to the syndicator for Developments awarded tax credits after January 1, 2004. The Development Owner is responsible for providing the name and mailing address of the syndicator in the Annual Owner's Compliance Report.

§10.620. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under the Code (§42(h)(6)) to record a LURA restricting the Development for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the rules detailed in paragraphs (1) - (12) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department request;

(2) At least once every three (3) years the property will be physically inspected including the exterior of the Development, all building systems and 10 percent of Low Income Units. No less than five but no more than thirty-five of the Development's HTC Low Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.603 of this chapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low Income Units. After the Compliance Period, utilities paid to the Owner can be accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period;

(10) The Owner shall not terminate the lease or evict low income residents for other than good cause;

(11) The total number of required HTC Low Income Units must be maintained Development wide; and

(12) The Annual Eligibility Certification must be collected for all low income households on an annual basis. See §10.609 of this chapter (relating to Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP, and BOND Developments).

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (5) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low Income Unit. If a Development markets to students or leases more than 15 percent of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low income occupancy requirements will be monitored Development wide, not building by building;

(3) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(4) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(5) Mixed income Developments are not required to conduct annual income recertifications.

(d) Regardless of the requirements stated in a LURA, the Department will monitor in accordance with this section.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year Fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§10.621. Material Noncompliance Methodology.

(a) The Department maintains a compliance history of each monitored Development in the Department's Compliance Status System. Developments with more than one program administered by the Department are scored by program. The Development will be considered in Material Noncompliance if the score for any single program exceeds the Material Noncompliance threshold for that program.

(b) A Development will not be assigned the scores noted in this section until after the Owner has been provided a written notice of the noncompliance and provided a corrective action deadline to show that either the Development was never in noncompliance or that the noncompliance event has been corrected.

(c) This section identifies all possible noncompliance events for all programs monitored by the Physical Inspection and Compliance Monitoring Sections of the Compliance Division. However, not all issues listed in this section pertain to all Developments. In addition, only certain noncompliance events are reportable on Form 8823. Those events that are reportable under the HTC program on Form 8823 are so indicated in subsections (h) and (i) of this section.

(d) For HTC Developments, all Forms 8823 issued by the Department will be entered into the Department's Compliance Status System. However, Forms 8823 issued prior to January 1, 1998 will not be considered in determining Material Noncompliance.

(e) For all programs, a Development will be in Material Noncompliance if the noncompliance event is stated in this section to be Material Noncompliance. The Department may take into consideration the representations of the Owner regarding monitoring notices and Owner responses; however, unless an Owner can prove otherwise, the compliance records of the Department shall be presumed to be correct.

(f) All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department, are scored even if the Development no longer actively participates in the program, with the exception of properties in the CDBG disaster recovery and Federal Deposit Insurance Corporation's (FDIC) Affordable Housing Disposition Program.

(g) Noncompliance events are categorized as either "Development events" or "Unit/building events". Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the noncompliance event rather than a score for each Unit or building. Other noncompliance events are identified individually by Unit and will receive the appropriate score for each Unit cited with an event. The Unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by Unit; however, the building is scored rather than the Unit and the building will receive the noncompliance score if one or more of the Units in that building are in noncompliance.

(h) Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value." Corrected noncompliance will no longer be included in the Development score three (3) years after the date the noncompliance was reported corrected by the Department.

(i) Each noncompliance event is assigned a point value. The possible events of noncompliance and associated "corrected" and "uncorrected" points are listed in subsections (j) and (k) of this section.

(j) Figure 10 TAC §10.621(j) lists events of noncompliance that affect the entire Development rather than an individual Unit. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC and Exchange Developments is 30 points. The Material Noncompliance threshold for a non-HTC Development with 1-50 Low Income Units is 30 points. The Material Noncompliance threshold for a non-HTC Development with 51-200 Low Income Units is 50 points. The Material Noncompliance threshold for non-HTC Developments with 201 or more Low Income Units is 80 points. The third column lists the number of points assigned to the event from the date the issue is corrected until three (3) years after correction. The fourth column indicates which programs the noncompliance event applies. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure 10 TAC §10.621(j):

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Major property condition violations	Material Noncompliance	10	All programs	Yes
Pattern of minor property condition violations	5	3	All programs	Yes
Administrative reporting of property condition violations	0	0	HTC	Yes
Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder	Material Noncompliance	10	See §10.612	Yes
Owner failed to approve and distribute an Affirmative Marketing Plan as required under §10.612 of this chapter	10	3	See §10.612	No
Development failed to comply with requirements limiting minimum income standards for Section 8 residents	10	3	See §10.612	No
Development is not available to general public	10	0	HTC	Yes
HUD or DOJ notification of possible Fair Housing Act violation	0	0	HTC	Yes
Determination of a violation under the Fair Housing Act	Material Noncompliance	10	All programs	Yes

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Development is out of compliance and never expected to comply/Foreclosure	Material Noncompliance	NA correction not possible	All programs	Yes
Owner did not allow on-site monitoring review	Material Noncompliance	5	All programs	Yes
LURA not in effect	Material Noncompliance	5	All programs	Yes
Development failed to meet minimum set aside	20	10	HTC Bonds	Yes
No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement	10	3	HTC	Yes
Development failed to meet additional State required rent and occupancy restrictions	10	3	All programs	No
The Development failed to provide required supportive services as promised at Application	10	3	HTC Bonds	No
The Development failed to provide housing to the elderly as promised at Application	10	3	All programs	No
Failure to provide special needs housing	10	3	All programs	No
Changes in Eligible Basis or Applicable Percentage	3	NA, No correction possible	HTC	Yes
Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department	10	3	All programs	Yes
Utility Allowance not calculated properly	20	10	All programs	Yes
Owner failed to execute required lease provisions, including language required by §10.608 of	10	3	All programs	No

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
this subchapter or exclude prohibited lease language				
Failure to provide annual Housing Quality Standards inspection	10	3	HOME	NA
Development has failed to establish and maintain a reserve account in accordance with §10.405 of this chapter	Material Noncompliance	10	All programs	No
Development substantially changed the scope of services as presented at initial Application without prior Department approval	10	3	HTC	No
Failure to provide a notary public as promised at Application	10	3	HTC	No
Violations of the Unit Vacancy Rule	3	1	HTC	Yes
Casualty loss	0	0	All programs	Yes
Failure to provide pre-onsite documentation as required	10	3	All programs	No
Failure to provide amenity as required by LURA	10	3	HTC	No
Failure to pay compliance monitoring or asset management fee	10	3	HTC, TCAP, Exchange, Bond	No
Change in ownership without Department approval	30	10	All programs	No
Failure to provide Fair Housing Disclosure	10	3	All programs	No

(k) Figure 10 TAC §10.621(k) lists ten events of noncompliance associated with individual Units. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC or Exchange Development is 30 points. The Material Noncompliance threshold for a non-HTC property with 1-50 Low Income Units is 30 points. The Material Noncompliance threshold for a non-HTC Development with 51-200 Low Income Units is 50 points. The Material Noncompliance threshold for non-HTC properties with 201 or more Low Income Units is 80 points. The third column lists the number of points assigned to the event from the date the issue is corrected until three (3) years after the event is corrected. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure 10 TAC §10.621(k):

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Unit not leased to Low Income Household	5	1	All programs	Yes
Low Income Units occupied by nonqualified full-time students	3	1	HTC during the compliance period and Bond	Yes
Low Income Units used on transient basis	3	1	HTC Bond	Yes
Household income increased above the re-certification limit and an available Unit was rented to a market tenant	3	1	HTC During the compliance period Bonds, HOME, HTF	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	5	1	All programs	Yes
Failure to maintain or provide tenant income certification and documentation	3	1	All programs	Yes
Unit not available for rent	3	1	All programs	Yes
Failure to maintain or provide Annual Eligibility Certification	3	1	All programs	No
Development evicted or terminated the tenancy of a low income tenant for other than good cause	10	3	HTC, HOME, and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	3	1	HOME	NA

§10.622. Alternative Dispute Resolution.

(a) It is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution (ADR) procedures to assist in resolving disputes under the Department's jurisdiction. If at any time an applicant or other person would like to engage the Department in an ADR process, 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.

(b) In all phases of monitoring (construction and throughout the entire Affordability Period), if a potential issue of noncompliance has been identified, Owners will be provided a written notice of noncompliance. In general, the Department will provide up to a ninety (90) day corrective action period which can and will be extended for an additional ninety (90) days if there is good cause and the Owner requests an extension during the corrective action period.

(c) Owners must respond to the Department's notice of noncompliance. If an Owner does not respond, this ADR process which is explained in this section cannot be initiated.

(d) If an Owner does not agree with the Department's assessment of compliance, they should clearly explain their position and provide as much supporting documentation as possible. If the position is reasonable and well supported, the issue of noncompliance will be cleared with no further action taken, i.e., for HTC properties, Form 8823 will not be filed with the IRS and the issue will not be scored in the Department's compliance status system.

(e) If an Owner's response indicates disagreement with the Department's assessment of noncompliance, but does not appear to be a valid concern to the Department, staff will notify the Owner in writing of their right to engage in ADR. The Owner must respond in five (5) days and request ADR. In addition, the Owner must request an extension of the corrective action deadline, if one is still available. If the Owner does not respond to the staff's invitation to engage in ADR, the Department's assessment of the violation is final.

(f) The Department must meet the Treasury Regulation requirement found in §1.42-5 and file Form 8823 within forty-five (45) days after the end of the corrective action period. Therefore, it is possible that the Owner and Department may still be engaged in ADR. In this circumstance, the Form 8823 will be filed. However, it will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. All Owner supplied documentation supporting their position will be supplied to the IRS. Although the violation will be reported to the IRS within the required timeframes, it will not be scored in the Department's compliance status system pending outcome of ADR.

(g) ADR is not an appropriate format for matters regarding interpretations of laws, regulations and rules. ADR can only be used when parties could reach consensus.

§10.623. Liability.

Compliance with the program requirements, including compliance with §42 of the Code, is the sole responsibility of the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the Code, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME program regulations, BOND program requirements, and all other programs monitored by the Department.

§10.624. Applicability.

Unless otherwise noted, this subchapter applies to all Developments administered by the Department.

§10.625. Temporary Suspension of Other Sections of this Subchapter.

(a) Temporary suspensions of other sections of this subchapter may be granted by the Executive Director if there are extenuating circumstances which make it not possible or an undue administrative burden to comply with a requirement of this subchapter as long as substantial compliance is still in effect. For example, the Executive Director could suspend the requirement to report online or use Department approved forms, or alter the sample size for calculating a utility allowance using the actual use method.

(b) Under no circumstances can the Executive Director or the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD when required by federal law.

(c) Under no circumstances can the Executive Director or the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of Form 8823, or any sections of 26 U.S.C. §42.

Subchapter G – Fee Schedule, Appeals and Other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract and ineligible to submit extension requests, ownership transfers and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds are available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (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 percent off the calculated pre-application fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be $30 per Unit based on the total number of Units. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements and for which a pre-application fee was paid, the Application fee will be $20 per Unit. 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 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application. Pursuant to Texas Government Code, §2306.147(b) the Department is required to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department and construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission) 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 or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter shall incur a late fee in the amount of $500 for each business day the deficiency remains unresolved.

(7) Challenge Processing Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to $500 for challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of $750 must be submitted. Building inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. 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 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the applicable deadline must be accompanied by an extension fee of $2,500. 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 U.S. Department of Agriculture (USDA) as a lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. 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 submit an amendment fee of $2,500. Amendment fees are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests to offer a property for sale under a Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(15) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(16) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee in an amount equal to the lesser of $3,000 or one-fourth (1/4) of 1 percent of the Qualified Contract Price determined by the Certified Public Accountant.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $500.

(18) Unused Credit or Penalty Fee. 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 IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 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 Internal Revenue Code, §42. 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) calendar 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 percent.

(19) Compliance Monitoring Fee. (HTC Developments Only.) 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. Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. 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.

(21) 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. 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.

§10.902. Appeals Process. (§2306.0321; §2306.6715)

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Restrictions and Requirements) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules), pre-application threshold criteria, underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the erroneous termination of an Application unless the termination is based on Material Noncompliance;

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, 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.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

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

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or,

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, 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.