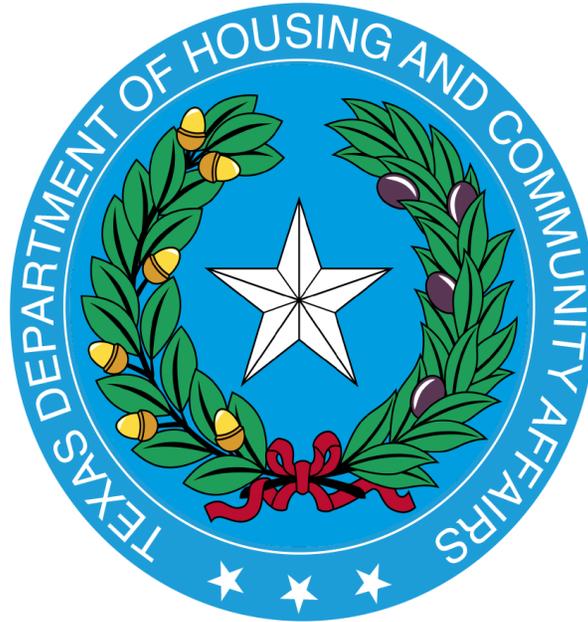


SUPPLEMENTAL BOARD BOOK OF SEPTEMBER 8, 2016



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BOARD REPORT ITEM

REAL ESTATE ANALYSIS DIVISION

SEPTEMBER 8, 2016

Report, Discussion, and Possible Action on the Underwriting Analysis and Recommendations for Application #16057, Silverleaf at Mason, Mason

BACKGROUND

At the Board meeting of August 25, 2016, staff presented a report on the status of the underwriting and recommendations for Application #16057, Silverleaf at Mason. Staff published an underwriting report on July 6, 2016 and did not recommend the proposed development for an award due to market concerns that caused the capture rates under the rules to fail. The Applicant appealed the underwriting report on July 13, 2016.

The Executive Director reviewed the information provided in the appeal documentation, and on July 19, 2016, issued a determination denying the appeal based on the market analyst's failure to provide "a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA," as required by 10 TAC §10.303(d)(9)(B)(i), and that the later submission of materials by the developer should not be accepted in light of the timing of submitting documents on appeal under 10 TAC §10.902(c).

The Applicant, through its counsel, took the position that the Applicant had not been afforded the opportunity to resolve inconsistencies as specifically provided in 10 TAC §10.303(c)(2). It was on that basis that staff recommended the change to a conditional award recommendation, allowing for the opportunity to engage with the Applicant's market analyst and see if inconsistencies could be resolved. As such, the Executive Director withdrew his July 19, 2016, appeal determination during the board meeting of July 28, 2016, and the application was given an award of tax credits conditional on the satisfaction of the Underwriter's market and other concerns. Staff was asked to continue discussions with the Applicant on the concerns and report back to the Board.

On August 25, 2016, Staff provided a report to the Board on the status of the underwriting. Staff reported on the dialogue with the Applicant and the market analyst that occurred, and provided a more detailed explanation of the market issues involved, specifically relating to the market areas defined by the market analyst, and other concerns such as operational breakeven rents and occupancy. Staff reported that work with the Applicant was ongoing and that a report would be brought to the meeting of September 8, 2016.

During its report on August 25, 2016, staff discussed its concerns with the large size of the primary market area or PMA, used by the market analyst. Staff in its own analysis reduced the size of the PMA (to the size of Mason County), and therefore the amount of demand for the property, which then caused the capture rate calculations to fail.

Through many discussions with the market analyst, staff learned that a large part of the basis for their defined PMA was that a drive time analysis they had performed extended into census tracts that are geographically large. The drive time analysis, or discussion about the analysis, was not included in the original report. The Department's rules require that the definition of a PMA must be based on census tracts. Therefore the definition required inclusion of large census tracts into the PMA because the drive time area extended partially into those tracts but did not encompass those entire census tracts. Resultantly, the PMA was very large geographically, which created the initial concern for the Underwriter and ultimately led to a denial of the application.

As was stated in the prior Board report on August 25, 2016, staff agreed with the market analyst that a drive-time analysis may be used as a logical and practical subset of the primary market area ("PMA") to support the rationale for the original definition of the PMA.

The market analyst provided a drive time analysis and population data that showed sufficient qualifying demand within a drive-time area. The data produced capture rate calculations that conformed to the rules. Although the drive time area made sense we noted that in limited instances the 25-minute drive-time extended into San Saba, Gillespie, and Llano counties, which are outside of the three-county PMA originally defined by the market analyst.

Upon further review of the materials provided by the market analyst, the market analyst stated that the mapping software used could not create PMA boundaries exactly as shown on the 25-minute drive time area. Therefore the 25-minute drive-time analysis was actually pulling demand data from "within a 25 to 30 minute" drive-time from Mason. The additional five minute time in the drive-time extended the demand area into Kimbal County, further into Llano and Gillespie Counties and looked, based on the map, to include the city of Brady, which is not to be included.

In order to use the drive time analysis as a clarification of the use of the three-county PMA for the demand calculations, the boundaries of the drive-time area were to be contained within the boundaries of the original PMA as submitted in the market study dated March 28, 2016. In other words, the market analyst could not justify the original PMA by extending the drive time area into areas not originally defined as the PMA.

A Secondary Market Area ("SMA") was defined in the market study that included some of the counties adjacent to the counties of the original PMA. Notably, Llano County was not part of either the PMA or SMA. Kimble and Gillespie counties were part of the originally defined SMA. The market analyst did not include any demand from the SMA in the capture rate calculations in the original report thinking that the PMA demand alone satisfied the rule.

Because Kimble and Gillespie counties were included in the originally defined SMA, the Underwriter concluded that the drive time area in those counties could be used in the demand area. The area into Llano County could not be used because it was not originally part of the SMA. The rules provide that up to 25% of total demand may come from an SMA. As such, REA concludes that demand up to that level from the SMA may be included in the demand calculation. This is a logical conclusion given that drive-time is not bound by a county line. The demand allowable may only come from areas within the original PMA and SMA and within the drive-time area shown (not the entirety of the SMA area). Also, demand from the census tract containing the city of Brady could not be included.

On August 26, 2016, the Underwriter asked the market analyst to revise the drive time area to include only the drive time area within the original PMA and the area in Gillespie and Kimble counties as an SMA. This area was concluded to be an appropriate area to use for demand purposes and at the same time keeping the demand area within the original PMA and SMA. REA had not calculated capture rates on this area and did not conclude this area as appropriate based on any capture rate conclusions. This area simply represents a logical market area including an SMA pursuant to rule.

The market analyst provided a revised drive time area that only included its area within the original PMA. None of the area in the SMA (Kimble and Gillespie counties) was used. The market analyst stated that there was a calculation error in their prior numbers that failed to include some qualifying income bands in the calculation. As a result, the demand in the drive time area contained within the original PMA satisfied the capture rate calculations.

At the Board meeting August 25, 2016, staff discussed some of the other risks of the development related to breakeven rents and occupancy. The concern being that an average \$46/unit breakeven rent represents significant risk specifically considering the development must capture almost 10% of the demand within the market area. Resolution of the market concerns solving the capture rate issues does not solve the operational risks associated with the breakevens.

The Applicant indicates that updated financial terms have been offered by the lender and the equity provider. Staff has not included these terms into the formal analysis but acknowledges that the revised terms would improve the breakevens. Equity has increased to \$1.00/credit (up from \$.92/Credit) and the permanent debt has been reduced by \$233K (\$1,868,150 to \$1,635,000). With these terms, if eventually achievable, a breakeven rent decreases to \$76/unit below average rent.

While staff believes there remains significant risk associated with the capture rates and breakevens, support for a reasonable demand area provided by the drive time analysis that produces acceptable capture rates has been provided. Therefore, staff is recommending approval of the development for a \$500K annual allocation of tax credits subject to the applicant providing written statements from the lender and equity provider indicating that they have performed an independent market analysis and that based on that analysis they intend to move forward with processing their applications. The statements must include a statement of the due diligence that they have performed

in general including review of plans or other typical due diligence items. They must include a statement of their approval process and timelines as well as their anticipated closing timeline if approved. The market review must be independent of the Applicant's market study and the review must include an independent review of the Applicant's report including the validity of the market area definition and rental rate projections. Updates to the financing terms must be included.

Without objection by the Board, staff is prepared to issue an addendum to the underwriting report with this recommendation and added conditions which would be due at or prior to Carryover (all prior conditions remain).

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 8, 2016

Presentation, Discussion, and Possible Action on proposed repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and a proposed new 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Uniform Multifamily Rules contain eligibility, threshold, and procedural requirements relating to applications requesting multifamily funding; and

WHEREAS, changes have been proposed to improve the efficiency of the funding sources involved and enhance their effectiveness in achieving policy objectives;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10 Subchapter A General Information and Definitions, Subchapter B Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, and Subchapter G Fee Schedule, Appeals and Other Provisions and proposed new 10 TAC Chapter 10, Subchapters A, B, C and G concerning Uniform Multifamily Rules together with the preambles presented to this meeting, are approved for publication in the *Texas Register* for public comment and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Uniform Multifamily Rules together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached behind this Board Action Request is the proposed 2017 Uniform Multifamily Rule which reflects staff's recommendations for the Board's consideration. This rule establishes the general requirements associated with making an award of multifamily development funding and/or assistance. In getting the 2017 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff hosted monthly roundtable discussions throughout the year that, while they were mostly focused on scoring items in the Qualified Allocation Plan,

discussion on several of those scoring items had applicability to site eligibility and other items within the Uniform Multifamily Rule. Moreover, staff participated in several discussions at the TAAHP Conference in July 2016, and discussed proposed changes and solicited feedback. Lastly, staff launched as it has in prior years, the online discussion forum to allow interested registered users of the forum an opportunity to engage with the Department and one another and provide feedback on possible changes. Staff evaluated the information received in all of these discussions by which to formulate the draft rules contained herein.

Rule-Making Timeline: Upon Board approval, the draft Uniform Multifamily Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 23, 2016, and October 14, 2016, and there will also be a consolidated public hearing during this time to garner public comment. The Uniform Multifamily Rules will be brought before the Board in November for final approval and subsequently published in the *Texas Register* for adoption.

Subchapters for this Action Request: This Board Action Request includes the subchapters, as noted below, that are part of the 2017 draft Uniform Multifamily Rule. The other subchapters (*e.g.*, Subchapters D and E) are found under a separate Board Action Request and include specific changes to those rules.

Subchapter A – Provides general information regarding the Department's multifamily funding and includes an extensive list of definitions specific to multifamily applications.

Subchapter B – Outlines the site and development requirements and restrictions, including but not limited to, floodplain restrictions, undesirable site and neighborhood features, development size limitations, rehabilitation costs, common and unit amenities, and tenant supportive services.

Subchapter C – Includes procedural requirements for submitting an application, the documentation required as part of the application including forms and templates, criteria that would render an applicant or application ineligible, how applications will be prioritized for review, information regarding board decisions, and the waiver process.

Subchapter G - This subchapter contains information regarding Department fees and other general requirements, including, but not limited to, the appeals process, adherence to obligations and the alternative dispute resolution policy.

Summary of Proposed Changes: This section outlines some of the more significant recommendations by staff. Citation and page references are indicated for ease of reference.

1. **Subchapter A §10.3 Definitions** (*Various Pages in Subchapter A*). The changes to this subchapter include modifications to the following definitions: “Applicable Percentage” to be consistent with recent federal legislation; “Direct Loan” in recognition of the Department's receipt of National Housing Trust Fund dollars and the continued source of TCAP funds, “Place”; “Rural Area”; and “Unit Type” to clarify that half-bath units do not constitute a separate type of unit. The deadline for submission of resolutions and third party reports was clarified to address when a direct loan application is layered with a housing tax credit application.
2. **Subchapter B §10.101(2) Site and Development Requirements and Restrictions** – (*Page 1 of 23 in Subchapter B*). This section proposes to remove the proximity to mandatory community assets. While staff believes that proximity to assets in the community that could benefit the residents are important, various assets on the list have morphed into establishments that could be all-encompassing. For example, a Super Wal-Mart would include a grocery store, a bank, a

pharmacy, an optometrist, and a retail/department store. Over the years the effectiveness of this eligibility item has been watered-down and staff believes that proximity to services and assets in the community will be driven by a combination of scoring items, an interest by financing partners, and an analysis of the market.

3. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Undesirable Site Features** (*Page 2 of 23 in Subchapter B*). There have been changes to the distances associated with some of the undesirable site features noted. Language has been added to reflect that such distances apply in instances where there is no local ordinance regulating proximity to such features.
4. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Undesirable Neighborhood Characteristics** (*Page 4 of 23 in Subchapter B*). Changes to this section have been refined to help clarify the criteria by which staff and the Board evaluates a proposed site despite the presence of undesirable neighborhood characteristics. This section removes the undesirable characteristics associated with an Environmental Site Assessment (“ESA”). The characteristic relating to the poverty rate for a census tract has decreased from 40% to 30% that would require disclosure. This section proposes that for sites with three or more undesirable characteristics, the site must be located in an area with a concerted plan of revitalization already in place, or the development site will be considered ineligible. This section also provides more clarity with respect to acceptable mitigation under each of the undesirable characteristics. As it relates to under-performing schools, this characteristic has been modified to further clarify eligibility regarding schools that haven’t achieved Met Standard for three consecutive years. The criteria under which the Board could find a site eligible despite the existence of the undesirable characteristics have been modified to indicate that whether new construction or preservation there must be a factual determination that the disclosed characteristic(s) are not of a nature or severity that should render a site ineligible based on the evaluation of the mitigation provided.
5. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Rehabilitation Costs** (*Page 12 of 23 in Subchapter B*). The minimum threshold rehabilitation costs per unit are proposed to be increased. For USDA applications, the amount will increase from \$19,000/unit to \$25,000/unit; for 4% developments less than 20 years old, the amount will increase from \$15,000/unit to \$25,000/unit; and for all other developments (including 4% developments greater than 20 years old) the amount will increase from \$25,000/unit to \$30,000/unit.
6. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Common Amenities** (*Page 13 of 23 in Subchapter B*). Some of the common amenities listed in this section have been modified to provide clarification based on the Department’s monitoring expectations. Some new options have also been added.
7. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Unit and Development Features** (*Page 18 of 23 in Subchapter B*). Some of the features noted in this section have been modified to provide clarification based on the Department’s monitoring expectations. Some new options have also been added.
8. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Tenant Supportive Services** (*Page 20 of 23 in Subchapter B*). The list of supportive services include a few modifications to existing options intended to provide clarification and introduces a new tenant

service that involves a partnership with local law enforcement to provide on-site social and interactive activities with the tenants.

9. **Subchapter C §10.204 Required Documentation for Application Submission.** (*Various Pages in Subchapter C*). Modifications to this section include allowing a cure period for miscalculations of fees associated with an application (*page 1 of 37*); allows for an extension by which the Certificate of Reservation for 4% applications must be issued of up to 30 days (*Page 3 of 37*); clarifies the prioritization of 4% applications during peak season of 9% application review and underwriting (*Page 6 of 37*); provides additional clarification regarding the intent of the administrative deficiency process and proposes to adjust the point deductions associated with late deficiency responses (*Page 6 of 37*); modifies the ineligibility criteria associated with applicants and applications to allow for issues to be brought to staff's attention by members of the general public and the process for such (*Page 8 of 37*); suggests that newly elected or appointed officials that take office after application submission be notified by applicants within 14 days of taking office (*Page 13 of 37*); modifies the experience requirement to reflect that a natural person with control of the development through placement in service, who is also a principal of the developer, development owner or general partner, must establish that they have the required experience (*Page 19 of 37*); the term sheet requirement from the lender and equity provider have been modified to require an acknowledgement of the amounts and terms of all other anticipated sources of funds associated with the development (*Page 21 of 37*); site plan requirements have been modified to require Rehabilitation developments to indicate the location and number of accessible parking spaces, any flood mitigation to be addressed, delineate compliant accessible routes and indicate the distribution of accessible units (*Page 25 of 37*); incorporation of the Section 811 Program as a threshold item applicable to all multifamily developments (*Page 31 of 37*); and language regarding the ability of the executive director to grant waivers has been removed, requiring all waiver requests to go to the Board (*Page 35 of 37*).
10. **Subchapter G §10.901 Fee Schedule, Appeals and Other Provisions** (*Various Pages in Subchapter G*). Changes to this section include recognition of the electronic submission of pre-applications and applications as it relates to refunds of pre-application and application fees; modifications to extension and amendment fees for subsequent requests relating to the same matter; and the inclusion of an extension fee relating to submission of construction status reports. This section also includes a proposal to increase the ownership transfer fee by \$500.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter A §§10.1 - 10.4, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to explain the purpose of the uniform multifamily rules, define terms that are used throughout the various subchapters and applicable to multifamily funding from the Department, and provide guidance on critical program dates associated with the multifamily funding the Department administers. The proposed repeal of existing Subchapter A is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to explain the purpose of the uniform multifamily rules, define terms and provide guidance on program dates. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 14, 2016.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

10.1 Purpose.

10.2 General.

10.3 Definitions.

10.4 Program Dates.

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1.Purpose. This chapter applies 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 establishes 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 1 Subchapter C of this title (relating to Previous Participation), 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 chapter does not apply to any project-based rental assistance 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 chapter remain subject to this chapter.

§10.2.General.

~~(a) 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.~~

(ab) 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 may 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.

(be) 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 chapter.

(cd) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, ~~2016~~2015, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.

(de) Public Information Requests. Pursuant to ~~Texas Government Code~~[Tex. Gov't Code](#), §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits, and as a waiver of any of the applicable provisions of ~~Texas Government Code~~[Tex. Gov't Code](#), Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

(ef) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHA~~ST~~") form on file, any current Analysis of Impediments to Fair Housing Choice, [any Affirmatively Further Fair Housing analysis](#), or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(fg) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. [Unless otherwise noted deadlines are based on calendar days.](#)

§10.3.Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, [HOME Direct Loan](#) Program and any other programs for the development of affordable rental property administered by the 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](#) [Tex. Gov't 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 the original Application or to assist staff in evaluating the 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 Direct Loan](#) 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 for 70 percent present value credits, pursuant to the Code, §42(b); or if such timing is deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress prior to March 1, 2016;

~~(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) Applicant--Means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11, ~~or 12,~~ or 13 and who may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, site control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11, ~~and 12~~ and 13, as applicable.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) 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.

(11) 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.

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

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

(14) 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).

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

(16) 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.

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

(18) 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.

(19) 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.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from “Committing to a specific local project” as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(21) Committee--See *Executive Award and Review Advisory Committee*.

(22) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

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

(24) 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.

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

(26) Contract--See *Commitment*.

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

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

(29) 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. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

(30) 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.

(31) 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 scheduled debt service required to be paid during the same period.

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(33) 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.

(34) 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 [the Code, §42\(m\)\(1\)\(D\)](#) ~~of the Code~~.

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer 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. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

- (A) site selection and purchase or lease contract negotiation;
- (B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
- (C) coordination and administration of activities, including the filing of applications to secure such financing;
- (D) coordination and administration of governmental permits, and approvals required for construction and operation;
- (E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;
- (F) selection and coordination of the General Contractor and construction contract(s);
- (G) construction oversight;
- (H) other consultative services to and for the Owner;
- (I) guaranties, financial or credit support if a Related Party; and
- (J) any other customary and similar activities determined by the Department to be Developer Services.

(38) 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)

(39) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) 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)

(41) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(42) Development Team--All Persons and 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.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, [National Housing Trust Fund](#), [Tax Credit Assistance Program Repayment \("TCAP Repayment"\)](#) or [State Housing Trust Fund](#) or other program available through the Department for multifamily development. [The terms and conditions for Direct Loans](#) ~~may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid.~~ [will be determined by the NOFA under which they are awarded, the Contract or the loan documents.](#) The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (*e.g.*, a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) 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.

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

(47) Elderly Development--A Development that is subject to an Elderly Limitation or a Development that is subject to an Elderly Preference.

(A) Elderly Limitation Development--A Development subject to an "elderly limitation" is a Development that meets the requirements of the Housing for Older Persons Act ("HOPA") under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA); or

(B) Elderly Preference Development--A property receiving HUD funding and certain other types of federal assistance is a Development subject to an "elderly preference." A Development subject to an Elderly Preference must lease to other populations, including in many cases elderly households with children. A property that is deemed to be a Development subject to an Elderly Preference must be developed and operated in a manner which will enable it to serve reasonable foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities.

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

(49) 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.

(50) Executive Award and Review Advisory Committee ("EARAC" also referred to as the "Committee")--The Department committee created under ~~Texas Government Code~~[Tex. Gov't Code](#) §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential units at any time after the beginning of the Application Acceptance Period.

(52) 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.

(53) 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.

(54) 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.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather

than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) 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.

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

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

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area ("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.

(60) 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.

(61) 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.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

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

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

(65) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under ~~Texas Government Code~~ [Tex. Gov't Code](#), Chapter 2161 by the State of Texas.

(66) 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.

(67) 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).

(68) 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.

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

(70) 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.

(71) 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.

(72) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, 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)

(73) 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.

(74) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (55) of this subsection, its functional equivalent) 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 refer to a manager or 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.

(75) 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.

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

(77) Market Rent--The achievable rent at the subject Property for a ~~unit~~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 (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.

(78) Market Study--See *Market Analysis*.

(79) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(80) 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.

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

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

(83) 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.

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

(85) 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.

(86) 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.

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

(88) 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.

(89) Owner--See *Development Owner*.

(90) 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.

(91) 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.

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

(93) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as census designated places. Any part of a census designated place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department may provide a list of Places for reference.

(94) 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.

(95) 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.

(96) Primary Market--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.

(97) Primary Market Area ("PMA")--See *Primary Market*.

(98) Principal--Persons that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) 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.

(99) 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.

(100) 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.

(101) 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.

(102) 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.

(103) 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).

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

(105) Qualified Entity--Any entity permitted under §42(i)(7)(A) of the Code and any entity controlled by such qualified entity.

(106) 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.

(107) 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~~[Tex. Gov't Code](#) §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

(108) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in [this chapter](#)~~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.

(109) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one ~~unit~~[Unit](#) must be reconstructed in order to qualify as Reconstruction.

(110) 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.

(111) Related Party--As defined in ~~Texas Government Code~~[Tex. Gov't Code](#), §2306.6702.

(112) 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.

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

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

(115) 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.

(116) Right of First Refusal ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Entity with priority to that of any other buyer at a price [established in accordance with an applicable](#) ~~whose formula is prescribed in the~~ LURA.

(117) Rural Area--

(A) A Place that is located:

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

(ii) 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~~ [Urban Area](#); or

[\(iii\) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.](#)

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §10.204(5)(B).

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

(119) Secondary Market Area ("SMA")--See *Secondary Market*.

(120) 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.

(121) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

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

(123) 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.

(124) 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.

(125) 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 include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be debt free or have no permanent foreclosable or noncash flow debt. A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). If the bonds are expected to be redeemed upon construction completion, placement in service or stabilization and no other permanent debt will remain, the Supportive Housing Development may be treated as Supportive Housing under Subchapter D of this chapter. The services offered generally include case management and 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.

(126) 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 chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(127) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations. An existing

Development that has been designated as a Development serving the general population may not change to become an Elderly Development, [or vice versa](#), without Board approval.

(128) 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.

(129) 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.

(130) 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.

(131) 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.

(132) 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.

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

(134) 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.

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

(136) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter, Chapter 11 and Chapter 12 of this title that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

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

(138) 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.

(139) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, full bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one full bath Unit is considered a different Unit Type than a two Bedroom/two full bath Unit. A three Bedroom/two full bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two full bath Unit with 1,200 square feet. A one Bedroom/one full bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one full bath Unit with 800 square feet. A powder room is the equivalent of a half-bathroom but does not by itself constitute a change in Unit Type.

(140) 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.

(141) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph ~~(117116)~~(A)(ii) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

(142) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).

(143) 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 Reuse, and Target Population fail to account fully 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 Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§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 by the ~~Department 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 and has established to the reasonable satisfaction of the ~~Department Executive Director~~ that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications ~~forms~~ in the Application.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be

defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December [9, 2016](#)~~11, 2015~~, 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.

(3) Applications Associated with Lottery Delivery Date. No later than December [16, 2016](#)~~18, 2015~~, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) 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).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports [meeting specific requirements described in §10.205](#) must be submitted with the Application in order for it to be considered a complete Application, ~~unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax Exempt Bond, in which case the Delivery Date for those programs will apply.~~ 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.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments or Direct Loan Applications [not layered with Housing Tax Credits](#) must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur. [If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.](#)

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter B §10.101, concerning Site and Development Requirements and Restrictions. The purpose of the new section is to provide guidance relating to site and development requirements and restrictions for all development sites for which applications are submitted in applying for multifamily funding through the Department. The proposed repeal of existing §10.101 is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be to provide guidance relating to site and development requirements and restrictions relating to applications applying for multifamily funding through the Department. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 14, 2016.**

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new section affects Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new section affects no other statutes, articles or codes.

§10.101 Site and Development Requirements and Restrictions.

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 requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed 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. If there are more stringent local requirements they must also be met. 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 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, as certified to by a Third Party engineer.

~~**(2) Mandatory Community Assets.** Development Sites must be located within a one mile radius (two mile radius for Developments located in a Rural Area), unless otherwise required by the specific asset as noted below, of at least six (6) community assets listed in subparagraphs (A) – (S) of this paragraph. Supportive Housing Developments located in an Urban Area must meet the requirement in subparagraph (S) of this paragraph. Only one community asset of each type listed will count towards the number of assets required. These do not need to be in separate facilities to be considered for points. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or 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 (excluding liquor stores, smoke shops and what could otherwise be considered adult-oriented businesses);~~
~~(E) federally insured depository institution;~~
~~(F) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);~~
~~(G) indoor public recreation facilities accessible to the general public, such as, community centers, libraries, fitness club/gym, and senior centers;~~
~~(H) outdoor public recreation facilities accessible to the general public, such as parks, golf courses, and swimming pools;~~
~~(I) medical office of a general practitioner, dentist, optometrist, urgent care facility or hospital;~~
~~(J) public schools;~~
~~(K) campus of an accredited higher education institution;~~
~~(L) community, civic or service organizations that provide regular and reoccurring services available to the entire community (this could include religious organizations or organizations like a Kiwanis or Rotary Club);~~
~~(M) child care center (must be licensed -- only eligible for Developments that are not Elderly Limitation Developments);~~
~~(N) post office;~~
~~(O) city hall;~~
~~(P) county courthouse;~~
~~(Q) fire station;~~
~~(R) police station;~~
~~(S) Development Site is located within 1/2 mile, connected by an accessible route, of a designated public transportation stop at which public transportation (not including "on demand" transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation does not meet this requirement.~~

(23) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - ~~(K)~~ of this paragraph ~~may~~will be considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high

speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that differs from the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. The distances identified in subparagraphs (A) – (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(~~BE~~) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(~~CH~~) Development Sites located 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 as zoned, licensed and regulated as such by the local municipality;

(~~DF~~) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, ~~radio antennae, satellite towers,~~ or other similar structures. This does not apply to local service electric lines and poles;

(~~EB~~) Development Sites located within ~~100~~500 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;

(~~FG~~) Development Sites located within 500 feet of heavy industrial ~~or dangerous uses~~ (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations), ~~refinery blast zones,~~ etc.);

(~~GD~~) Development Sites located within ~~2~~10 miles of ~~potentially hazardous uses such as a nuclear plants or refineries capable of refining more than 100,000 barrels of oil daily~~;

(HG) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones ~~for commercial or military~~ of any airports;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (“PIPA”);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

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

(34) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics ~~to the Department. Disclosure of undesirable characteristics must be made at the time~~ in the Application ~~is~~ submitted to the Department. ~~Alternatively, an~~ An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. ~~or after inducement (for Tax-Exempt Bond Developments).~~ Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and ~~which will~~ include, where applicable, a review as described in subparagraph (C) of this

paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

~~(B) The existence of any one of the five undesirable neighborhood characteristics in clauses (i) – (v) of this subparagraph must be disclosed by the Applicant and will prompt further review as outlined in subparagraph (C) of this paragraph. The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically prior to placement in service, and that the undesirable characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.~~

(i) The Development Site is located within a census tract that has a poverty rate above ~~40~~30 percent for individuals ~~(or 55 percent for Developments in regions 11 and 13).~~

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures ~~visible from the street, which~~ that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school orand a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential

for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016~~5~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.

~~(v) The Environmental Site Assessment for the Development Site indicates any facilities listings within the ASTM required search distances from the approximate site boundaries on any one of the following databases:~~

- ~~(I) U.S. Environmental Protection Agency ("USEPA") National Priority List ("NPL");~~
- ~~Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS");~~
- ~~(II) Federal Engineering and/or Institutional Controls Registries ("EC");~~
- ~~Resource Conservation and Recovery Act ("RCRA") facilities associated with treatment, storage, and disposal of hazardous materials that are undergoing corrective action ("RCRA CORRACTS");~~
- ~~(III) RCRA Generators/Handlers of hazardous waste; or~~
- ~~(IV) State voluntary cleanup program.~~

(C) Should any ~~one~~ of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i)-(viii) of this subparagraph and subparagraph (D) of this paragraph so that staff ~~will~~ may conduct a further Development Site and

neighborhood review, ~~which will include assessments of those items identified in clauses (i)–(vi) of this paragraph.~~

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area neighborhood, including comment on concentration based on ~~neighborhood~~ the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; ~~and~~

(vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i)-(iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or

significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, and a clear and compelling reason that the Development should be located at the Site. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(ii) Evidence that crime rates are substantially decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan,

partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

~~For example, a plan to clean up an environmental hazard is an appropriate response to disclosure of a facility listed in the Environmental Site Assessment. With respect to crime, such information may include, but is not limited to, crime statistics evidencing trends that crime rates are materially and consistently decreasing, violent crime data based on the police beat within which the Development Site is located for the city's police department, or violent crimes within a one half mile radius of the Development Site. The data used must include incidents recorded during the entire 2014 and 2015 calendar year. A written statement from the local police department, information identifying efforts by the local police department addressing issues of crime, or documentation indicating that the high level of criminal activity is concentrated at the Development Site, which presumably would be remediated by the planned Development, may also be used to document compliance with this provision. Other mitigation efforts to address undesirable characteristics may include new construction in the area already underway that evidences public and/or private investment, and to the extent blight or abandonment is present, acceptable mitigation would go beyond the securement or razing and require the completion of a desirable permanent use of the site(s) on which the blight or abandonment is present such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space. Possible mitigation for areas where the schools have not achieved the Met Standard rating could include, but is not limited to, a letter from the Superintendent or member of the school board identifying the efforts it has undertaken to increase student performance, including benchmarks for re-evaluation, any local efforts that may be underway (including plans for school expansion or new schools built to alleviate over-crowding), and long-term trends that would point toward their achieving the Met Standard rating by the time the Development places in service. — In general, mitigation of any of the undesirable neighborhood characteristics must also include timelines that evidence that efforts are already underway and a reasonable expectation that the issue(s) being addressed will be resolved or significantly improved by the time the proposed Development is placed in service.~~

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving ~~at least one of~~ the goals in clauses (i) ~~–and (iiiii)~~ of this subparagraph.

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or development of new high quality affordable housing units that are subject to ~~existing~~ federal rent or income restrictions; and

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that ~~they~~ should render the Development Site ineligible based on [the assessment and mitigation provided under subparagraphs \(C\) and \(D\) of this paragraph](#). Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by [the time the Development places into service](#). ~~mitigation efforts as established under subparagraph (D) of this paragraph; or~~

~~(iii) The Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order, as such documentation is provided by the Applicant as part of the disclosure.~~

(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) ~~or~~ (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(i) Developments ~~comprised of~~ [such as](#) hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities ~~that~~ [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 on-site 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 will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; 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 [or Adaptive Reuse](#), if the Applicant is not proposing [at least](#) the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

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

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum 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. The ~~following~~ minimum Rehabilitation amounts identified in subparagraphs (A) – (C) of this paragraph must be maintained through the issuance of IRS Forms 8609. ~~or at the time of the close-out documentation, as applicable;~~

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least \$~~19,000~~25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$25,000~~15,000~~ per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$30,000~~25,000~~ per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least \$30,000~~25,000~~ per Unit in Building Costs and Site Work. ~~or~~

~~(D) Rehabilitation Developments financed with Direct Loans provided through the HOME program (or any other program subject to 24 CFR 92) that triggers the rehabilitation requirements of 24 CFR 92 will be required to meet all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code (“IEBC”); and the requirements in clauses (i) – (iv) of this subparagraph.~~

~~(i) recommendations made in the Environmental Assessment and Physical Conditions Assessment with respect to health and safety issues, major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning), and lead-based paint must be implemented;~~

~~(ii) all accessibility requirements pursuant to 10 TAC §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973) and §1.209 (relating to Substantial Alteration of Multifamily Developments) must be met;~~

~~(iii) properties located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and~~

~~(iv) should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.~~

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (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. All amenities listed below must be at no charge to the tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(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 ~~C~~connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) ~~Solar S~~creens on all ~~operable~~ windows (north-facing windows may exclude solar screens if north-facing operable windows provide insect screens);

(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) Blinds or window coverings for all windows;

(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 must meet performance standards of Texas Health and Safety Code, Chapter 372;

(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only [or historic preservation where central would be cost prohibitive](#)); 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- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(5) Common Amenities.

(A) All Developments must include 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) - (vi) of this subparagraph. For Developments with 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 to 40 Units must qualify for four (4) points;

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

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

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

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

(vi) 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 Affordability Period. Tenants must be provided written notice of the elections made by the Development Owner. 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, which includes those amenities required under subparagraph (C)(xxxiii) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxiii) of this paragraph must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this

requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed to use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be accessible and must be available to all units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. An Applicant 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 [that includes parking areas and all amenities \(excludes guest or general public parking areas\)](#); (2 points);
- (ii) Controlled gate access (2 points);
- (iii) Gazebo [or covered pavilion](#) 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 every 40 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 40 Units loaded with basic programs (maximum of 5 computers needed), 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~~1 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 provider office in addition to leasing offices. \(1 point\):](#)
- (xvi) [Regularly staffed service provider](#)~~Service coordinator~~ office in addition to leasing offices (~~1~~3 points);
- (xvii) ~~Senior~~-Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);
- (xviii) Health Screening Room (1 point);
- (~~xix~~[xviii](#)) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- (~~xxix~~) Horseshoe pit; putting green; shuffleboard court; [pool table](#); or video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);
- (xxi) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (xxii) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (~~2~~1 points). [Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection.](#) Can only select this item if clause (xxii) of this subparagraph is not selected; or
- (xxiii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (~~4~~2 points). [Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection.](#) Can only select this item if clause (xxi) of this subparagraph is not selected;
- (~~xxiv~~[xiii](#)) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (~~xxv~~[iv](#)) 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);
- (xxvi) Community Theater Room equipped with a 52 inch or larger screen [or projection](#) with surround sound equipment; DVD player; and theater seating (3 points);
- (xxvii) 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);
- (xxviii) Common area Wi-Fi (1 point);
- (~~xxix~~[xviii](#)) Twenty-four hour, ~~seven~~ days a week monitored camera/security system in each building (3 points);
- (~~xxx~~[ix](#)) Bicycle parking within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);

(xxxi) ~~R~~Shaded Rooftop or structural viewing deck of at least 500 square feet (2 points); ~~or~~

(xxxii) Porte-cochere (Elderly Developments Only) (1 point); or

(xxxiii) Green Building Features. 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 ICC 700 National Green Building Standard. 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 twenty-two (22) items listed under items (-a-) - (-v-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) a rain water harvesting/collection system and/or locally approved greywater collection system;

(-b-) newly installed native trees and plants ~~installed~~ that ~~reduce~~minimize irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;

(-c-) 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~~WaterSense faucet aerators (minimum of 30% more efficient) instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;

(-e-) 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 for electric and water. 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 (includes providing a storage location and service for pick-up) provided throughout the Compliance Period;
- (-j-) ~~for Rehabilitation Developments or Developments with 41 units or less,~~ construction waste management system provided by contractor that meets LEEDs minimum standards;
- (-k-) for Rehabilitation Developments ~~or Developments with 41 units or less,~~ clothes dryers vented to the outside;
- (-l-) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products;
- (-m-) locate water fixtures within 20 feet of ~~hot~~ water heater;
- (-n-) drip irrigate at non-turf areas;
- (-o-) radiant barrier decking for New Construction Developments or other “cool” roofing materials;
- (-p-) permanent shading devices for windows with solar orientation (does not include solar screens, but may include permanent awnings, black-out shades, fixed overhangs, etc.);
- (-q-) Energy-Star certified insulation products (For Rehabilitation Developments, this would require installation in all places where insulation could be installed, regardless of whether the area is part of the scope of work);
- (-r-) full cavity spray foam insulation in walls;
- (-s-) Energy-Star rated windows;
- (-t-) FloorScore certified flooring;
- (-u-) sprinkler system with rain sensors;
- (-v-) NAUF (No Added Urea Formaldehyde) cabinets.

(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) ICC 700 National Green Building Standard (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 and Development Construction Features. Housing Tax Credit Applicants may select amenities for the score of an Application 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 seven (7) points. Direct Loan Applications not layered funded with Housing Tax Credits (~~e.g. Direct Loan Applications~~) must include enough amenities to meet a minimum of four (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 Affordability 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 three (3) points and Supportive Housing Developments will start with a base score of five (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) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (1.5 points);
- (viii) Covered patios or covered balconies (0.5 point);

- (ix) Covered parking (including garages) of at least one covered space per Unit (1.5 points);
- (x) ~~R-15 Walls / R-30 Ceilings (rating of wall/ceiling system)~~ Meet current R-value requirements (rating of wall/ceiling system) of IECC for the Development's climate zone (1.5 points);
- (xi) 14 SEER HVAC (or greater) ~~for New Construction, Adaptive Reuse, and Reconstruction~~ or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided ~~for Rehabilitation (excluding Reconstruction)~~ (1.5 points);
- (xii) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- ~~(xiii) Desk or computer~~ Built-in computer nook (0.5 point);
- (xi) Built-in shelving unit (0.5 point);
- (xii) Floor to ceiling kitchen cabinetry (1 point);
- (xiii) Recessed or track LED lighting in kitchen and living areas (1 point);
- (xiv) Thirty (30) year shingle or metal roofing (excludes Thermoplastic Polyolefin (TPO) roofing material) (0.5 point); and
- (xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not ~~funded~~ layered with Housing Tax Credits ~~(e.g. HOME Program or other Direct Loans)~~ must include enough services to meet a minimum of four (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 §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (*e.g.* exercises classes must be offered in a manner that would enable a person with a disability to participate). 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. ~~All of these services must be provided by a person on the premises.~~ These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and

background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(A) partnership with local law enforcement to provide regular on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (3 points);
~~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, bullying, teambuilding, internet/social media dangers, stranger danger, etc.) (2 points);

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

(D) Food pantry consisting of an assortment of non-perishable food items and/ common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a tenant (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (2 points);

(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 provided by a health care professional(1 point);

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

(J) organized youth programs or other recreational activities such as games, movies or crafts offered by the Development (1 point);

(K) scholastic tutoring (shall include ~~weekday~~ daily (Monday – Friday) homework help or other focus on academics) (3 points);

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

(M) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(N) twice monthly arts, crafts, and other recreational activities (*e.g.* 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 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 case management services offered by a qualified Owner or Developer or through external, contracted parties 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 Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(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);

(U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(V) external partnerships for provision of weekly substance abuse meetings at the Development Site (2 points);

(W) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(X) a full-time resident services coordinator with a dedicated office space at the Development (2 points);

(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point); and

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and provide transportation to and from the facility:

(i) Facility for treatment of alcohol and/or drug dependency;

(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;

(iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or

(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

(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 requirements under [Federal law §504, Rehabilitation Act of 1973 \(29 U.S.C. §794\)](#), as specified under [24 C.F.R. Part 8, Subpart C](#), and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each ~~unit type~~ [Unit Type](#) of otherwise exempt units (*i.e.*, one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) 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, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as Substantial Alteration, in accordance with [Chapter 1, Subchapter B§1-205](#) of this title.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter C §§10.201 - 10.207, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide guidance for application submission, define what would cause an applicant and application to be ineligible for consideration of multifamily funding, and explain processes regarding Board decisions. The proposed repeal of existing Subchapter C is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to provide additional clarity regarding requirements for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 14, 2016.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.201 Procedural Requirements for Application Submission.

§10.202 Ineligible Applicants and Applications.

§10.203 Public Notifications.

§10.204 Required Documentation for Application Submission.

§10.205 Required Third Party Reports.

§10.206 Board Decisions.

§10.207 Waiver of Rules for Applications.

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

§10.201.Procedural Requirements for Application Submission. ~~The purpose of this section is to identify the~~ This subchapter establishes the procedural requirements for Application submission. Only one Applicant may have an Application or Applications for assistance relating to a specific Development Site at any given time. ~~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 substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, ~~such as including, but not limited to,~~ changes in the amenities ultimately selected and provided.

(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 (including all required exhibits and supporting materials) 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 not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days and may not be extended. Failure to cure such an error timely will be grounds for termination.

(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 ~~must~~ ~~should~~ ensure that all documents are legible, properly organized and tabbed, and that materials provided in digital media ~~are~~ ~~is~~ fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in ~~in the order required by~~ the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

(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 by the same Applicant for Tax-Exempt Bond Developments will be considered to be one Application as identified in ~~Texas Government Code~~ Tex. Gov't Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(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 in §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. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The ~~Executive Director~~ Department may, for good cause, administratively approve an extension for up to an additional ~~fifteen~~thirty (30~~15~~) days to submit confirmation the Certificate of Reservation has been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice. Applications that receive Traditional Carryforward will be subject to closing within the same timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers.

Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. 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. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) 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 (if TDHCA is bond issuer) or TBRB priority status including

the effect on the inclusive capture rate. 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; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature 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. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(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. ~~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, which shall include those Applications believed likely to be competitive, 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. 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~~[Real Estate Analysis division](#) 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 Chapter 1 Subchapter C of this title (relating to Previous Participation) and a Development Site ~~conditions~~ may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §10.101(a)(3) (relating to Undesirable Neighborhood Characteristics), by the Department or its agents. The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.

(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 TBRB; and
- (ii) For all other Developments, the date the Application is received by the Department; and
- (iii) Notwithstanding the foregoing, after July 31 of the current program year, 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. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June or July Board agendas will ~~take longer to process~~ not be prioritized for review or underwriting due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow ~~staff to request that~~ an Applicant to provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Because The ~~the~~ review of an Application may ~~occurs~~ in several phases, ~~and~~ deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail 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. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. 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) It is critical that the use of the Administrative Deficiency process not unduly slow the review process, and since the process is intended to clarify or correct matters or obtain non-material missing information (that should already be in existence), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives an Administrative Deficiency to address the matter fully by the close of business on the date by which resolution must be complete and the Administrative Deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on

the responding party that if the materials do not fully resolve the matter there may be a point deduction or termination.

(B) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the third ~~fifth~~ business day following the date of the deficiency notice, then (~~5 points~~1 point) shall be deducted from the selection criteria score. ~~f~~For each additional two (2) days the deficiency remains unresolved an additional (1 point) shall be deducted from the selection criteria score. 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 have (3 points) deducted and be terminated, subject to appeal. 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 or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website. ~~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 an Administrative Deficiency Notice 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 ~~may~~will be terminated or suspended from further processing so long as the active Application does not impact the processing or underwriting of other Applications. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that ~~would generally~~could likely 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 requires ~~does indeed need~~ correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, 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 having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter and no later than May 1, 2017 for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's 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. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and ~~determined by staff to exist~~, present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in which case the Applicant or

Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. ~~then prior to termination the Department may 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 in this section include those requirements in §42 of the Code, ~~Texas Government Code~~ Tex. Gov't 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. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter.

(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, including ~~or~~ listed in HUD's System for Award Management (SAM); (§2306.0504)

(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 order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); 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 materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of 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 found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title;

(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 within the time frame provided by notice from the Department and at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) would be prohibited by ~~is in violation of~~ a state or federal revolving door or other standard of conduct or conflict of interest statute, including ~~Texas Government Code~~ Tex. Gov't Code, §2306.6733, or a provision of ~~Texas Government Code~~ Tex. Gov't Code, Chapter 572, from participating in the ~~in making, advancing, or supporting the~~ Application in the manner and capacity they are participating;

(J) has, without prior approval from the Department, had 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 Person is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided ~~fraudulent information, knowingly~~ falsified documentation, or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application or Commitment, for a Development, 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 this chapter and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title;

(L) was the owner or Affiliate of the owner of a Department ~~HOME or NSP~~-assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or Department ~~HOME or NSP~~ funds repaid; or

(M) 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, that has terminated voluntarily or involuntarily 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 referred to the Board for

~~termination~~terminated based upon factors in the disclosure. ~~The Executive Director shall make an initial determination whether the person or persons should be involved in the Application within thirty (30) days after the date on which the Applicant receives a preliminary deficiency notice with respect to the Application, including providing information responsive to any supplemental Department requests. The decision of the Executive Director may be appealed in accordance with §10.902 of this chapter. 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 proposed 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; or~~

~~(N) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves or about a competing Applicant that would likely have the effect of fomenting opposition to an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws. Nothing herein shall be construed or effectuated in a manner to deprive a person of their right of free speech, but it is a requirement of those who voluntarily choose to participate in this program that they refrain from participating in the above-described inappropriate behaviors. Applicants may inform Department staff about activities potentially prohibited by this provision outside of the Third Party Request for Administrative Deficiency process described in §11.10 of this title (relating to Third Party Request for Administrative Deficiency for Competitive HTC Applications). An Applicant submitting documentation of a potential violation may not appeal any decision that is made with regard to another competing Applicant's application.~~

(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~~[Tex. Gov't Code](#), §2306.1113, exists relating to Ex Parte Communication. 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~~[Tex. Gov't 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 [person covered by 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; or \(Tex. Gov't Code, §2306.6703\(a\)\(1\); or §2306.6733\);](#)

(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 [Tex. Gov't Code, §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 notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. 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 [within fourteen \(14\) days of when they take office.](#)

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site. [As used in this section, “on record with the state” means on record with the Secretary of State.](#)

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site 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. Developments located in an Extra Territorial Jurisdiction (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. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

- (A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the Development Site;
- (B) Superintendent of the school district in which the Development Site is located;

- (C) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (F) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (G) All elected members of the Governing Body of the county in which the Development Site is located; and
- (H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (vi) of this subparagraph.

- (i) the Applicant's name, address, individual contact name, and phone number;
- (ii) the Development name, address, city and county;
- (iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;
- (iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
- (v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, ~~townhomes~~, high-rise etc.); and
- (vi) the total number of Units proposed and total number of low-income Units proposed.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve ~~exclusively~~ a Target Population exclusively unless such targeting or preference is documented in the Application and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

§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 in this section 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, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification, Acknowledgement and Consent of Development Owner. ~~This form, as provided in the Application, A certification of the information in this subchapter as well as Subchapter B of this chapter~~ must be executed by the Development Owner and address 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, that they have given it with all required authority and with actual knowledge of the matters certified. ~~Applicants must 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~~[Tex. Gov't Code](#), Chapter 552, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance 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 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.

(F) The Applicant will attempt to ensure that at least 30 percent 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~~ [Tex. Gov't Code](#), §2306.6734.

(G) 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.

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

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. ~~This form, as provided in the Application, A certification of the information in this subchapter as well as Subchapter B of this chapter~~ must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. ~~The form identifies~~ certification must identify 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).

(A) for for-profit corporations, 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;

(B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, 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, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;

(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and

(D) for limited liability companies, 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.

(3) Architect Certification Form. ~~This form, as provided in the Application,~~[The certification, addressing all of the accessibility requirements,](#) must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with ~~Texas Government Code~~[Tex. Gov't Code](#), §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds such as HOME or CDBG funds. For an Application with a Development Site that is:

- (i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;
- (ii) Within the extraterritorial jurisdiction (ETJ) of a municipality, the Applicant must submit both:
 - (I) a resolution from the Governing Body of that municipality; and
 - (II) a resolution from the Governing Body of the county; or

(iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the Application may be terminated. The resolution(s) must certify that:

(i) Notice has been provided to the Governing Body in accordance with ~~Texas Government Code~~[Tex. Gov't Code](#), §2306.67071(a) and subparagraph (A) of this paragraph;

(ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with ~~Texas Government Code~~[Tex. Gov't Code](#), §2306.67071(b) and subparagraph (B) of this paragraph; and

(iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) 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~~[Tex. Gov't 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. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the ~~2017~~[2016](#) Application Round, such

requests must be made no later than ~~December 15, 2015~~ December 16, 2016. If staff is able to ~~confirm~~affirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to ~~confirm~~affirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

(i) The population of the political subdivision or census designated place does not exceed 25,000;

(ii) The characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) The percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than fifty percent contiguity with urban designated places is presumptively rural in nature;

(iv) The political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) The political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) The boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in ~~2014 or~~ 2015 or 2016 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development through placement in service, who is also 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 any of the items in clauses (i) - (ix) of this subparagraph:

- (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 a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate 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.

(D) 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.

(E) 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.

(7) 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. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in

instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. 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 memorialized in a recorded ~~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) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;

(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 signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

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

(IV) include either a committed and locked ~~anticipated~~ interest rate, or the currently projected interest rate and ~~including~~ the mechanism for determining the interest rate;

(V) include ~~all~~any required Guarantors, if known;

(VI) include the principal amount of the loan; ~~and~~

(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and

(VIII) include and address any other material 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; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with ~~receipt of the~~ a complete loan transfer application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must

provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or 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, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. [A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.](#)

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner [or investor](#) that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or ~~repository(ies)~~[depository\(ies\)](#) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds [are and will remain readily available at Commitment and until the required investment is completed.](#) Regardless of the amount, all capital contributions other than syndication equity will be [deemed to be a part of and therefore will be](#) added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a [documented](#) history of fundraising [sufficient](#) to support the development of affordable housing.

(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~~
- (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; [and](#)
- [\(vi\) include an acknowledgement of the amounts and terms of all other anticipated sources of funds.](#)

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes [all aspects of](#) 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, [project-based assistance](#), and replacement reserves; and the status [\(dates and deadlines\) for applications, approvals and closings, etc. associated with the](#) ~~of~~ commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) 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 §10.614 of this chapter (relating to Utility Allowances), [including deadlines for submission](#). Where the Applicant uses any method that requires Department review, [documentation indicating that the requested method has been granted by the Department must be included in the Application.](#) ~~such review must have been requested prior to submission of the Application.~~

(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 [and rents are consistent with such assistance and applicable legal requirements](#). 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. For Applications that propose utilizing ~~HOME Direct Loan~~ funds, at least 90 percent of the Units restricted in connection with the [Direct Loan](#)~~HOME~~ program must be available to [households or](#) families whose incomes do not exceed 60 percent of the Area Median Income.

(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 provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) 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. 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 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. 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 Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. 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) - (vi) 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 Existing Residential 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) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))
- (v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and
- (vi) if applicable, evidence that the relocation plan has been submitted to all the appropriate legal or governmental agencies or bodies ~~agency~~. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include 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.

(A) For all New Construction, Reconstruction and Adaptive Reuse Developments a site plan is submitted that includes the items identified in clauses (i) – (v) of this subparagraph ~~which:~~ and for all Rehabilitation Developments, the site plan includes the items identified in clauses (i) – ix) of this subparagraph:

- (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 and number of the parking spaces;
- (vi) indicates the location and number of the accessible parking spaces;
- (vii) describes, if applicable, how flood mitigation or any other required mitigation will be accomplished;
- (viii) delineates compliant accessible routes; and
- (ix) indicates the distribution of accessible Units.

(B) Building floor plans must be submitted for each building type. Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include 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 must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for~~does not expressly preclude~~ an ability to assign the Site Control to the Development Owner ~~or another party~~. 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 of any affiliated property acquisition(s) 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 take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application.~~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. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through

one of the items described in clauses (i) – (iii) of this subparagraph or other documentation acceptable to the Department.

- (i) a recorded warranty deed [vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner](#), with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or
- (ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or
- (iii) a contract for sale or an option to purchase that includes a 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, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government 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 evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate [has made formal application for a required](#) ~~is in the process of seeking a zoning change, and that a zoning application was received by the political subdivision, and that~~ the jurisdiction [has](#) received a release [whereby the applicant for the zoning change has agreed](#) ~~agreeing~~ to hold the political subdivision and all other parties harmless in the event the appropriate zoning is ~~denied~~ [not granted](#). Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. [In an area with zoning](#). ~~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, the Application must include a letter from a local government 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;
- [\(iii\) that it will allow the non-conformance;](#)
- ~~(iv)~~ Owner's rights to reconstruct in the event of damage; and
- ~~(v)~~ penalties for noncompliance.

(12) 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 prior to the beginning of the Application Acceptance Period, then a letter from the title company indicating that nothing further has transpired during the six-month period 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.

(13) Ownership Structure [and Previous Participation.](#)

(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 ~~and/or~~ Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, ~~or the~~ Developer ~~and/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 [the Development Owner and each Affiliate, including entities and individuals \(unless excluded under 10 TAC Chapter 1, Subchapter C\)](#) ~~has ownership interest in the Development Owner, Developer or Guarantor,~~ has provided a copy of the completed ~~P~~previous ~~P~~participation ~~F~~orm ~~i~~nformation to the Department. Individual Principals of such entities identified on the organizational chart must provide the ~~P~~previous ~~P~~participation ~~F~~orm ~~i~~nformation, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title. [In addition, any](#) ~~Any~~ Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer

Fee is also required to submit this ~~document~~[information](#). The ~~information~~[form](#) must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or 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. The ~~Previous Participation Form~~ [individuals providing previous participation information](#) will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) 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 [has been determined by the Internal Revenue Service to be tax-exempt under is-a §501\(c\)\(3\) or \(4\) entity of the Code](#);

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(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;

(VI) that the nonprofit organization has the ability to do business as a nonprofit in Texas;

(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 has been determined by the Internal Revenue Service to be tax-exempt under ~~is a~~ §501(c)(3) or (4) ~~entity of the Code;~~ and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under a §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status.

(15) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction or Reconstruction 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, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan.

(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 or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the appropriate local entity and

that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(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 code 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.

(16) Section 811 Project Rental Assistance Program. All Applications must meet the requirements of subparagraphs (A) or (B) of this paragraph. Applications that are unable meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.

(A) Applicants must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least 10 units to the Section 811 PRA Program. An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, a minimum of 10 Units are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program.

(B) Applicants that cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self-certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Applications. In such cases, the Applicant is able to satisfy the

threshold requirement of this paragraph through this subparagraph (B). Applications must meet all of the requirements in clauses (i) – (v) of this subparagraph. Applicants must commit at least 10 Units in the Development for which the Application(s) has been submitted for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines or other requirements limit the proposed Development to fewer than 10 Units. Once elected in the Application(s), Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria or the Applicant chooses to request an amendment by Carryover, Award Letter, or subsequent to the issuance of the Determination Notice but prior to closing (for Tax-Exempt Bond Developments), or to place the Units on an Approved Existing Development. If the Applicant or an Affiliate obtain an ownership interest in an Approved Existing Development, the Applicant can submit an Amendment request authorizing that the Application satisfies this criteria under subparagraph (A), not subparagraph (B). Such an Amendment request will be considered a non-material change that has not been implemented, and Applicants will not be subject to the amendment fee required under §10.901(13) (relating to Fee Schedule, Appeals and other Provisions).

(i) The Development must not be an ineligible Elderly Development;

(ii) Unless the Development is also proposing to use any federal funding, the Development must not be originally constructed before 1978;

(iii) The Development must have units available to be committed to the Section 811 PRA Program in the Development, meaning that those Units do not have any other sources of project-based rental assistance within 6 months of receiving Section 811 PRA Program assistance, not have an existing use restriction for Extremely Low-income households, and the Units do not have an existing restriction for Persons with Disabilities;

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(v) No new construction activities of projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (i) – (iii) of this subparagraph. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:

(1) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(II) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(III) Project structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

§10.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), ~~and the Primary Market Area map (with definition based on census tracts, ~~zip codes or census place~~ in electronic format~~ and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §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. An 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. The Market Analysis, 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 the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a [disinterested](#) 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 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 the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. 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. All Rehabilitation Developments

financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for 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. 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.

§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, and fulfillment of, 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 and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, published binding policy, official finding, or court order. 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.

§10.207. Waiver of Rules for Applications.

(a) General Waiver Process. This waiver section, unless otherwise specified, is applicable ~~only~~ to Subchapter A (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) ~~and~~ Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), ~~and~~ Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of

[another Board action request.](#) Where appropriate, the Applicant is encouraged to submit with the requested waiver 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 and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. Waiver requests that are limited to Development design and construction elements not specifically required in ~~Texas Government Code~~ [Tex. Gov't Code](#), Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraph (2) of this subsection.

(1) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director finds that the Applicant has established good cause for the waiver. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered under this paragraph.

(2) The waiver 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~~ [Tex. Gov't 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.

~~**(b) Waivers Granted by the Executive Director.** The Executive Director may consider requests to waive requirements of those provisions of this rule listed in subsection (a) of this section. Even if this section of the rule grants the Executive Director authority to waive 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 to the extent such requirement is mandated by statute. Denial of a waiver 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.~~

(be) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters [A through B, C, E, and G](#) of this chapter, [Chapter 11, Chapter 12 and Chapter 13](#), except no waiver shall be granted to provide [directly or implicitly any](#) forward commitments or ~~any if the requested~~ waiver [that](#) 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 [to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements](#).

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter G §§10.901 - 10.904, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide for fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department. The proposed repeal of existing Subchapter G is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments. While an increase to some fees are proposed, the increased amount would only be applicable should an applicant need to submit multiple requests for the same activity. Moreover, the increase to ownership transfer requests is nominal, and only applicable to applicants seeking such action.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be adequate revenue to cover the cost of monitoring compliance with the program requirements. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that any new economic impact on small or micro-businesses is expected to be minimal, and/or offset by reductions in other fees and would only be incurred if the business engages in actions that are at its option. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 25, 2015 to October 15, 2015, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 15, 2015.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code §2306.144, §2306.147, and §2306.6716.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.901 Fee Schedule.

§10.902 Appeals Process.

§10.903 Adherence to Obligations.

§10.904 Alternative Dispute Resolution (ADR) Policy.

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 available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The ~~Executive Director~~Department may ~~extend the deadline~~ ~~grant a waiver~~ for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for ~~a waiver~~an extension no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(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 reflected in the pre-application, 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 a private 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, may be eligible to receive a discount of 10 percent off the calculated pre-application fee provided such documentation is submitted with the 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~~ Initial processing 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 based on the total number of Units in the full Application. 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, may be eligible to receive a discount of 10 percent off the

calculated Application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to ~~Texas Government Code~~Tex. Gov't Code, §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. 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~~ Initial processing will constitute 20 percent, the site visit will constitute 20 percent, ~~program 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~~may incur a late fee in the amount of \$500 for each business day the deficiency remains unresolved.

(7) Third Party Deficiency Request Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to \$500 must be submitted with a ~~for an Administrative Deficiency be issued with respect to challenges~~ Third Party Request for Administrative Deficiency that is submitted per Application pursuant to §11.10 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(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 ~~in~~ 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), [Construction Status Reports](#), 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 original deadline must be accompanied by an extension fee of \$2,500. [Extension fees will increase by \\$500 for each subsequent request on the same activity, regardless of whether the first request was submitted thirty \(30\) calendar days in advance of the applicable deadline.](#) An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500. [Amendment fees will increase by \\$500 for each subsequent request, regardless of whether the first request was non-material and did not require a fee.](#) Amendment fees [and fee increases](#) are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests for approval of the satisfaction of the 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 of \$3,000.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of ~~\$1,000~~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 and HOME Developments Only.)~~ Upon receipt of the cost certification for HTC Developments or HTC Developments and that are layered with Direct Loan ~~HOME funds~~ Developments, or upon the completion of the 24-month development period and the beginning of the repayment period for ~~HOME~~ Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit and \$34 per ~~HOME~~ Direct Loan designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For ~~HOME~~ Direct Loan only Developments, the fee will be

collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. 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. 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~~[Tex. Gov't 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 and HOME programs ~~may~~[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 Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), 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; and

(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~~[Tex. Gov't 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~~[Tex. Gov't 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~~[Tex. Gov't 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.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter A §§10.1 - 10.4, concerning General Information and Definitions. The purpose of the repeal is to allow for the replacement of the existing sections with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department. Proposed new §§10.1 – 10.4 is published concurrently with this repeal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of existing Subchapter A with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 14, 2016.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.1. Purpose.

§10.2. General.

§10.3. Definitions.

§10.4. Program Dates.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter B §10.101, concerning Site and Development Requirements and Restrictions. The purpose of the repeal is to allow for the replacement of the section with a new section that encompasses restrictions and requirements for all development sites for which applications are submitted in applying for multifamily funding through the Department. Proposed new §10.101 is published concurrently with this proposed repeal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of the existing section with a new section that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 14, 2016.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.101. Site and Development Requirements and Restrictions.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter C §§10.201 - 10.207, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. The purpose of the repeal is to allow for the replacement of the existing sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. Proposed new §§10.201 - 10.207 are being published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of the sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. There is no new or additional economic cost to any persons required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 14, 2016.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.201. Procedural Requirements for Application Submission.

§10.202. Ineligible Applicants and Applications.

§10.203. Public Notifications.

§10.204. Required Documentation for Application Submission.

§10.205. Required Third Party Reports.

§10.206. Board Decisions.

§10.207. Waiver of Rules for Applications.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions. The purpose of the repeal is to allow for the adoption of new Subchapter G to provide for updated guidance relating to fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department. Proposed new §§10.901 – 10.904 is published concurrently with this repeal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of existing Subchapter G with a new Subchapter G that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 14, 2015.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code §2306.144, §2306.147, and §2306.6716.

§The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.901. Fee Schedule.

§10.902. Appeals Process.

§10.903. Adherence to Obligations.

§10.904. Alternative Dispute Resolution (ADR) Policy.

5b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 8, 2016

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) is authorized to make Housing Tax Credit allocations for the State of Texas;

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Texas Government Code §2306.67022, developed this Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits; and

WHEREAS, pursuant to Texas Government Code, Chapter 2306.6724(a), the Board shall adopt a proposed Qualified Allocation Plan no later than September 30;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan together with the preambles presented to this meeting, are approved for publication in the *Texas Register* for public comment and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Qualified Allocation Plan together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached to this Board Action Request is the 2017 proposed Qualified Allocation Plan (“QAP”) which reflects staff’s recommendations for the Board’s consideration. In getting the 2017 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff hosted monthly roundtable discussions throughout the year that, while they were mostly focused on scoring items in the Qualified Allocation Plan, discussion on several of those scoring items had applicability to site eligibility and other items within the Uniform Multifamily Rule. Moreover, staff participated in several discussions at the TAAHP Conference in July 2016, and discussed proposed changes and solicited feedback. Lastly, staff launched as it has in prior years, an online discussion forum to allow interested registered users of the forum an opportunity to engage with the Department and one another and provide feedback on possible changes. Staff evaluated the information received in all of these discussions by which to formulate the draft rules

contained herein. It is worth noting staff considered many alternative concepts which were discussed and/or published for consideration on the Forum, but several of these ideas were ultimately withdrawn for further refinement and future consideration based on input from stakeholders.

Rule-Making Timeline: Upon Board approval, the proposed QAP will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 23, 2016, and October 14, 2016, and there will also be a consolidated public hearing during this time to garner public comment. The QAP will be brought before the Board in November for final approval followed by the statutorily mandated submission to the Office of the Governor by November 15, 2016. Upon the Governor's approval or approval with modifications, which must occur no later than December 1, 2016, the adopted QAP will be published in the *Texas Register*.

Statutory Changes: The 2017 Draft QAP incorporated a number of statutory changes made during the 84th Legislative Session. HB 3535 – Required that in an urban sub-region that contains a county with a population in excess of 1.7 million people, the highest scoring development shall be awarded, if any, that is part of a concerted revitalization effort where that municipality has a population of 500,000 or more. This statute is addressed in §11.6(3)(C)(ii) under Award Recommendation Methodology.

Summary of Proposed Changes: This section outlines some of the more significant recommendations by staff. Citation and page references are indicated for ease of reference.

1. **§11.2 Program Calendar** The calendar has been updated for 2017 dates, and several deadlines have been added so that the public has more clarity regarding the Program timeline.
2. **§11.5 (3) At-Risk Set-Aside** A requirement to provide an explanation regarding the disposition of units that will not be relocated has been added, so the the Department can have a clearer understanding of the proposed transaction.
3. **§11.6(3)(C)(ii) At-Risk Set-Aside** This subsection has been added to address statutory requirements. While the format of §11.6(3)(C) has been modified to allow the addition, the language in the balance of the section has not been materially changed.
4. **§11.7 Tie Breaker Factors** New measures have been added to this section, using features that exceed the maximum Opportunity Index or Educational Quality scores. The average school ratings measure has been moved ahead of poverty rate, to address stakeholder concerns.
5. **§11.8(b) Pre-Application Threshold Criteria** Disclosure of Undesirable Neighborhood Characteristics under §10.101(a)(4) has been added to the requirements.
6. **§11.9(c)(2) Rent Levels of Tenants and §11.9(c)(3) Tenant Services.** References to the Houston Supportive Housing Program have been removed as those points have not been requested by Applicants in the recent past.
7. **§11.9(c)(3) Tenant Services.** An additional scoring item has been added to this section, for Applicants who wish to certify they will make Development community space available to local service providers for tenant outreach and education.
8. **§11.9(c)(4) Opportunity Index.** This section has undergone multiple changes in response to stakeholder input. The threshold poverty rate has been raised to the higher of 20% or the median for the region, so that the measure is adjusted for regional conditions. A threshold option for census tracts with income in the third quartile is added. A menu of factors has been added so that applicants will have more flexibility in site selection.
9. **§11.9(c)(5) Educational Quality** Educational Excellence has been renamed Educational Quality. The TEA scores needed to gain points have been changed to include an option to use the Educational Service Center region as the benchmark, in order to regionalize the measurement. As with Opportunity Index a menu of options has been added to allow more sites to reach the maximum score.

10. **§11.9(c)(6) Underserved Area** The maximum points for this item have been increased to five and the measurements have been adjusted to more closely mirror statutory language. An additional scoring item has been added for census tracts fully surrounded by census tracts without HTC allocations in the past 15 years.
11. **§11.9(c)(7) Tenant Populations with Special Housing Needs** The Section 811 Project Rental Assistance Demonstration Program has been moved to a threshold item, after stakeholder input indicated this would be the preferred method to make use of the program
12. **§11.9(c)(8) Proximity to the Urban Core.** This new scoring item provides five points for developments within four miles of City Hall in the five largest cities in Texas. It seeks to support development in gentrifying areas in close proximity to employment and other benefits.
13. **§11.9(d)(5) Community Support from State Representative.** This item has been modified to allow for withdrawal of a letter if the Representative provides a statement that factual representations made to secure their original letter were inaccurate. It has also been modified to allow staff to seek clarification if the letter is unclear.
14. **§11.9(d)(5)(7) Concerted Revitalization Plan** An additional scoring item has been added so that sites that are able to score four points on Opportunity Index are able to gain an additional point. The Rural subsection has been modified to reflect the lack of published plans in smaller communities.
15. **§11.9(e)(2) Cost of Development per Square Foot.** The maximum costs have been increased by 4% to account for increased development costs since the last adjustment.
16. **§11.9(e)(3) Pre-application Participation.** This section has been modified to clarify the site requirements, and added a requirement for disclosure of Undesirable Neighborhood Characteristics under 10 TAC §10.101(a)(4) in order to gain points.
17. **§11.9(e)(4) Leveraging of Private, State, and Federal Resources.** The proportions in this item have been adjusted for the types of structures that are currently prevalent.
18. **§11.9(f)(2) Point Adjustments** This item has been added to provide for a penalty if the Applicant fails to meet Federal commitment or expenditure requirements.
19. **§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications** This section has been edited to provide clarity around the process, based on the results of the 2016 round.

2017 Qualified Allocation Plan Selection Criteria

	Scoring Item	Point Value	Statutory Rank	Statutory/Code Reference	Notes
Criteria Promoting the Development of High Quality Housing	Size and Quality of Units	15 points max	4th	§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)	
	<i>Unit Sizes</i>	8 points			
	<i>Unit Features</i>	7 points max			
	Sponsor Characteristics			§42(m)(1)(C)(iv)	
	<i>HUB or Qualified NP</i>	1 point			Cannot score for both HUB & NP
Criteria to Serve and Support Texans most in Need	Income Levels of Tenants	16 points max	3rd	§2306.111(g)(3)(B) and (E); §2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)	
	Rent Levels of Tenants	13 points max	5th	§2306.6710(b)(1)(E)	13 points max for Supportive Housing; 11 points max for other developments/populations
	<i>Supportive Housing</i>	13 points max			
	<i>All others</i>	11 points max			
	Tenant Services	11 points max	7th	§2306.6710(b)(1)(G) and §2306.6725(a)(1)	11 points max for Supportive Housing; 10 points max for other developments/populations
	<i>Supportive Housing</i>	11 points			
	<i>All others</i>	10 points			
	Opportunity Index	7 points max			
	Educational Quality	5 points max			Elderly score same as general population. Supportive Housing can score up to two points.
	Underserved Area	5 points max		§2306.6725(b)(2); §2306.127; §42(m)(1)(C)(ii)	Score for Opportunity Index precludes score here.
	<i>colonia</i>	2 points			
	<i>EDA</i>	1 point			
	<i>CT in incorporated area w/no HTC in 15 years</i>	3 points			
	<i>other CT w/no active HTC serving same population</i>	2 points			
	<i>CT in incorporated area surrounded by CT w/no HTC in 15 years</i>	5 points			
	Proximity to the Urban Core	5 points			
Tenant Populations with Special Housing Needs	2 points		§42(m)(1)(C)(v)		
Criteria Promoting Community Support and Engagement	Local Government Support	17 points max	2nd	§2306.6710(b)(1)(B)	
	Commitment of Development Funding by Local Political Subdivision	1 point max	5th	§2306.6725(a)(5)	
	Declared Disaster Area	10 points	8th	§2306.6710(b)(H)	
	Quantifiable Community Participation (QCP)	9 points max	9th	§2306.6710(b)(1)(I); §2306.6725(a)(2)	2 point incentive for change from opposition to support or neutrality
	Community Support by State Representative	8 points max	10th	§2306.6710(b)(1)(I); §2306.6725(a)(2)	
	Input from Community Organizations	4 points max		§2306.6725(a)(2)	
	Concerted Revitalization Plan	7 points max		§42(m)(1)(C)(iii)	
	<i>Urban</i>	7 points max			
<i>Rural</i>	7 points max				
Criteria Promoting Efficient Use of Limited Resources and Applicant Accountability	Financial Feasibility	18 points max	1st	§2306.6710(b)(1)(A)	
	Cost of Development per Square Foot	12 points max	6th	§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)	Supportive Housing NRA can include up to 50 sq.ft. of common area per unit.
	Pre-application Participation	6 points		§2306.6704	
	Leveraging of Private, State and Federal	3 points max		§2306.6725(a)(3)	
	Extended Affordability	2 points		§2306.6725(a)(5); §2306.111(g)(3)(C); §2306.185(a)(1) and (c); §2306.6710(e)(2); and §42(m)(1)(B)(ii)(II)	
	Historic Preservation	5 points		§2306.6725(a)(5)	Up to 3 pts instead of 5 if app received 1 or 3 pts for Educational Excellence
	Right of First Refusal	1 point		§2306.6725(b)(1); §42(m)(1)(C)(viii)	
	Funding Request Amount	1 point			

Housing Tax Credit Program Qualified Allocation Plan

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to ~~Texas Government Code~~[Tex Gov't Code](#), Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by ~~Tex Gov't Code~~[Texas Government Code](#), §2306.67022.

(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, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. [As provided by Tex Gov't Code §2306.6715\(c\), appeal rights are triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only.](#)

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, 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 could not have been anticipated and 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 should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that

the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in ~~Texas Government Code~~[Tex Gov't Code](#), Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 201~~65~~, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. [Unless otherwise noted deadlines are based on calendar days.](#)

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the ~~Executive Director~~[Department](#) for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the ~~Executive Director~~[Department](#) that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application. ,and the request is made on or before the original deadline.

Deadline	Documentation Required
01/0 45 /201 67	Application Acceptance Period Begins.
01/0 89 /201 67	Pre-Application Final Delivery Date (including waiver requests).
<u>02/17/2017</u>	<u>Deadline for submission of application for .ftp access if pre-application not submitted</u>
03/01/ 2016 2017	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions

Deadline	Documentation Required
	<p>necessary under §11.3 of this chapter related to Housing De-Concentration Factors).</p> <p>Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).</p>
04/01/201 6 ⁷	Market Analysis Delivery Date pursuant to §10.205 of this title.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
<u>06/01/2017</u>	<u>Third Party Request for Administrative Deficiency</u>
<u>06/23/2017</u>	<u>Public Comment to be included in the Board presentation for awards</u>
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/201 6 ⁷	Carryover Documentation Delivery Date.
06/30/201 7 ⁸	10 Percent Test Documentation Delivery Date.
12/31/201 8 ⁹	Placement in Service.
<p><u>Five-Three (35)</u> business days after the date on the Deficiency Notice (without incurring point loss)</p>	<p>Administrative Deficiency Response Deadline (unless an extension has been granted).</p>

§11.3.Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by ~~Texas Government Code~~Tex Gov't Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in ~~Texas Government Code~~Tex Gov't Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing ~~Texas Government Code~~Tex Gov't Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey and the Development is in a Place that has a population greater than 100,000 shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional

allocation. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or \$150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required,

form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMRs) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; or

(E) the Development is not an Elderly Development and is not located in a QCT that is in an area covered by a concerted revitalization plan. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

§11.5.Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9(3) of this chapter (related to Pre-Application Participation).

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and ~~Texas Government Code~~Tex Gov't Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the

controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region unless the Application is receiving USDA Section 514 funding. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of ~~Texas Government Code~~[Tex Gov't Code](#), §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of ~~Texas Government Code~~[Tex Gov't Code](#), §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in ~~Texas Government Code~~[Tex Gov't Code](#), §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

- (i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (i.e. the site proposed in the tax credit Application) prior to the tax credit ~~Commitment Carryover~~ deadline;
- (ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.* the Applicant may add market rate units); and
- (iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) If Developments ~~must be~~ at risk of losing affordability from the financial benefits available to the Development ~~are able to and must~~ retain or renew the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability must be included with the application.

(i) For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition

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

(F) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6. Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with ~~Texas Government Code~~ Tex Gov't Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in ~~Texas Government Code~~ Tex Gov't Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department

determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex Gov't Code, §2306.6711(h) and will publish such percentages on its website.

~~(i)~~- In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion.

~~The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website.~~

~~(ii) In Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.~~

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with ~~Texas Government Code~~ Tex Gov't Code, §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended (i) At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in

subparagraphs (A) - (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned;

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; and

(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

(3) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.

(4) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

(25) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

~~(3) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for “choice” districts) the closest.~~

(46) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

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

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), not later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to ~~Texas Government Code~~[Tex Gov't Code](#), §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

- (C) Target Population;
- (D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);
- (E) Total Number of Units proposed;
- (F) Census tract number in which the Development Site is located;
- (G) Expected score for each of the scoring items identified in the pre-application materials;
~~and~~
- (H) Proposed name of ownership entity; ~~and~~
- (I) Disclosure of any Undesirable Neighborhood Characteristics under §10.101(a)(4).

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. 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 registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

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

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

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

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

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, ~~townhomes~~, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve ~~exclusively~~ a Target Population ~~exclusively~~ unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under ~~Texas Government Code~~Tex Gov't Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements. When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure

support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as including, but not limited to, changes in the amenities ultimately selected and provided.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive one (1) point if the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside.

(A) The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations.

(B) The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points);
- or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points);
- or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit ~~or for Developments participating in the City of Houston's Permanent Supportive Housing ("HPSH") program. A Development participating in the HPSH program and electing points under this subparagraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for a minimum of five (5) points under paragraph (4) of this subsection (relating to the Opportunity Index), and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection (relating to Tenant Populations with Special Housing Needs)~~ (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit ~~or Developments participating in the HPSH program~~ may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. ~~A Development participating in the HPSH program and electing~~

~~eleven (11) points under this paragraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for a minimum of five (5) points under paragraph (4) of this subsection, and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection.~~

~~(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development)~~

~~(B) The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)~~

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

~~(A) A Proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.~~

~~(i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)~~

~~(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 points)~~

~~(B) An application that meets the foregoing criteria may qualify for additional points up to seven (7) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:~~

~~(i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (15) of this subparagraph.~~

~~(1) The Development site is located less than 1/2 mile on an accessible route from a public park with an accessible playground (1 point)~~

(II) The Development Site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point)

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(IX) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point)

(X) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(XI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less (1 point)

(XII) The development site is located within 1 mile of a public library (1 point)

(IV) The Development Site is located within 5 miles of a University or Community College campus (1 point)

(V) The Development Site is located within 3 miles of a concentrated retail shopping center of at least 1 million square feet or that includes at least 4 big-box national retail stores (1 point)

(VI) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)

(VII) Development site is within 2 miles of a government-sponsored museum (1 point)

(VIII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(VIX) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(VX) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (13) of this subparagraph.

(I) The Development site is located within 2 miles of a full-service grocery store or pharmacy. . A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(II) The Development is located within 4 miles of health -related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category. (1 point)

(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(IX) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less (1 point)

(X) The development site is located within 3 miles of a public library (1 point)

(XI) The development site is located within 3 miles of a public park (1 point)

(XII) The Development Site is located within 7 miles of a University or Community College campus (1 point)

(XIII) The Development Site is located within 5 miles of a retail shopping center with XX square feet of stores (1point)

(IV) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)

(V) Development site is within 2 miles of a government-sponsored museum (1 point)

(VI) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(VII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(VIII) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this

could include religious organizations or organizations like the Kiwanis or Rotary Club)
(1 point)

~~For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) – (v) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.~~

~~(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);~~

~~(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, has achieved a 77 or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);~~

~~(iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);~~

~~(iv) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or~~

~~(v) The Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).~~

~~(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) – (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.~~

~~(i) The Development Site is located within the attendance zone of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B). (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this~~

~~subparagraph only, any school, regardless of the number of grades served, can count towards points; however, schools without ratings, unless paired with another appropriately rated school will not be considered.) (3 points);~~

~~(ii) The Development Site is within 1.5 linear miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program (2 points);~~

~~(iii) The Development Site is located within 1.5 linear miles of a full service grocery store (2 points);~~

~~(iv) The Development Site is located within 1.5 linear miles of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and/or pre-kindergarten, at a minimum (2 points);~~

~~(v) The Development Site is located within 1.5 linear miles of a senior center (2 points); and/or~~

~~(vi) The Development Site is located within 1.5 linear miles of a health related facility (1 point);~~

~~(C) An elementary school attendance zone for the Development Site does not include schools with district wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district wide enrollment an Applicant may use the rating of the closest elementary school that may possibly be attended by the tenants. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.~~

(5) Educational ExcellenceQuality.

In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with

another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (5 points);

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (3 points, or 2 points for a Supportive Housing Development); or

(C) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. Center.(1 point); or

(D) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(E) If the Development Site is able to score one or three points under clauses (B) through (D) above, two additional points or 1 point for a Supportive Housing Development may be added if one or more of the features described in subclause (1) - (4) is present:

(1) The Development Site is in the attendance zone of an elementary school that has Met Standard, and has earned at least one distinction designation by TEA(1 point);

(2) The Development Site is located in the attendance zone of a general admission high school with a four-year longitudinal graduation rate in excess of the statewide four-year longitudinal graduation rate for all schools for the latest year available. (1 point)

(3) The development is in the primary attendance zones for an elementary school that has met standard and offers an extended day Pre-K program. (1 point)

(4) The development site within the attendance zone of an elementary school, a middle school and a high school that all have a Met Standard rating for the three years prior to application. (1 point)

Except for Supportive Housing Developments, an Application may qualify to receive up to five (5) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A)–(C) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) and (B) of this paragraph, as determined by the Texas Education Agency

~~..—An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the rating of the closest elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~

~~(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points, or 2 points for a Supportive Housing Development);~~

~~(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points; (3 points, or 2 points for a Supportive Housing Development); or~~

~~(C) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points. (1 point)~~

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to ~~two-five (25)~~ points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence

substantiating qualification for the points. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) An Economically Distressed Area (1 point);

~~(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation serving the same Target Population which remains an active tax credit development (2 points);~~

~~(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population (2 points);~~

~~(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development serving the same Target Population that remains an active tax credit development or if it is serving the same Target Population then it has not received the allocation within the past 10 years (1 point);~~

~~(C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);~~

~~(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA; (2 points);~~

~~(E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory (5 points).~~

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points by serving Tenants with Special Housing Needs. ~~Points will be awarded as described in subparagraphs (A)–(C) of this paragraph.~~

~~(A) Applications may qualify for two (2) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.~~

~~(B) Applications meeting all of the requirements in clauses (i) – (v) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department’s Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines and requirements limits the proposed Development to fewer than 10 Units. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria. In this case, staff may allow the Application to qualify for points by meeting the requirements of subparagraph (C) of this paragraph.~~

~~(i) The Development must not be an Elderly Limitation Development or Supportive Housing;~~

~~(ii) The Development must not be originally constructed before 1978;~~

~~(iii) The Development has units available to be committed to the Section 811 PRA Program in the Development, meaning that those units do not have any other sources of project-based rental or long-term operating assistance within 6 months of receiving 811 assistance and cannot have an existing restriction for persons with disabilities;~~

~~(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA, Dallas-Fort Worth-Arlington MSA, El Paso MSA, Houston-The Woodlands-Sugar Land MSA, McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and~~

~~(v) The Development Site must not be located in the mapped 500-year floodplain or in the 100-year floodplain.~~

~~(C) Applications proposing Developments that do not meet all of the requirements of clauses (i) – (v) of subparagraph (B) of this paragraph may qualify for two (2) points for meeting the requirements of this subparagraph. In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.~~

~~(8) Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one and a half (1.5) mile radius or three (3) mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points. A map must be included identifying the Development Site and the location of each of the services.~~

~~(A) Full Service Grocery Store (1 point);~~

~~(B) Pharmacy (1 point).~~

~~(8) Proximity to the Urban Core. A development in a County with a population over 1 million and in a City with a population over 500,000 if the Development Site is located within 4 miles of the main City Hall facility. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas.(5 points)~~

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development;
or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development. The letter must include the amount of support and the terms under which it will be provided.—Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Texas Government CodeTex Gov't Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date and its boundaries must contain the entire Development Site. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. ~~Neighborhood Organizations may request to be on record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) not later than 30 days prior to the Full Application Delivery Date.~~

Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to ~~Texas Government Code~~Tex Gov't Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with ~~Texas Government Code~~Tex Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries, ~~persons residing or owning real property within the boundaries~~ of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the

average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. 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 having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2017~~6~~. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials

Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn except in the instance where a representative who has provided a letter provides an additional letter to the Department, on or before April 3, 2017, stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality or opposition and, accordingly, their letter is withdrawn. A change in this manner is final and will result in a score of zero (0) points. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. ~~Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter. A letter expressly stating opposition is scored - 8 points. A letter expressly stating neutrality is scored 0 points. Any other letter conveying a sense of support is scored 8 points. If a tone of support cannot be discerned in a letter that does not expressly state support, neutrality or opposition, the representative will be contacted and given five (5) business days to indicate in writing if they wish to have the letter scored as support or neutral. If clarification is not timely provided, the letter will be scored as neutral.~~

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include

neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

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

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems must include the limited availability of safe, decent, affordable housing and may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

~~(-b-)~~ attracting private sector development of housing and/or business;

~~(-b_c-)~~ developing health care facilities;

~~(-e_d-)~~ providing public transportation;

~~(-e_e-)~~ developing significant recreational facilities; and/or

~~(-e_f-)~~ improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(ii) Up to seven (7) pPPoints will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the city or county as contributing most significantly more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A The resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. ~~(this resolution is not required at pre-application).~~ If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. ~~A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.~~

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)

-(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable

(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts.

(iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)

~~(i) The requirements For concerted revitalization in a Rural Area are distinct and separate from the requirements related to concerted revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other~~

~~taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or have been approved and is projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) – (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) – (V) of this clause:~~

~~(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one half (1/2) mile of the Development Site;~~

~~(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;~~

~~(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;~~

~~(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and~~

~~(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.~~

~~(ii) To qualify under clause (i) of this subparagraph, the Applicant must provide a letter from a government official with specific knowledge of the project (or from an official with a private utility company, if applicable) which must include:~~

~~(I) the nature and scope of the project;~~

~~(II) the date completed or projected completion;~~

~~(III) source of funding for the project;~~

~~(IV) proximity to the Development Site; and~~

~~(V) the date of any applicable city, county, state, or federal approvals, if not already completed.~~

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

- (i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;
- (ii) the Development is more than 75 percent single family design;
- (iii) the Development is Supportive Housing; or
- (iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

- (i) The Building Cost per square foot is less than ~~\$70~~72.80 per square foot;
- (ii) The Building Cost per square foot is less than ~~\$75-78~~ per square foot, and the Development meets the definition of a high cost development;
- (iii) The Hard Cost per square foot is less than ~~\$90-93.60~~ per square foot; or

(iv) The Hard Cost per square foot is less than ~~\$100-104~~ per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than ~~\$75-78~~ per square foot;

(ii) The Building Cost per square foot is less than ~~\$80-83.20~~ per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than ~~\$95-98.80~~ per square foot; or

(iv) The Hard Cost per square foot is less than ~~\$105-109.20~~ per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The Building Cost is less than ~~\$90-93.60~~ per square foot; or

(ii) The Hard Cost is less than ~~\$110-114.40~~ per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$100-104~~ per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$130-135.20~~ per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$130-135.20~~ per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

~~(F) The Development Site at Pre-Application and full Application are the same or have contiguous borders of at least 10% with the site at full application, and the site at both pre-application and at full application are entirely within the same census tract. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application. The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application; and~~

~~(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application~~

~~(HG)~~ The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than ~~8-seven (7)~~ percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~9-eight (8)~~ percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~10-nine (9)~~ percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the

points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) Except for Developments that qualify for one (1) or three (3) points under Educational [ExcellenceQuality](#) §11.9 (c)(5), an Application that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive five (5) points. Developments that qualify for one (1) or three (3) points under Educational [ExcellenceQuality](#) §11.9 (c)(5) that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive three (3) points. At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status.

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with [Texas Government Code](#) [Tex Gov't Code](#), §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the sub-region or set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive

Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

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

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

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

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. Staff actions are not subject to RFAD, as the request does not bring new information to staff's attention. As a practical consideration, the Department expects that such requests be received by June 1. Requests made after this date may not be reviewed by staff. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The results of a RFAD may not be appealed by the Requestor.

5c

BOARD ACTION REQUEST
REAL ESTATE ANALYSIS
SEPTEMBER 8, 2016

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10 Subchapter D, concerning Underwriting and Loan Policies, and a proposed new 10 TAC Chapter 10 Subchapter D, concerning Underwriting and Loan Policy, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs; and

WHEREAS, staff proposes clarifications and changes to the existing rules to better serve the underwriting of applications submitted under various Department programs;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10 Subchapter D Underwriting and Loan Policy and proposed new 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy together with the preamble presented to this meeting, are approved for publication in the *Texas Register* for public comment and

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Underwriting and Loan Policies together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The draft 2017 Underwriting and Loan Policy rule presented herein reflect staff's recommended modifications to the 2016 rule for the Board's consideration. The proposed changes to the rule resulted from both public and staff input. Some modifications are necessary for consistency with proposed changes to other Department rules. Significant changes to specific sections are summarized below. Other changes that are clarifying in nature or simply expand on the descriptions of current methodologies are not specifically discussed.

Upon Board approval, the draft rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 23, 2016 and October 14, 2016 and there will be a consolidated public hearing held. The draft rules after consideration of public comment will be brought before the Board in November for final approval.

§10.302 Underwriting Rules and Guidelines (update based on comments herein)

§10.302(d)(1)(A)(iv) Utility Allowances (page 2 of 25). The change to this section removes the determination of the appropriate utility allowances by the underwriter and references §10.614 of Subchapter F relating to Utility Allowances as the allowances to be used by the underwriter. This change is to ensure consistency with the Compliance Monitoring rules.

§10.302(d)(4)(D)(i)(I) Acceptable Debt Coverage Ratio (page 5 of 25). The change to this section provides clarity of the current methodology used by the Underwriter in instances where the DCR is less than the minimum required DCR of 1.15 times. If a Direct Loan exists, the Underwriter will decrease the principal amount of the Direct Loan until the DCR meets the minimum DCR requirement. In instances where the Direct Loan proceeds are required to balance the sources and uses and no additional developer fee is available for deferral to fill the gap, the interest rate or amortization may be adjusted as long as not prohibited by a program NOFA.

§10.302(e)(1)(C) Acquisition from Seller without current title (page 7 of 25). This addition to the rule is to limit the acquisition price used by the Underwriter to the amount being paid to the current title holder of the property by an intermediate purchaser and where the Applicant is then simultaneously acquiring the land from an intermediate purchaser who has not improved the property.

§10.302(e)(8) Financing Costs (page 9 of 25). This change will allow construction period interest on Related Party construction loans to be includable in eligible basis, subject to all other rules relating to construction period interest, when the loan is demonstrated to be at a market rate of interest, fees and loan terms and when the Related Party lender can demonstrate that it is in the business of regularly providing construction financing to un-related parties.

§10.302(i)(5)(A) & (B) Long Term Feasibility and §10.302(i)(6)(B) Exceptions (page 12 of 25). The changes to these two provisions working in tandem require that throughout the term of a Direct Loan, the Long Term Pro Forma must always indicate positive cash flow and that there are no exceptions to the requirement.

§10.303(d)(8)(B)(i) Secondary Market Area (page 13 of 25). The changes to this section expand on the narrative requirements for defining a Secondary Market Area ("SMA"). The narrative must explain the qualitative aspects of the SMA and its relationship to the subject Development. The narrative should discuss the Development's location within the SMA as well as the connections between the

qualitative aspects of the SMA to its quantitative data. The narrative should discuss the relationship between the SMA and the PMA. The list is not intended to be exhaustive and some items may not apply. However the expanded detail is intended to guide the Market Analyst in defining an appropriate SMA. While this is additional information to be provided, it should be analysis that is already being performed by the Market Analyst. These changes just require that that work is narrated in the market analysis report.

§10.303(d)(9)(B)(i) Primary Market Area (page 14 of 25). The changes to this section expand on the narrative requirements for defining a Primary Market Area (“PMA”). The narrative must explain the qualitative aspects of the PMA and its relationship to the Development. The narrative should discuss the Development’s location within the PMA as well as the connections between the qualitative aspects of the PMA to its quantitative data. The list is not intended to be exhaustive and some items may not apply. However the expanded detail is intended to guide the Market Analyst in defining an appropriate PMA. While this is additional information to be provided, it should be analysis that is already being performed by the Market Analyst. These changes just require that that work is narrated in the market analysis report.

§10.306(a)(4) Accessibility Requirements (page 23 of 25). This addition to the rule requires the PCA provider to report on the accessibility of the Development with respect to the Department’s accessibility rules. The PCA report must include the specific scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).

Attachment A: Preamble and Proposed repeal of 10 TAC Chapter 10, Subchapter D, concerning 2016 Underwriting and Loan Policy and a proposed new 10 TAC Chapter 10, Subchapter D, concerning 2017 Underwriting and Loan Policy for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes repeal of 10 TAC Chapter 10, Subchapter D, concerning 2016 Underwriting and Loan Policy.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section(s) are in effect, enforcing or administering the repealed section(s) does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal sections are in effect, the public benefit anticipated as a result of the repealed sections will be the adoption of new rules to enhance the State’s ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuation required to comply with the repealed sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Brent Stewart, or by email to bstewart@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM, Austin local time, on OCTOBER 14, 2016.

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. The proposed repeals and amendments affect no other code, article or statute.

- §10.301. General Provisions.
- §10.302. Underwriting Rules and Guidelines.
- §10.303. Market Analysis Rules and Guidelines.
- §10.304. Appraisal Rules and Guidelines.
- §10.305. Environmental Site Assessment Rules and Guidelines.
- §10.306. Property Condition Assessment Guidelines.
- §10.307. Direct Loan Requirements.

Subchapter D – Underwriting and Loan Policy

§10.301. General Provisions.

(a) **Purpose.** This ~~subchapter~~Subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This ~~subchapter~~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 ~~subchapter~~Subchapter 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~~Subchapter is 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)) includes general appeal procedures. 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 of 1986 (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis Report ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. 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. For the purpose of this ~~subchapter~~Subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A – E and G).

(c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following:

- (1) **Program Limit Method.** For Housing Credit Allocations, 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 defined in §10.3 of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.
- (2) **Gap 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 downward (but not less than 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 (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio ("DCR") conforms to the standards

described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

- (3) **The Amount Requested.** The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) **Operating Feasibility.** The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income ("NOI") to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

- (1) **Income.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to utility allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) **Rental Income.** The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a 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. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.
- (ii) **Gross Program Rent.** The Underwriter will use 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 Effective Gross Income ("EGI") to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.
- (iii) **Contract Rents.** The Underwriter will review 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 an increase.
- (iv) **Utility Allowances.** The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of Subchapter F of this Chapter relating to Utility Allowances. ~~The Underwriter will review~~ Utility allowances must be calculated for individually metered tenant paid utilities, ~~considered to reflect a tenant's actual consumption. Methodologies for calculating Utility allowances can be found in Subchapter F, §10.614. The Underwriter generally uses the most current Public Housing Authority ("PHA") utility allowance schedule. Should HUD issue guidance requiring a different methodology for Direct Loan Programs, that methodology will be followed.~~

- (v) Net Program Rents. Gross Program Rent less Utility Allowance.
 - (vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.
 - (vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.
- (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 and garage 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 and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.
- (i) The Applicant must show that a 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.
 - (ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.
 - (iii) Collection rates of exceptional fee items will generally be heavily discounted.
 - (iv) If an additional fee is charged for the optional 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 normalized 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. 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 immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.
- (D) **Effective Gross Income ("EGI").** EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten 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 operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's 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 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.
- (A) **General and Administrative Expense ("G&A")**--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 EGI as documented in an existing property

- management agreement or proposal. Typically, 5 percent of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.
- (C) **Payroll Expense.** Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.
 - (D) **Repairs and Maintenance Expense.** Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.
 - (E) **Utilities Expense.** Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.
 - (F) **Water, Sewer, and Trash Expense ("WST").** Includes all water, sewer and trash expenses paid by the Development.
 - (G) **Insurance Expense.** Cost of Insurance coverage 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) If the Applicant proposes a property tax exemption or PILOT agreement the Applicant must provide documentation in accordance with §10.402(d). At the underwriter's discretion, such documentation may be required prior to Commitment if deemed necessary.
 - (I) **Replacement Reserves.** Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve 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 Property Condition Assessment ("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 Operating Expenses.** The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.
 - (K) **Tenant Services.** Tenant services are not included as an operating expense or included in the DCR calculation unless:
 - (i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,
 - (ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;
 - (iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.

- (L) **Total Operating Expenses.** The total of expense items described above. 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 ("NOI").** The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5 percent of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.
- (4) **Debt Coverage Ratio.** DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.
- (A) **Interest Rate.** The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, 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. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.
- (B) **Amortization Period.** For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.
- (C) **Repayment Period.** For purposes of projecting the DCR over a thirty (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.** Except as set forth in clauses (i) or (ii) of this subparagraph, 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 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).
- (i) 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 subject to a Direct Loan NOFA and program rules:
- (I) a reduction to the principal amount of a Direct Loan, or in the case where no repayable Developer Fee remains available for deferral and the Direct Loan is necessary to balance the sources and uses, the a reduction to the interest rate or an increase in the amortization period for Direct Loans;
- (II) a reclassification of Direct Loans to reflect grants,
- (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 subject to a Direct Loan NOFA and program rules:
 - (I) reclassification of Department funded grants to reflect loans;
 - (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 Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.
 - (iv) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.
- (5) **Long Term Pro forma.** The Underwriter will create a 30-year operating pro forma using the following:
- (A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.
 - (B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.
 - (C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) **Total Housing Development Costs.** The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that costs 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 Rehabilitation Developments will be based in accordance with the estimated cost provided in the PCA for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's cost estimate 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 (by the Applicant or a Related Party) 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) An 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) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.
 - (ii) In all identity of interest transactions the Applicant is required to provide:
 - (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 capitalized costs, 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 if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) Acquisition from Seller without current Title. In cases where as of the first day of the Application Acceptance Period the seller does not hold title to the property, the acquisition price will be limited to the acquisition price between the seller and the current title holder unless the seller can document land improvement costs or work to be performed by the seller as obligated in the site control documents. If the seller is acquiring more land from the current title holder than will be conveyed to the Applicant [whether under a single or multiple purchase contract(s)], the value ascribed to the proposed Development Site will be determined according to §10.302(e)(1)(A).

- (D) Eligible Basis on Acquisition of Buildings.** Building acquisition cost will be included in the underwritten 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 eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:
- (i) the Applicant's stated eligible building acquisition cost;
 - (ii) the total 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. [These circumstances include but are not limited to operating subsidies, rental assistance and/or property tax exemptions.](#) 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 with 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 with 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. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.
 - (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 on the PCA Cost Schedule Supplement.
- (5) **Contingency.** Total contingency, 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.
- (6) **General Contractor Fee.** General 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. General 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 Fee 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. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.
 - (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.** All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. 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). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is ~~not only~~ included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.
- (9) **Reserves.** Except for the underwriting of a Housing Tax Credit Development at cost certification, 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 found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the~~including~~ initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.
- (10) **Soft Costs.** Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.
- (11) **Additional Tenant Amenities.** For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.
- (12) **Special Reserve Account.** For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to \$2,500 per Unit into a Special Reserve Account [pursuant to §10.404(d)] as a Development Cost.

(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) in cases when warranted. The Underwriter ~~will~~ may 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 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~~ may result in an Application being referred to the Committee by the Director of Real Estate Analysis. 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 proposed to be designed to comply with the QAP, ~~or~~ NOFA and applicable Federal requirements.
- (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. Distance is measured in a straight line from nearest boundary point to nearest boundary point.
- (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 affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;
 - (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 and Individual Unit Capture Rate.** The method for determining capture rates for a Development is defined in §10.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) is characterized as an ~~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) is Supportive Housing and the Gross Capture Rate exceeds 30 percent; or,

(E) has an Individual Unit Capture Rate for any Unit Type greater than ~~100~~-75 percent.

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) 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, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMI rents, 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 underwritten capitalization 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.**

(A) Except when underwritten at cost certification, 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.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

- (5) **Long Term Feasibility.** The Long Term Pro forma [at any time during years two through fifteen](#), as defined in subsection (d)(5) of this section, reflects:
[\(A\) a Debt Coverage Ratio below 1.15; or, ~~negative cash flow.~~](#)
[\(B\) negative cash flow \(throughout the term of a Direct Loan\).](#)
- (6) **Exceptions.** The infeasibility conclusions may be excepted when:
- (A) 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 not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. [A Development financed with a Direct Loan will not be re-characterized as feasible with respect to \(5\)\(B\).](#)
 - (i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program 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) The approved Qualified Market Analyst list will be updated and published annually on or about October 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.
- (A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).
 - (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. [A firm with multiple offices or locations must indicate all members expected to be providing 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.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

- (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 will be posted on the Department's web site no later than November 1st.

(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) **Market Analysis Summary.** 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 geographic area from which the Development may draw limited demand in addition to the PMA.](#) A SMA 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 SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)
 - (A) The SMA will be defined by the Market Analyst with:
 - (i) [geographic](#) size based on a base year population of no more than 250,000 people inclusive of the PMA; and
 - (ii) boundaries based on U.S. census tracts.
 - (B) The Market Analyst's definition of the SMA must include:

- (i) a detailed ~~narrative description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA~~ specific to the SMA explaining:
 - (I) how the boundaries of the SMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;
 - (II) whether a more logical market area within the SMA exists but is not definable by census tracts and how this subsection of the SMA supports the rationale for the defined SMA, and also explains how the SMA relates to the PMA in terms of its qualitative and quantitative aspects;
 - (III) what are the specific attributes of the Development's location within the SMA that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development;
 - (IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development;
 - (V) the household and employment concentrations across the SMA and proximity to the Development;
 - (VI) that prospective tenants within one mile of the Development will be able to afford the Pro Forma rent or if not provide further comment on where eligible demand will come from; and
 - (VII) other housing issues in general, if pertinent.
- (ii) a complete demographic report for the defined SMA; and
- (iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments.

(9) **Primary Market Area.** A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

- (A) The PMA will be defined by the Market Analyst as:
 - (i) geographic size based on a base year population no larger than necessary to provide sufficient demand but of no more than 100,000 people;
 - (ii) boundaries based on U.S. census tracts; and
 - (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.
- (B) The Market Analyst's definition of the PMA must include:
 - (i) a detailed ~~narrative description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;~~ specific to the PMA explaining:
 - (I) how the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;
 - (II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA ;
 - (III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;
 - (IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;
 - (V) the household and employment concentrations across the PMA and proximity to the Development;
 - (VI) that prospective tenants within one mile of the Development will be able to afford the Pro Forma rent and if not provide further comment on where eligible demand will come from; and

- (VII) other housing issues in general, if pertinent.
 - (ii) a complete demographic report for the defined PMA; ~~and;~~
 - (iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and.
 - (iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.
- (C) **Comparable Units.** Identify ~~Developments~~developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable ~~Development~~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;
 - (xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,
 - (xii) 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 rental developments, including unrestricted developments, whether existing or proposed);
 - (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 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. [A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.](#)
- (i) **Demographics.** The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for an ~~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~~[elderly population](#) targeted by the proposed Development.
 - (III) **Household Size-Appropriate.** Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).
 - (IV) **Income Eligible.** Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:
 - (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for ~~Qualified-Elderly~~[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 or Supportive Housing:
 - (-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. [Analysis must discuss existing or planned employment opportunities with qualifying income ranges.](#)
- (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 by unit type and income type 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) Adjustments for proximity [and drive times](#) to employment centers and services narrated in the Comparable Unit description must be included.
 - (v) Total adjustments in excess of 15 percent must be supported with additional narrative.
 - (vi) 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 in an Application with priority over the subject pursuant to §10.201(6) of this chapter.
- (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. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) **Individual Unit Capture Rate.** For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. [Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, the Underwriter will make assumptions such that each household is included in the capture rate for only one Unit Type.]

~~(H) 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.

(H) **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.

(14) **Qualifications.** Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.

(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 (such as 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 (such as 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 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.~~ For public housing converting to project-based rental assistance, the value must be based on the post conversion restricted rents and must consider any other on-going restrictions that will remain in place even if not affecting rents. 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 value must be based on the proposed restricted rents ~~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 the 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 must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). 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 the Department 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 must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must 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 Lead Based Paint and/or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
- (5) 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. [For buildings constructed prior to 1980, a report on the quality of the local water supply does not satisfy this requirement;](#)
- (6) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;
- (7) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and
- (8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(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 section.

§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)~~thirty (30) 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. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;
- (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 as outlined in Chapter 1 of this title,~~ the Department's Uniform Physical Condition Standards, and any scoring criteria for which the Applicant may claim points;
- (4) **Accessibility Requirements.** ~~The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8) and include the specific scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).~~
- (45) **Reconciliation of Scope of Work and Costs.** ~~The PCA report must include an analysis, detailed and shown on the Department's PCA Cost Schedule Supplement, that reconciles the scope of work and immediate costs identified in the PCA with the Applicant's scope of work and costs (Hard Costs) as presented on the Applicant's development cost schedule; and~~ The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and Hard Costs as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider; and
- (56) **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) **Reconciliation of Costs.** The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the Hard Costs presented on the Applicant's development cost schedule.

(D) **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 lesser of thirty (30) years or 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)~~ thirty (30) 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) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) 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.

(d) 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.

(e) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs 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 Texas Department of Housing and Community Affairs. 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.

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

- (1) the interest rate may be as low as zero percent provided all applicable NOFA and program [rules and requirements](#) are met as well as requirements in this ~~subchapter~~[Subchapter](#);
- (2) unless structured only as an interim construction or bridge loan and provided all NOFA and program requirements are met, 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. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.
- (3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing 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~~[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;
- (4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions 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; and,
- (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) - (B) 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; or
 - (B) 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.

(b) ~~HOME~~ Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with [the Federal requirements in 24 CFR Part 92](#) and as included in the ~~HOME~~ Direct Loan documents:

- (1) Construction must begin no later than six (6) months from the date of "Committing to a specific local project" as defined in 24 CFR Part 92 and must be completed within twenty-four (24) months of the actual date of loan closing as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;
- (2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;
- (3) repayment will be required on a per unit basis for units that have not been rented to eligible households within twenty-four (24) months of project completion; and
- (4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

Attachment B: The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307. The purpose of the new rule is to provide the Department and participants in the Department’s affordable housing programs guidance in awarding funds to properties that are economically viable and appropriate for their residents.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will enhance the State’s ability to provide decent, safe, sanitary and affordable housing. The cost to produce the Market Study report required under §10.303 should not increase as a result of the expanded description required for the market areas as the market analyst should already be conducting that work as a normal component of producing a market analysis.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Brent Stewart, or by email to bstewart@tdhca.state.tx.us, or by FAX to (512) 475-4420. **ALL COMMENTS MUST BE RECEIVED BY 5:00 PM, Austin local time, on OCTOBER 14, 2016.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government code §2306.053, which authorizes the Department to adopt rules. The proposed sections and amendments affect no other code, article or statute.

§10.301. General Provisions.

§10.302. Underwriting Rules and Guidelines.

§10.303. Market Analysis Rules and Guidelines.

§10.304. Appraisal Rules and Guidelines.

§10.305. Environmental Site Assessment Rules and Guidelines.

§10.306. Property Condition Assessment Guidelines.

§10.307. Direct Loan Requirements.