# Substantial Amendment to the 2019 One-Year Action Plan

The purpose of this Substantial Amendment to the 2019 One Year Action Plan is to update the Method of Distribution for HTF. Nonsubstantial edits to reflect rulemaking in 10 TAC Chapters 11 and 13 in Allocation Priorities, Method of Distribution, and Program Specific Requirements for HTF and HOME have also been made. Updates to the following sections are:

**AP-05 Executive Summary**

Updates are made to the summary of public comments to include the comments and responses to those comments.

- Public comments on Amendment (p. 4 and 5)

**AP-25 Allocation Priorities**

Updates are made to the introduction to NHTF Allocation Priorities in AP-25 to have consistent requirements for the updated goal:

- HOME and NHTF Serve Special Needs (p. 6 and 7)

**AP-30 Methods of Distribution**

Updates are made to the NHTF Distribution Methods table in AP-30 to associate priority criteria for NHTF:

- Table 8 - Distribution Methods by State Program (p. 27 and 28)

**AP-90 Program Specific Requirements**

Updates are made to the HOME and NHTF Programs to have consistent requirements for the program plans:

- HOME Investment Partnership Program (HOME) (p. 49, 53)
- Housing Trust Fund (HTF) (p. 53-59, 64)
- Chapter 13 Rule (Attached) (p. 65)

The full 2015-2019 State of Texas Consolidated Plan is available at http://www.tdhca.state.tx.us/housing-center/pubs-plans.htm#consolidated.

# Executive Summary

## AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

### 1. Introduction

This One Year Action Plan (OYAP) identifies the contemplated possible use of funds received by the State of Texas from the U.S. Department of Housing and Urban Development (HUD) for Program Year (PY) 2019. This PY 2019 OYAP applies to those actions of the Texas Department of Housing and Community Affairs (TDHCA), the Texas Department of Agriculture (TDA), and the Texas Department of State Health Services (DSHS), relating to the activities of those three state agencies involving the administration of ongoing HUD Community Planning and Development (CPD) programs. Those agencies, being all of the agencies that administer HUD CPD programs for the state of Texas (other than Community Development Block Grant Disaster Recovery funds designated specifically by HUD for disaster recovery efforts), are collectively referred to herein as the "State." This OYAP is for the HOME Investment Partnerships (HOME) Program, the Emergency Solutions Grant (ESG) Program, the Community Development Block Grant (CDBG) Program, the Housing Opportunities for Persons with AIDS (HOPWA) Program, and the National Housing Trust Fund (NHTF). The 2019 PY for HUD program activity begins on February 1, 2019, and ends on August 31, 2020. The performance report on PY 2017 funds was submitted to HUD in April 2018, and approved by HUD in August 2018.

The HUD Program Year (PY) used by the state of Texas' Community Planning and Development Programs (CPD) will be changing from a February – January cycle to a September – August cycle. The CPD programs include the Emergency Solutions Grant Program, the HOME Investment Partnerships Program and the National Housing Trust Fund Program administered by the Texas Department of Housing of Community Affairs; the Community Development Block Grant Program administered by the Texas Department of Agriculture; and the Housing Opportunities for Persons with AIDS Program administered by the Department of State Health Services. The purpose of this change is to align with State Fiscal year reporting, and the recent timeframe of the Congressional Appropriations process. To accomplish this change, Texas will lengthen its PY 2019 by seven months, running from February 1, 2019, through August 31, 2020. Thus, Texas' PY 2020 will be the first PY on the new September - August cycle, and will run from September 1, 2020, through August 31, 2021. Per 24 CFR §91.10, Texas submitted written notification to the HUD Office of Planning and Community Development, Fort Worth, and received confirmation of this notification from that office on November 23, 2018.

### 2. Summarize the objectives and outcomes identified in the Plan

**This could be a restatement of items or a table listed elsewhere in the plan or a reference to another location. It may also contain any essential items from the housing and homeless needs assessment, the housing market analysis or the strategic plan.**

The 2019 OYAP:

1. Reports on the intended use of funds received by the State from HUD for PY 2019;
2. Explains the State's method for distributing CDBG, ESG, HOME, HOPWA, and NHTF program funds; and,
3. Provides opportunity for public input on the development of this OYAP.

The State's progress in achieving the goals put forth in the OYAP will be measured according to HUD guidelines (24 CFR §91.520) and outlined in the Consolidated Annual Performance and Evaluation Report (CAPER), submitted to HUD by May 1 each year.

In accordance with the guidelines from HUD, the State utilizes the CPD Outcome Performance Measurement System through the use of HUD's Integrated Disbursement and Information System (IDIS) to develop the OYAP and CAPER each year. Program activities are categorized into the objectives and outcomes listed throughout the OYAP. The estimated performance figures are based on planned performance during the PY (February 1st through January 31st) of contracts committed and projected households to be served based on estimated availability of funds. In contrast, the performance measures reported to the Texas Legislative Budget Board for the State Fiscal Year (SFY) which is September 1st through August 31st, are based on anticipated units and households at time of award.

The objectives, outcomes, and activity budgets in this OYAP will be proportionally adjusted from the estimated levels included herein once the PY 2019 allocation notice is received from HUD.

## 3. Evaluation of past performance

## This is an evaluation of past performance that helped lead the grantee to choose its goals or projects.

The information below is for HOME, ESG, NHTF, CDBG, and HOPWA for PY 2017 (February 1, 2017 to January 31, 2018). Because NHTF was a new program for PY2016, past performance data is limited to award activities.

HOME Evaluation of Past Performance
TDHCA's HOME program expended $32,490,905 in program funds through six different HOME Program activities in PY 2017, representing completed assistance to 584 households that achieved 94% of expected program year goals.

ESG Evaluation of Past Performance
During PY 2017, TDHCA's ESG Program expended $15,751,230, including 2017 ESG funding, reallocated and unexpended balances of ESG funds from 2011-2016,as well as matching funds. With the expended

funding, ESG served 922 households with rapid re-housing, 14,492 persons with overnight shelter assistance, and 2,048 persons with homelessness prevention.

NHTF Evaluation of Past Performance

TDHCA's NHTF program committed $4,578,947.60 PY 2016 funds and $2,885,873.80 PY 2017 funds, with the remaining expected to be committed by mid-2019. TDHCA anticipates committing PY 2018 funds beginning early 2020.

TDHCA's NHTF program expended $2,365,467.03 PY 2016 funds and anticipates expending PY 2017 funds by the end of 2021. All funds thus far have been used for the new construction of multifamily rental housing.

CDBG Evaluation of Past Performance

During PY 2017, the Texas CDBG Program committed a total of $70,220,988 through 241 awarded contracts. For contracts that were awarded in PY 2017, 372,087 persons were anticipated to receive service. The Colonia Self Help centers, overseen by TDHCA's Office of Colonia Initiatives, awarded two contracts in 2017, totaling $1,488,785 and benefitting 3,565 persons.

HOPWA Evaluation of Past Performance

In PY 2017, the DSHS HOPWA program served 468 households with TBRA (100% of the OYAP goal set at 477 households), 479 households with STRMU assistance (111% of the OYAP goal set at 433 households), and 52 households with Permanent Housing Placement (PHP) assistance (208% of the OYAP goal set at 25 households) for a total of 943 unduplicated households. Of the 943 households served, 940 households also received HOPWA-funded Supportive Services (104% of the OYAP goal set at 900.) All HOPWA clients receive housing supportive services at some level, but some costs were leveraged with other funding sources. Client outcome goals for housing stability, reducing homelessness risk, and improving access to care were also achieved.

## 4. Summary of Citizen Participation Process and consultation process

## Summary from citizen participation section of plan.

The State is committed to reaching out to and engaging with the public in order to develop programmatic activities that are responsive to the various affordable housing needs of Texans. The State also solicits and receives input from governmental bodies, nonprofits, and community and faith-based groups. More information on the citizen participation, consultation, and public comment are included in the Consultation and Participation sections of the Plan.

The 2015-2019 Consolidated Plan (as adopted) substantial amendments, the OYAP, and the Consolidated Plan Annual Performance and Evaluation Report (CAPER) are available to the public online at http://www.tdhca.state.tx.us and materials are accessible to persons with disabilities, upon request.

The State recognizes that public participation and consultation are ongoing processes. During the development of the 2015-2019 Consolidated Plan, comprehensive outreach was conducted to gather input. This outreach continues through the development of each Annual Action Plan within the 5-year consolidated planning process. Following the release of HUD's Final Rule to Affirmatively Further Fair Housing (AFFH), the State updated the Citizen Participation Plan and Language Access Plan; those updated plans are now being used as the State develops an updated Analysis of Impediments to Fair Housing Choice (AI).

**5. Summary of public comments**

**This could be a brief narrative summary or reference an attached document from the Citizen Participation section of the Con Plan.**

Following the release of the Draft 2019 OYAP, the Public Comment period was open from Monday, October 15, 2018 through Thursday November 15, 2018, and a public hearing was held on Thursday, October 25, 2018, in Austin, TX. There were no public comments received.

Following the release of the Draft of 10 TAC Chapter 13, Multifamily Direct Loan Rule, First Substantial Amendment to the 2019 OYAP, the Public Comment period was open from October 14, 2019 through November 14, 2019. Two public comments were received.

Commenter (1) asks that TDHCA provide separate equity requirements for Applicants under the Soft Repayment Set-Aside with Direct Loan funds as their only source of permanent funding.

Commenter (2) expressed concerns regarding the waiver limitations added to 10 TAC §13.1(c) and asks that TDHCA clarify potential preclusions.

**6. Summary of comments or views not accepted and the reasons for not accepting them**

In response to Commenter (1), staff believes the use of grants as a source of equity-like funding may help in meeting the requirement of 10 TAC §13.8(c)(9)(A) on a case-by case basis. 10 TAC §13.8(c)(9)(A) already allows for that possibility that an Applicant, regardless of the set-aside under which they are requesting Direct Loan funds, may request meeting the owner equity requirement through equity-like sources from foundations, corporations, and local government(s). Additionally, Commenter (1) references the owner equity requirement of 20% of Total Housing Development Costs in the 2019 MFDL Rule, rather than the owner equity requirement of 10% of Total Housing Development Costs found in the proposed 2020 MFDL
Rule. The reduction in the owner equity requirement is a result of similar stakeholder input received over the past year.

In response to Commenter (2), staff appreciates the concerns raised regarding the additional language under the waivers section in 10 TAC §13.1(c). However, with respect to the specific example cited by Commenter (2), staff does not believe that the additional language will impact an applicant's ability to request an exception under 10 TAC §11.302(i)(6)(A) or potentially meet the positive cash flow requirement for Direct Loan-funded developments. In the state's 2019 One Year Action Plan approved by HUD earlier this year, in response to the question "Describe the eligibility requirements for recipients of HTF funds (as defined in 24 CFR §93.2)," the state responded, in part, by stating "all Applications must meet the Underwriting requirements at 10 TAC §11.302, including acceptable pro forma projections through year 30, minimum 1.15 Debt Coverage Ratio, and minimum replacement reserve requirements."

## 7. Summary

The consolidated planning process occurs once every five years, so creating a comprehensive 2015-2019 Consolidated Plan was vital for CDBG, HOME, ESG, HOPWA, and NHTF. Because of the Consolidated Plan's authority to govern these programs, research from multiple sources, including other government plans, peer-reviewed journals, news sources, and fact sheets were used. Valuable public input was gathered through roundtable meetings, council/workgroup meetings, public hearings, online surveys, and an online forum. An expansive public input process was included in the development of the Consolidated Plan. The 2015-2019 Consolidated Plan is now carried out through Annual Action Plans, which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that the State plans to use each year to address the priority needs and specific goals identified by the Consolidated Plan.

## AP-25 Allocation Priorities – 91.320(d)

### Introduction:

The CPD Programs serve special needs populations and meet the 13 Priority Needs found in Strategic Plan 25 of the 2015-2019 Consolidated Plan. These Needs in Strategic Plan 25 are correlated with Goals in Action Plan 20 to show which activities will serve which priority needs. The goals from Action Plan 20 are listed below with allocation percentages. Percentages in the chart below are estimated and may change depending on funding received from HUD, legislative priorities, and funding requests from administrators or subrecipients. Due to software restrictions, allocations are rounded to the nearest whole number and do not reflect precise percentages.

Also, for the other programs listed in the anticipated resources (Action Plan 15) that could be used to leverage funds (including 4% HTC, 9% HTC, Multifamily Direct Loan Program, HHSP, State Housing Trust Fund, TX MCC, and My First Texas Home Program, NSP PI, Section 8 HCV programs, Section 811 PRA, and TCAP RF), goals are tailored to each program in the planning documents governing those programs. These documents can be found at http://www.tdhca.state.tx.us. In addition to meeting the priority needs, the CPD Programs works to serve special needs populations as described in this section. HOME and ESG's special needs populations are discussed in the introduction, and HOPWA and CDBG's are included in the discussion below.

HOME and NHTF Serve~~s~~ Special Needs

TDHCA has determined that administrators may request to establish a preference to serve the following special needs populations: persons with disabilities, persons with substance use disorders, persons living with HIV/AIDS (PLWH), persons with Violence Against Woman Act (VAWA) protections, colonia residents, farmworkers, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), public housing residents, persons transitioning out of incarceration, and persons transitioning out of foster care and nursing facilities.

For administrators with programs that are designed to limit assistance to certain populations, TDHCA will only approve program designs that limit assistance to households that include a member within the following populations if necessary to provide as effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR §8.4(b)(1)(iv): PLWH, mental illness, substance use disorders, or households that would qualify under the TDHCA's Project Access program as defined in 10 TAC §5.801. Otherwise, administrators may only give preference to populations described in the special needs section.

For HOME or NHTF rental housing, TDHCA will allow development of housing that meets requirements under the Housing for Older Persons Act. TDHCA may also consider permitting rental housing owners to give a preference or limitation as indicated in this section and may allow a preference or limitation that is not described in this section to encourage leveraging of federal or state funding, provided that another federal or state funding source for the rental housing requires a limitation or preference. TDHCA may put further guidelines on development of specific types of rental housing by rule or NOFA.

In order to have consistent requirements for Developments with 100% Single Room Occupancy Units, the Department will utilize the HOME definition in 24 CFR §92.2 for HOME and NHTF, in addition to the Department's definition of Single Room Occupancy at 10 TAC §11.1(d)(117) and the definition of Unit at 10 TAC §11.1(d)(136).

~~In order to have consistent requirements for Developments that consist of 100% of units that are Single Room Occupancy, the Department will utilize the HOME definition in 24 CFR 92.2 for NHTF.~~

## Funding Allocation Priorities

| | Homeless Goals (%) | Construction of single family housing (%) | Rehabilitation of single family housing (%) | Homebuyer assistance with possible rehabilitation (%) | Tenant-Based Rental Assistance with HOME funding (%) | HOME Households in new/rehabbed multifamily units (%) | HOPWA Tenant-Based Rental Assistance (%) | HOPWA Short-Term Rent, Mortgage, & Utilities Asst (%) | HOPWA Permanent Housing Placement Assistance (%) | HOPWA-Funded Supportive Services (%) | HOPWA Facility-Based Housing Subsidy Assistance (%) | HOPWA Resource Identification (%) | HOPWA Housing Information Services (%) | CDBG Other Construction (%) | CDBG Economic Development (%) | CDBG Planning / Capacity Building (%) | CDBG Disaster Relief / Urgent Need (%) | CDBG Colonia Set-Aside (%) | CDBG Colonia Self-Help Centers (%) | CDBG Administration (%) | HOME Administration (%) | NHTF households in new multifamily units (%) | NHTF Administration (%) | Colonias Set-Aside (%) | Total (%) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| CDBG | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 68 | 16 | 1 | 0 | 10 | 2 | 3 | 0 | 0 | 0 | 0 | **100** |
| CDBG Colonias Set-aside | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 100 | **100** |
| HOME | 0 | 3 | 32 | 2 | 15 | 48 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | **100** |
| HOPWA | 0 | 0 | 0 | 0 | 0 | 0 | 58 | 14 | 2 | 18 | 6 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | **100** |
| ESG | 100 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | **100** |
| Housing Trust Fund | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 90 | 10 | 0 | **100** |

**Table 1 – Funding Allocation Priorities**

## Reason for Allocation Priorities

HOME

TDHCA prioritizes HOME funding for multifamily, single-family, and Set-Aside activities. Multifamily activities were historically allocated a higher percent of funds to address the priority needs of Rental Assistance and Production of New Units, promote tax credit leveraging, and because they account for a large portion of HOME's program income. TDHCA now has access to TCAP RF, which are loan repayments from original TCAP funded developments, as a source of multifamily financing, as well as the ability to allocate program income to this activity based on the amount actually received in the prior program year, so these priorities will continue to have funds directed toward them while likely reducing the portion of HOME annual allocation funds directed towards multifamily activities.

Funding for single family activities from the 2019 annual allocation is anticipated to be awarded based on TDHCA's Regional Allocation Formula, through the Reservation System, contract awards, or a combination of the two allowing local administrators to prioritize single family activities on a household-by-household basis for: HBA, which addresses Acquisition of Existing Units and Rehabilitation of Existing Units priority needs; A pilot project allowing Homebuyer Assistance to be utilized to assist a homebuyer with purchase a land or a substandard housing unit, which will be either rehabilitated or newly constructed with HOME funds; HRA, which addresses Rehabilitation of Existing Units priority need; and TBRA, which addresses Rental Assistance priority need. These priorities are a result of the consolidated planning process and significant public input.

ESG

ESG does not have specific allocations for priority needs. ESG funds can be used for all eligible purposes within limitations set by ESG regulations and guided by local Continuum of Care (CoC) direction, including:

Street outreach, Emergency shelter, Rapid re-housing, HMIS activities, and Homelessness prevention.

HOPWA

HOPWA provides the following activities in line with priority needs:

TBRA, which addresses Rental Assistance priority needs; STRMU, which addresses Homelessness Prevention priority needs; Facility-Based Housing Subsidy Assistance, which addresses emergency shelter and transitional housing rental assistance needs; Supportive Services Program, which addresses Supportive Services for PLWH priority needs; and PHP, which addresses Homelessness Prevention priority needs.

CDBG

The CDBG Program offers the following activities relating to the corresponding priority needs. The majority of CDBG funds are used to meet basic human needs. These projects, in addition to being among the most critical needs in the state, are prioritized locally by regional review committees and local communities. Colonia funding allocation is reflected in "Colonias Set-Aside" column.

The majority of funds are awarded to address basic human needs including improvements to water and sewer systems and roads for low and moderate income (LMI) communities. Economic development activities are funded to create and retain jobs primarily for LMI persons, and to revitalize downtown areas in rural communities. Public facilities such as community centers and public safety facilities are less common activities, but are valuable to LMI communities. Colonias SHC activities provide public services and housing funds for residents living in the designated colonias of El Paso, Hidalgo, Cameron/Willacy, Webb, Starr, Maverick and Val Verde counties.

NHTF

The NHTF Program activities for PY 2019 will be limited to construction of multifamily housing to address the priority needs of Rental Assistance and Production of New Units, and to promote leveraging of other fund sources. As this is a new fund source and a new program, the administrative burden of implementation is mitigated by using the funds within the well-established multifamily finance structure.

**How will the proposed distribution of funds will address the priority needs and specific objectives described in the Consolidated Plan?**

The special needs populations for HOME are described in the Introduction. ESG, HOPWA and CDBG discuss special needs populations below.

ESG Serves Special Needs

ESG does not have funding allocation priorities for special needs populations. However, the 2019 ESG NOFA may include selection criteria related to proposals serving persons with higher barriers to housing including persons with serious mental illness, persons recently released from institutions, persons with substance use disorders, veterans, survivors of domestic violence, youth aging out of foster care, and persons transitioning out of incarceration.

TDHCA requires ESG subrecipients to comply with HUD Final Rule Implementing Violence Against Women Reauthorization Act of 2013 (VAWA). Forms and information are required to be distributed to applicants and program participants for short- and medium-term rental assistance in accordance with 24 CFR §5.2005(e). Also pursuant to 24 CFR §5.2005(e), ESG Subrecipients are required to develop and follow an Emergency Transfer Plan.

HOPWA Serves Special Needs

Texas HOPWA serves PLWH and their household members, all of whom are at or below 80% of the AMI, and most of whom fall into the extremely-low-income category. As previously noted, allocations generally mirror the Ryan White Program allocation formula, which takes into account population of PLWH, HIV incidence, number of PLWH accessing Ryan White services, percent of PLWH eligible for Medicaid and other considerations. The allocations are then adjusted based on unmet need, prior performance and expenditures, geographic-specific data provided by Project Sponsors, and any other relevant factors. After allocations to each HIV Service Delivery Area (HSDA) are determined, it is then up to the Project Sponsor to allocate between activities of TBRA, STRMU, Facility-Based Housing Subsidy Assistance, PHP, Supportive Services, Housing Information Services, Resource Identification, and administrative expenses (not to exceed 7% of their allocation) and submit those to their Administrative Agents (AAs) and DSHS for approval. Project Sponsors base allocations on many factors, including but not limited to, number of clients projected to continue into the next year, area unmet need, rental costs, prior number of clients served, average expenditures per client, and changes in HIV population living in poverty, etc. Funds are also reallocated during the year within HSDAs under each AA as needed.

CDBG Serves Special Needs

CDBG provides more than 85% of available funds for projects that primarily benefit low-to moderate-income persons through basic infrastructure, housing, job creation and other activities as identified at the local level. Among those projects, CDBG sets aside 12.5% of funds to specifically benefit colonia residents through planning activities, infrastructure and housing construction, self-help center services, construction activities, and public services. Funding for community development projects in colonias and other LMI communities is a critical element in the well-being of these communities.

In 1996, in an effort to place more emphasis on addressing the needs of colonias, the OCI at TDHCA was created and charged with the responsibility of coordinating all TDHCA's legislative initiatives involving border and colonia issues and managing a portion of TDHCA's existing programs targeted at colonias. The fundamental goal of the OCI is to improve the living conditions and lives of border and colonia residents and to educate the public regarding the services that the Department has to offer. As part of its plan to improve the living conditions in colonias, the OCI operates Border Field Offices in Pharr, Laredo, and El Paso to provide technical assistance to border counties, Colonia SHCs, and Bootstrap Program participants.

## AP-30 Methods of Distribution – 91.320(d)&(k)
### Introduction:

Given that Texas is the second largest state in the nation by total area, the method of distribution of its funds has to take into account a very large area. To serve this large area it is necessary for the State to use subrecipients to administer the programs funded under CPD. The selection processes for these entities are generally described below.

### Distribution Methods

**Table 2 - Distribution Methods by State Program**

| | | |
|---|---|---|
| 1 | **State Program Name:** | Colonia Economically Distressed Areas Program (CEDAP) |
| | **Funding Sources:** | CDBG<br>CDBG Colonias Set-aside |
| | **Describe the state program addressed by the Method of Distribution.** | Colonia Economically Distressed Areas Program (CEDAP) Legislative Set-Aside fund provides funding to eligible cities and counties to assist colonia residents that cannot afford the cost of service lines, service connections, and plumbing improvements associated with being connected to a TWDB Economically Distressed Area Program or similar water or sewer system improvement project. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | The TDA will evaluate the following factors prior to awarding CEDAP funds:<br>• The proposed use of the CDBG funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through Economically Distressed Area Program or similar program;<br>• The ability of the applicant to utilize the grant funds in a timely manner;<br>• The availability of funds to the applicant for project financing from other sources;<br>• The applicant's past performance on previously awarded CDBG contracts;<br>• Cost per beneficiary; and<br>• Proximity of project site to entitlement cities or metropolitan statistical areas (MSAs). |
| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |

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| | **Describe how resources will be allocated among funding categories.** | The allocation is distributed on an as-needed basis. |
| | **Describe threshold factors and grant size limits.** | Maximum $1,000,000/Minimum $75,000 |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefiting LMI Persons |
| 2 | **State Program Name:** | Colonia Planning and Construction Funds |
| | **Funding Sources:** | CDBG<br>CDBG Colonias Set-aside |
| | **Describe the state program addressed by the Method of Distribution.** | The Colonia Planning Fund (CPF) funds planning activities that either targets a specific colonia(s) (Colonia Area Planning) or that provides a countywide comprehensive plan (Colonia Comprehensive Planning). In order to qualify for the Colonia Area Planning activities, the county applicant must have completed a Colonia Comprehensive Plan that prioritizes problems and colonias for future action. The targeted colonia must be included in the Colonia Comprehensive Plan.<br><br>The goal of the Colonia Fund Construction (CFC) fund is to develop viable communities by providing decent housing, viable public infrastructure, and a suitable living environment, principally for persons residing within a community or area that meets the definition of a colonia. An eligible county applicant may submit an application for the following eligible construction activities:<br><br>Assessments for Public Improvements - The payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement.<br>Other Improvements - Other activities eligible under 42 USC Section 5305 designed to meet the needs of colonia residents. |

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| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | Colonia Fund: Construction. The selection criteria for the Colonia Fund: Construction will focus upon the following factors: community distress; percentage of people living in poverty; per capita income; percentage of housing units without complete plumbing; unemployment rate; benefit to LMI persons; project priorities; project design; matching funds; and past performance.<br><br>Colonia Fund: Planning (Area). The selection criteria for the Colonia Fund: Planning will focus upon the following factors: community distress; percentage of people living in poverty; per capita income; percentage of housing units without complete plumbing; unemployment rate; project design; the severity of need within the colonia area(s) and how clearly the proposed planning effort will remove barriers to the provision of public facilities to the colonia area(s) and result in the development of an implementable strategy to resolve the identified needs; the planning activities proposed in the application; whether each proposed planning activity will be conducted on a colonia-wide basis; the extent to which any previous planning efforts for colonia area(s) have been accomplished; the CDBG cost per LMI beneficiary; the availability of funds to the applicant for project financing from other sources; the applicant's past performance on previously awarded CDBG contracts; benefit to LMI persons; and matching funds.<br><br>Colonia Fund: Planning (Comprehensive). The selection criteria for the Colonia Fund: Planning will focus upon the following factors: community distress; percentage of people living in poverty; per capita income; percentage of housing units without complete plumbing; unemployment rate; project design; the severity of need for the comprehensive colonia planning effort and how effectively the proposed comprehensive planning effort will result in a useful assessment of colonia populations, locations, infrastructure conditions, housing conditions, and the development of short-term and long term strategies to resolve the identified needs; the extent to which any previous planning efforts for colonia area(s) have been accomplished; whether the applicant has provided any local matching funds for the planning or preliminary engineering activities; the applicant's past performance on previously awarded CDBG contracts; and award history (an applicant that has previously received a CDBG comprehensive planning award would receive lower priority for funding). |

| | | |
|---|---|---|
| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |
| | **Describe how resources will be allocated among funding categories.** | The State CDBG allocation 6.75% (approximately) is allocated to the Colonia Fund. Of the yearly CDBG allocation to the Colonia Construction and Planning Fund, 97.5% (approximately) of those funds are to award grants through the CFC and 2.5% (approximately) are to award grants through the CFP. Subsequent to awarding funds, any portion of the CFC allocation that is unable to be awarded (i.e., fund an application in the minimum amount of $75,000, etc.) may be used to fund additional eligible CFP applications, and conversely, any portion of the CFP allocation that is unable to be awarded may be used to fund additional eligible CFC applications. |
| | **Describe threshold factors and grant size limits.** | CFP Maximum $100,000/Minimum $0<br>CFC Maximum $100,000/Minimum $75,000 |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefiting LMI Persons |
| **3** | **State Program Name:** | Colonia SHC Legislative Set-Aside (administered by TDHCA) |
| | **Funding Sources:** | CDBG<br>CDBG Colonias Set-aside |
| | **Describe the state program addressed by the Method of Distribution.** | Administered by TDHCA and funded through CDBG, the Colonia SHC Program serves colonias along the Texas-Mexico border. Colonia SHCs provide concentrated on-site technical assistance to low- and very low-income individuals and families in a variety of ways including housing, community development activities, infrastructure improvements, outreach and education. Key services include: housing rehabilitation; new construction; surveying and platting; construction skills training; tool library access for self-help construction; housing finance; credit and debt counseling; grant writing; infrastructure construction and access; contract-for-deed conversions; and capital access for mortgages. |

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| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | Approximately 40,180 residents live in the targeted colonias served by the Colonia SHC Program. The Colonia SHCs process applications from income eligible households on a first-come, first-served basis. Eligible households must reside in a targeted colonia, which has been preselected by each county and approved by C-RAC. Households must earn less than 80% of AMI. |
| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Colonia SHCs are statutorily required to establish SHCs in Cameron/Willacy, El Paso, Hidalgo, Starr and Webb counties. Statute allows for additional Colonia SHCs to be established if any other county if TDHCA deems it necessary and appropriate and if the county is designated an economically distressed area under statute. In 2001, TDHCA established additional Colonia SHCs in Maverick and Val Verde counties. Each Colonia SHC must serve five targeted colonias within the county it serves. The Colonia SHCs and TDHCA's Border Field Offices both conduct outreach activities throughout the contract period to inform colonia residents of program benefits and eligibility criteria and to provide application assistance. |
| | **Describe how resources will be allocated among funding categories.** | Of the State CDBG allocation, 2.5% (approximately) is allocated to this fund. Resources are allocated after analysis and input from each community. Counties that are statutorily designated to participate in the Colonia SHC Program conduct a needs assessment before proposing which target colonias should receive concentrated attention and the scope of program activities and funding. Each Colonia SHC designs a proposal unique to the needs of a specific community. After the C-RAC, composed of residents from previously participating colonias, reviews and approves the proposals from the counties, the proposals are then reviewed and approved by the TDHCA Governing Board for implementation. Funds deobligated from prior Colonia SHC Program grant years and any program income recovered from Colonia SHC funds shall be used by TDHCA for the Colonia SHC Program. |
| | **Describe threshold factors and grant size limits.** | Maximum $1,000,000/Minimum $500,000<br>For the Colonia SHC, program rules limit the assistance to up to $1,000,000 per Colonia SHC per contract period. If there are insufficient funds available to fully fund an application, the Administrator may accept the amount available and wait for remaining funds to be committed the next program year. Each program activity, such as new construction, rehabilitation, and tool library operation, for example, are limited to specific dollar amounts. TDHCA, at its discretion and in coordination with the county, may amend a contract to increase the budget amount based on Colonia SHC performance and other factors. |

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| | **What are the outcome measures expected as a result of the method of distribution?** | For the Colonia SHC Program, outcomes include: colonia residents assisted, housing units assisted or created, instances of technical assistance provided, and instances of information delivered. In general, these are Activities Benefiting LMI Persons. |
| **4** | **State Program Name:** | Colonias to Cities Initiative Program |
| | **Funding Sources:** | CDBG<br>CDBG Colonias Set-aside |
| | **Describe the state program addressed by the Method of Distribution.** | The Colonia to Cities Initiative (CCIP) provides funding for basic infrastructure considered necessary for a colonia area to be annexed by an adjoining city. Priority is given to colonias that have received prior CDBG funding. Both the county and city must submit a multi-jurisdictional pre-application for the project that includes a resolution from each jurisdiction. The city's resolution must include a firm commitment to annex the colonia upon completion of the project. Failure to annex the colonia may result in a requirement to repay the CDBG funding to TDA. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | The TDA will evaluate the following factors prior to awarding CCIP funds:<br>• the proposed use of the TxCDBG funds including the eligibility of the proposed activities;<br>• the ability of the community to utilize the grant funds in a timely manner;<br>• the availability of funds to the community for project financing from other sources;<br>• the community's past performance on previously awarded TxCDBG contracts, if applicable;<br>• cost per beneficiary; and<br>• commitment by the city to annex the colonia area within one year of project completion.<br>If applications exceed the available funding, the Department may use the scoring factors established for the Colonia Fund-Construction component. |
| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Eligible applicants will be notified if funds become available. |

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| | **Describe how resources will be allocated among funding categories.** | If there are an insufficient number of projects ready for CEDAP funding, the CEDAP funds may be transferred to the Colonias to Cities Initiative. |
| | **Describe threshold factors and grant size limits.** | Minimum $100,000/Maximum $1,000,000 |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefiting Low and Moderate Income (LMI) Persons |
| **5** | **State Program Name:** | Community Development Fund |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | The Community Development (CD) Fund is available on a biennial basis through a competition in each of the State's 24 planning regions. The goal of the CD Fund is to develop viable communities by providing decent housing, viable public infrastructure, and a suitable living environment, principally for persons of low to moderate income. Applicants are encouraged to provide for infrastructure and housing activities that will improve opportunities for LMI persons. When considering and designing projects, applicants must continue to consider project activities that will affirmatively further fair housing, which includes project activities that provide basic infrastructure (such as water, sewer, and roads) that will benefit residential housing and other housing activities. |

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| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | CD applicants are scored using a shared system with 90% of the scoring criteria established by Regional Review Committees (RRC) and 10% established by the state's scoring criteria. There is a Regional Review Committee in each of the 24 State planning regions. Each RRC will be comprised of 12 members appointed at the pleasure of the Texas Commissioner of Agriculture. A quorum of seven members is required for all public hearings. Each RRC is responsible for determining local project priorities and objective scoring criteria for its region for the CD Fund in accordance with the requirements in this Action Plan. Additionally, the RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring criteria. The Regional Review Committees are responsible for convening public hearings to discuss and select the objective scoring criteria that will be used to score and rank applications at the regional level. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. The final selection of the scoring criteria is the responsibility of each RRC and must be consistent with the requirements in this Action Plan. The RRC may not adopt scoring factors that directly negate or offset the State's scoring factors. Each RRC shall develop a RRC Guidebook, in the format provided by TDA, to notify eligible applicants of the objective scoring criteria and other RRC procedures for the region. The Guidebook must be submitted to TDA and approved at least ninety days prior to the application deadline.<br>The state scoring will be based on the following:<br>1. Past Performance- 16 points.<br>2. All project activities within the application would provide basic infrastructure or housing activities - 4 points. (Basic infrastructure - the basic physical shared facilities serving a community's population consisting of water, sewage, roads and flood drainage. Housing activities - as defined in 24 Code of Federal Regulations (CFR) Part 570.) |
| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |
| | **Describe how resources will be allocated among funding categories.** | 66.9% (approximately) of the State CDBG allocation is allocated to this fund. In addition, deobligated funds may be allocated to the CD Fund according to the procedures described in the Additional Detail on Method of Distribution section following this table. |

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| | **Describe threshold factors and grant size limits.** | Minimum $75,000/Maximum $800,000, regions may establish additional grant amount limits. |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefiting LMI Persons |
| 6 | **State Program Name:** | Fire, Ambulance, & Services Truck (FAST) Fund |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | The Fire, Ambulance, & Services Truck (FAST) Fund provides funds for eligible vehicles to provide emergency response and special services to rural communities. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | Applications will be scored and ranked based on:<br>• Poverty Rate (Census data)<br>• Past performance on TxCDBG grants (see CD Fund State scoring factors) |
| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |
| | **Describe how resources will be allocated among funding categories.** | All deobligated funds from fund year 2015 and earlier will be made available for the FAST Fund on the first day of the program year. This amount may be increased as additional funds are deobligated during the program year. |
| | **Describe threshold factors and grant size limits.** | Minimum $100,000/Maximum $500,000 |

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| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefiting LMI Persons |
| **7** | **State Program Name:** | Disaster Relief Funds |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | Disaster Relief (DR) Fund assistance is available as needed for eligible activities in relief of disaster situations where either a state or federal disaster declaration has been issued.<br>Declaration other than Drought: Priority for the use of these funds is for repair and restoration activities that meet basic human needs (such as water and sewer facilities, housing, and roads), and may not include funding to construct public facilities that did not exist prior to the occurrence of the disaster.<br><br>Declaration for Drought: Funding in response to a Governor's drought disaster declaration covering the area that would benefit from project activities must include new facilities to improve water supply, subject to the conditions set forth in Title 4, Part 1, Chapter 30, Subchapter A of the Texas Administrative Code. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | To qualify for the DR Fund:<br>a. The situation addressed by the applicant must be both unanticipated and beyond the control of the local government.<br>b. The problem being addressed must be of recent origin. For DR Fund assistance, this means that the application for assistance must be submitted no later than 12 months from the date of the state or federal disaster declaration.<br>c. Funds will not be provided under Federal Emergency Management Agency's (FEMA's) Hazard Mitigation Grant Program for buyout projects unless TDA receives satisfactory evidence that the property to be purchased was not constructed or purchased by the current owner after the property site location was officially mapped and included in a designated flood plain area.<br>d. Each applicant must demonstrate that adequate local funds are not available, i.e., the entity has less than six months of unencumbered general operations funds available in its balance as evidenced by the last available audit required by state statute, or funds from other state or federal sources are not available to completely address the problem.<br>e. TDA may consider whether funds under an existing CDBG contract are available to be reallocated to address the situation.<br>f. The distribution of these funds will be coordinated with other state agencies. |

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| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |
| | **Describe how resources will be allocated among funding categories.** | Up to $3,000,000 may be transferred from CD deobligated funds, as needed |
| | **Describe threshold factors and grant size limits.** | Maximum $350,000/Minimum $50,000 |
| | **What are the outcome measures expected as a result of the method of distribution?** | Meet other community development needs of particular urgency which represent an immediate threat to the health and safety of residents of the community. |
| **8** | **State Program Name:** | General HOME Funds for Single-Family Activities |
| | **Funding Sources:** | HOME |
| | **Describe the state program addressed by the Method of Distribution.** | TDHCA awards single-family activity funds as grants and loans through a network of local administrators for Homeowner Rehabilitation (HRA), Homebuyer Assistance (HBA), and Tenant Based Rental Assistance (TBRA). Assistance length and term depends on the type of activity. Non set-side funds are initially being made available on a regional basis in accordance with state statute. Remaining funds are made available statewide on a first-come, first-served Reservation System, a contract-based system or some combination of these two methods. The method will be described in NOFAs and is informed by needs analysis, oversubscription for the activities, and public input. |

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| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | Applicants must comply with requirements stated in NOFAs, the Single-Family Programs Umbrella Rule, and State HOME Program Rules in effect at the time they receive their award.<br><br>Review of Applications<br>All programs will be operated through direct administration by TDHCA, reallocation of deobligated funding and program income, or through the release NOFA with an emphasis on geographic dispersion of funds, particularly in rural areas of the state, using a Regional Allocation Formula (RAF) which uses objective measures to determine rural housing needs such as poverty and substandard housing. For NOFAs, applicants must submit a complete application to be considered for funding or eligibility to access the Reservation System, along with a nominal application fee determined by TDHCA. Applications received by TDHCA will be reviewed for applicable threshold, eligibility and/or scoring criteria in accordance with the Department's rules and application review procedures published in the NOFA and/or application materials. Information related to NOFAs, application requirements and fees, and application review procedures and materials is available at http://www.tdhca.state.tx.us/home-division/index.htm.<br><br>Selection Process<br>Qualifying applications for funding are recommended for funding to TDHCA's Board based on the Department's rules and any additional requirements established in the NOFA. Applications for participation in the Reservation System are submitted to the TDHCA Board for approval, but are subject to all other review requirements. Should TDHCA reprogram unutilized HOME funds for development activities, applications submitted for development activities will also receive a review for financial feasibility, underwriting, and compliance under the HOME Final Rule as well as the Department's existing previous participation review process.<br><br>The state may select subrecipients or state recipients as described in program rules and NOFAs, or may conduct a portion of HOME activities directly in accordance with §92.201.<br><br>When administrators have not successfully expended the HOME funds within their contract period, TDHCA de-obligates the funds and pools the dollars for redistribution according to TDHCA's Reallocation of Financial Assistance rule at 10 TAC §1.19, and consistent with the reservation system and any open NOFAs. TDHCA may also reallocate these funds through a competitive NOFA process resulting in an award of funds. |

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| | **Describe how resources will be allocated among funding categories.** | TDHCA announces the annual allocation of HOME Single-Family funds through a NOFA and specifies that the funds will initially be made available using a Regional Allocation Formula (RAF) which divides funds among 26 sub-regions as required by state statute. The allocation method is developed based on a formula which considers need and funding availability. After a period of several months, regional allocations collapse. Following the release of the annual allocation through the RAF, TDHCA periodically adds HOME program income and deobligated funds to the funds available via the Reservation System and either allocates a specific amount of funds per activity based on funding priorities or may allow HOME administrator's requests for funding through the system to determine how the funds are finally allocated among fund categories. TDHCA may specify the maximum amount of funds that will be released for each activity type and may allocate funds via a first come, first served Reservation System or alternate method based on public comment. |
| | **Describe threshold factors and grant size limits.** | Applicants must comply with requirements stated in the HOME NOFA and State HOME Program Rules in effect the year they receive their award. These sources provide threshold limits and grant size limits per activity type. |
| | **What are the outcome measures expected as a result of the method of distribution?** | Assistance to LMI households. |
| 9 | **State Program Name:** | HOME Multifamily Development |
| | **Funding Sources:** | HOME |
| | **Describe the state program addressed by the Method of Distribution.** | The HOME Multifamily Direct Loan Program awards loans to for-profit and nonprofit multifamily developers to construct and rehabilitate affordable rental housing. These loans typically carry a 0% to 5% interest rate and have terms ranging from 15 years to 40 years. The vast majority of the loans are made in conjunction with awards of 4% or 9% HTCs. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | TDHCA's Texas Administrative Code Chapters 10, 11, and 13 set forth a minimum set of requirements that document a project owner's readiness to proceed with the development as evidenced by site control, notification of local officials, the availability of permanent financing, appropriate zoning for the site, and a market and environmental study. Additionally, the development must be near certain community assets. After a period of Regional Allocation, HOME Multifamily Direct Loan Program funds are typically awarded on a first-come, first-served basis, as long as the criteria above are met. After a certain date, for HOME Multifamily Development applications layered with 9% HTCs, the highest scoring applications in the 9% cycle that also request HOME funds are prioritized according to 9% criteria. |

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| | **Describe how resources will be allocated among funding categories.** | Typically, of the HOME Multifamily Funds, 85% is available for general activities and 15% for Community Housing Development Organizations (CHDOs). However, the HOME Multifamily Direct Loan Program may make funds available annually or through a special purpose NOFA under the General, Supportive Housing/Soft Repayment, and CHDO Set-Asides, or may choose to have a preference or limitation for Persons with Disabilities. |
| | **Describe threshold factors and grant size limits.** | TDHCA's Uniform Multifamily Rules and Qualified Allocation Plan set forth a minimum set of requirements that document a project owner's readiness to proceed with the development as evidenced by site control, notification of local officials, the availability of permanent financing, experience of the developer, appropriate zoning for the site, and a market and environmental study. Additionally, the development must be near certain community assets such as a full service grocery, financial institution, pharmacy, or medical office and have certain unit amenities and common amenities. Awards of HOME Multifamily Direct Loan Program funds range from approximately $300,000 to $4,000,000per application in the form of a loan. |
| | **What are the outcome measures expected as a result of the method of distribution?** | Assistance to LMI households. |
| **10** | **State Program Name:** | Local Revolving Loan Funds |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | TxCDBG allows communities that received Texas Capital Fund awards to support job creation or retention, and that created a local revolving loan fund, prior to implementation of the interim rule published November 12, 2015, to retain the program income generated by the economic development activities and to reinvest the funds to support job creation/retention activities. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | Criteria are established by local subrecipients, with guidance from the TxCDBG Revolving Loan Fund Information Guide provided by TDA. |

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| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | The TxCDBG Revolving Loan Fund Information Guide is provided directly to subrecipients that have established revolving loan funds. |
| | **Describe how resources will be allocated among funding categories.** | Program Income generated by a local RLF is retained by that community or returned to TDA for distribution according to the Action Plan. See "Grantee Unique Appendices" for table of local revolving loan funds. |
| | **Describe threshold factors and grant size limits.** | Parameters for minimum or maximum loan amounts may be established by the subrecipient. |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefitting LMI Persons through Job Creation/Retention |
| **11** | **State Program Name:** | National Housing Trust Fund |
| | **Funding Sources:** | Housing Trust Fund |
| | **Describe the state program addressed by the Method of Distribution.** | It is planned that the NHTF Program will award loans to for-profit and nonprofit multifamily developers to construct multifamily affordable housing. Because the NHTF is required to benefit ELI households at 30% of AMI or less, the units will likely not be able to service a debt payment. The constraints on NHTF dictate that the funds typically be available as 0% interest, deferred payment loan, or as 0% interest cash flow loans, if required, to leverage with tax credits or other financing mechanisms. |

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| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | TDHCA's Texas Administrative Code Chapters 10, 11, and 13 set forth a minimum set of requirements that document a project owner's readiness to proceed with the development. ~~as evidenced by site control, notification of local officials, the availability of permanent financing, appropriate zoning for the site, and market and environmental studies.~~ Additionally, the development must be near certain community assets. TDHCA Multifamily Direct Loan (MFDL) Program funds are typically awarded on a first-come, first-served basis, as long as the criteria above are met.<br><br>In annual year 2019 TDHCA will review and recommend 2018 NHTF (referred to under the umbrella term MFDL below) applications in accordance with the Multifamily Direct Loan Rule for the annual NOFA as follows:<br><br>(1) Priority 1: Applications not layered with current year 9% HTC that are received prior to the current year Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar for Competitive Housing Tax Credits. Priority 1 applications will be prioritized based on score within their respective set-aside and subregion or region during the initial allocation period in accordance with the RAF, to the extent that two or more Applications are received in the same set-aside that request less than or equal to the amount available in the subregion or region. Once the RAF period has ended, applications will be reviewed on a first-come first served basis within their set- aside, or as reflected in the NOFA.<br><br>(2) Priority 2: Applications layered with current year 9% HTC will be prioritized based on their recommendation status for an HTC allocation. All Priority 2 applications will be deemed received on the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar. In order for an MFDL application layered with 9% HTC to be considered complete, Applications for both programs must be timely received. Priority 2 applications will be recommended for approval at the same meeting when the Board approves the 9% HTC allocations. Applications that are on the waiting list for a 9% HTC allocation are not guaranteed the availability of MFDL funds. If the applicable NOFA is over-subscribed for MFDL funds, the Applicant will be notified and may amend their Application to accommodate another funds source.<br><br>(3) Priority 3: Applications that are received after the Market Analysis Delivery Date, as described in 10 TAC §11.2 Program Calendar for Competitive Housing Tax Credits, on a first come first served basis for any remaining funds, until the final deadline identified in the annual NOFA or as identified in a NOFA.<br>Applications that will create new ELI units without preexisting vouchers or other rental subsidy may be prioritized, and additional criteria may be imposed for applications not layered with tax credits. |

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| | | In annual year 2020, TDHCA will review and recommend 2019 NHTF applications in accordance with the Multifamily Direct Loan Rule for the annual NOFA as follows:<br><br>Program year 2019 NHTF will initially be programmed through the annual NOFA. These funds will be allocated to regions based on a Regional Allocation Formula (RAF). The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website. Complete Applications received during the period of the RAF will be prioritized for review and recommendation to the Board, if funds are available in the region. If insufficient funds are available in the region to fund all applicants meeting the criteria in 10 TAC Chapters 11 and 13, applications will be scored according to the criteria in 10 TAC §13.6.<br><br>Remaining NHTF may then be made available statewide in the annual NOFA, or transferred to a special purpose NOFA. |
| | **Describe how resources will be allocated among funding categories.** | NHTF will not be allocated among funding categories. The requirement to serve ELI households already meets a set aside category in TDHCA Multifamily programs. |
| | **Describe threshold factors and grant size limits.** | TDHCA's Uniform Texas Administrative Code Chapters 10, 11, and 13 set forth a minimum set of requirements that document a project owner's readiness to proceed with the development as evidenced by site control, notification of local officials, the availability of permanent financing, experience of the developer, appropriate zoning for the site, and a market and environmental study. Additionally, the development must be near certain community assets such as a bank, pharmacy, or medical office, and have certain unit amenities and common amenities. Awards of NHTF will be integrated into the TDHCA Multifamily Direct Loan Program. Award funds may range up to $4,000,000 per application in the form of a loan for this program, but may be lower because of insufficient demonstrated need of the Applicant or limitations in the NOFA. |
| | **What are the outcome measures expected as a result of the method of distribution?** | Assistance to ELI households. |
| 12 | **State Program Name:** | Planning/Capacity Building Fund |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | The Planning/Capacity Building (PCB) Fund is available to assist eligible cities and counties in conducting planning activities that assess local needs, develop strategies to address local needs, build or improve local capacity, or that include other needed planning elements (including telecommunications and broadband needs). |

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| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | The selection criteria for the PCB Fund will focus upon the following factors:<br>a. Community Distress;<br>a. Percentage of persons living in poverty;<br>b. Per capita income;<br>c. Unemployment rate;<br>b. Benefit to LMI Persons;<br>c. Project Design;<br>d. Program Priority;<br>e. Base Match;<br>f. Area-wide Proposals; and<br>g. Planning Strategy and Products. |
| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |
| | **Describe how resources will be allocated among funding categories.** | 1.0% (approximately) of the State CDBG allocation is allocated to this fund. In addition, deobligated funds may be allocated to this fund according to the procedures described in the Additional Detail on Method of Distribution section following this table. |
| | **Describe threshold factors and grant size limits.** | Minimum $0/Maximum $55,000 |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefiting LMI Persons |
| **13** | **State Program Name:** | State Mandated Contract for Deed Conversion Set-Aside |
| | **Funding Sources:** | HOME |

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| | **Describe the state program addressed by the Method of Distribution.** | Rider 6 of the TDHCA bill pattern within the General Appropriations Act for Fiscal Years 2018-19 requires TDHCA to identify funding sources and estimated funding levels for contract for deed conversions and other activities for families that reside in a colonia and earn 60 percent or less of the applicable area median family income (AMFI) and the home converted must be their primary residence. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | Administrators must meet HOME Program threshold requirements to access funding. Funding is made available to contract for deed administrators on a first-come, first-served basis, in addition to threshold requirements outlined in the State HOME Program Rule, through the Reservation System. |
| | **Describe how resources will be allocated among funding categories.** | Beginning in FY 2018, TDHCA will set aside $1,000,000 for Contract for Deed activities annually and will release the funds through the reservation system as a method of distribution. |
| | **Describe threshold factors and grant size limits.** | Applicants must meet the thresholds provided in the NOFA and State HOME Program Rules in effect the year in which they receive their award. Administrators are not awarded a grant following a successful application. Rather funds are awarded on a household by household basis. |
| | **What are the outcome measures expected as a result of the method of distribution?** | Assistance to households with incomes at or below 60% AMFI. |
| **14** | **State Program Name:** | TCF Main Street and Downtown Revitalization Programs |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | The Texas Capital Fund (TCF) Main Street and Downtown Revitalization Programs award grant funds for public infrastructure to foster and stimulate economic development in rural downtown areas. |

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| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | The selection criteria for the TCF Main Street Program for eligible Texas Main Street communities will focus upon the following factors:<br>a. Applicant Need criteria, including poverty rate, median income, unemployment rate, and community need;<br>b. Project criteria, including leverage, economic development consideration, sidewalks projects and Americans with Disabilities Act (ADA) compliance, broad-based public support, emphasis on benefit to LMI persons, and grant application training; and<br>c. Main Street program criteria, including National Main Street program recognition, Main Street program participation, historic preservation ethic impact.<br>The selection criteria for the TCF Downtown Revitalization Program will focus upon the following factors:<br>a. Applicant Need criteria, including poverty rate, median income, unemployment rate, and community need;<br>b. Project criteria, including leverage, economic development consideration, sidewalks projects, and ADA compliance, broad-based public support, emphasis on benefit to LMI persons, and grant application training; and<br>c. Past Performance. |
| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |
| | **Describe how resources will be allocated among funding categories.** | 4.7% of the State CDBG allocation is allocated to the TCF Main Street and Downtown Revitalization Programs; in addition, deobligated funds may be allocated for the these programs, up to a total funding amount of $3,500,000 . Program income funds may be transferred to this category on August 1 if such funds have not been utilized by other TCF programs (if available). |
| | **Describe threshold factors and grant size limits.** | Maximum $250,000/Minimum $50,000 |
| | **What are the outcome measures expected as a result of the method of distribution?** | Eliminate or prevent slum and blight conditions. |

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| | **State Program Name:** | TCF Real Estate and Infrastructure Development Programs |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | The Texas Capital Fund (TCF) Real Estate and Infrastructure Development Programs provides grants and/or loans for Real Estate and Infrastructure Development to create or retain permanent jobs in primarily rural communities and counties. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | The selection criteria for the TCF Real Estate and Infrastructure Development will focus upon the following factors:<br>a. Job creation criteria:<br>i. Cost-per-job,<br>ii. Job impact,<br>iii. Wage impact, and<br>iv. Primary jobs created/retained;<br>b. Unemployment rate; and<br>c. Return on Investment.<br>Once applications are evaluated and determined to be in the funding range the projects will be reviewed upon the following additional factors:<br>a. History of the applicant community in the program;<br>b. Strength of the business or marketing plan;<br>c. Evaluation of the business and the business' principal owners credit;<br>d. Evaluation of community and business need; and<br>e. Justification of minimum necessary improvements to serve the project. |
| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |

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| | **Describe how resources will be allocated among funding categories.** | 11.9% of the State CDBG allocation is allocated to the Real Estate and Infrastructure Development Programs. In addition, program income funds generated by TCF projects and not otherwise allocated are made available for the Real Estate and Infrastructure Development Programs on the first day of a program year.<br>In accordance with 24 CFR 570.479(e)(ii), the State has determined that program income generated by TCF during PY 2017 must be returned to the State for redistribution to new economic development activities. TCF awards are made for a specific project, based on the minimum necessary work to support the creation or retention of specific jobs, which must be completed prior to close out of the TCF contract. Therefore the community is unlikely to continue funding the same activity in the near future as described in the new regulation. |
| | **Describe threshold factors and grant size limits.** | Maximum $1,000,000/Minimum $100,000 |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefiting LMI Persons |
| **16** | **State Program Name:** | TCF Small and Micro Enterprise Revolving Fund |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | The Texas Capital Fund (TCF) Small and Micro Enterprise Revolving Fund provides grants to local partnerships of communities and non-profit organizations to establish a local revolving loan fund, providing loans to local small businesses that commit to create or retain permanent jobs. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | The TCF Small and Micro Enterprise Revolving Fund will be offered as a component of the Main Street and Downtown Revitalization Programs. |

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| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |
| | **Describe how resources will be allocated among funding categories.** | Up to $1,200,000 in program income will be made available for the SMRF Fund. |
| | **Describe threshold factors and grant size limits.** | $100,000 per award |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefiting LMI Persons |
| **17** | **State Program Name:** | Utility U Program |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | Utility U provides funds to cities and counties, in coordination with water and wastewater utilities, to provide job training opportunities in the utility field. Both classroom and on-site training methods provided by a community based development organization (CBDO) or similar organization shall provide critical utility industry skills to current and newly hired employees to create or enhance job opportunity. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | The Utility U Program will be available to cities and counties only upon recommendation by two or more state or federal regulatory or funding agencies. These agencies are expected to evaluate the need for job training for a specific utility or group of utilities prior to making a recommendation to TDA. The utility must agree to employ the trainee for a minimum of two years following completion of the training. |

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| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation are available upon request. |
| | **Describe how resources will be allocated among funding categories.** | $0 of allocation is made available for the Utility U Program on the first day of the program year. If an eligible project is recommended for funding, up to $100,000 may be transferred from other fund categories as needed. |
| | **Describe threshold factors and grant size limits.** | Maximum $100,000/Minimum $30,000 |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefiting LMI Persons |
| **18** | **State Program Name:** | Texas ESG Program |
| | **Funding Sources:** | ESG |

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| | **Describe the state program addressed by the Method of Distribution.** | The ESG Program is currently a competitive grant that awards funds to private nonprofit organizations, cities, and counties in the State of Texas to provide the services necessary to help persons who are experiencing or at-risk of homelessness quickly regain stability in permanent housing. To prioritize geographic dispersion of funds, funding is allocated to each CoC based on an allocation formula that includes population and other data as described in the State ESG rules. At the discretion of the CoC and upon approval by TDHCA, applicants for ESG apply either directly to TDHCA for an award of funding or may apply to the CoC in a local competition for funds. Award authority for all ESG funds remains with TDHCA's Board, and TDHCA contracts directly with all subrecipients regardless of method of application.<br>TDHCA may elect to conduct application cycles for either one or two years of funding. When applications are accepted for funding years for which the funding amount is not yet determined, TDHCA retains the right to make adjustments to awards in relation to the amount of funding received. When subrecipient has not successfully expended the ESG funds within their contract period, TDHCA may de-obligate the funds and pool the dollars for redistribution according to TDHCA's Reallocation of Financial Assistance rule at 10 TAC §1.19, or as described in the State Rules or NOFA.<br><br>Any funds returned to the Department from prior to 2018 ESG funds, will be redistributed in accordance with the 2017/2018 NOFA, or as otherwise approved by the TDHCA Board. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | In the competitive process with TDHCA, applications are selected based on requirements stated in the ESG NOFA and State ESG Program Rules in effect the year they receive their award. These sources provide threshold requirements, which must be met prior to an application being considered for an award, and selection criteria, which are utilized to rank applications and determine the order in which applications may be funded.<br><br>Threshold requirements include current status of required single audits and submission of an audit certification form; information necessary to conduct a previous participation review, and documentation sufficient to determine that the subrecipient has adequate capacity to administer the ESG funds.<br><br>Selection criteria include items related to program design, including the type and quality of services offered and performance outcomes. |

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| | **Describe the process for awarding funds to state recipients and how the state will make its allocation available to units of general local government, and non-profit organizations, including community and faith-based organizations. (ESG only)** | For the competitive process, TDHCA will release a NOFA prior to receipt of ESG funding. The NOFA may include the option for the subrecipient to apply for both an award of 2019 ESG funds and anticipated 2020 funds. A two-year award cycle allows Subrecipients to offer up to 24 months of assistance for medium-term rental assistance (previously Subrecipients were limited to the number of months within their contracts, which is 12 months or fewer), and to spend more time on program activities than applying for funds. TDHCA encourages collaboration among homeless service providers by including selection criteria related to collaboration with the CoC.<br>Eligible applicant organizations are Units of General Purpose Local Government, including cities, counties and metropolitan cities; urban counties that receive ESG funds directly from HUD; and a consolidation of units of general purpose local governments, like a Council of Governments. Other instrumentalities of a city or county, like a Local Mental Health Authority, may be eligible and should seek guidance from TDHCA to determine if they may apply. Governmental organizations such as Public Housing Authorities (PHAs) and housing finance agencies are not eligible and cannot apply directly for ESG funds.<br><br>Eligible applicants also include private nonprofit organizations that are secular or religious organizations described in section 501(c) of the Internal Revenue Code of 1986, are exempt from taxation under subtitle A of the Code, have an acceptable accounting system and a voluntary board, and practice non-discrimination in the provision of assistance. Faith-based organizations receiving ESG funds, like all organizations receiving HUD funds, must serve all eligible beneficiaries without regard to religion. |
| | **Describe how resources will be allocated among funding categories.** | ESG funds may be used for six program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, HMIS or HMIS-comparable database, and administrative activities. In order for TDHCA to meet the requirement of no more than 60% of funds expended in street outreach and emergency shelter per 24 CFR §576.100(b), TDHCA reserves the right to remove applications proposing street outreach and emergency shelter from competition when 60% of ESG funds have been awarded to higher raking applications proposing these activities. A CoC lead agency that elects to run a local competition must ensure that the combined amount recommended for ESG awards in the CoC will not exceed 60% in street outreach and emergency shelter. |

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| | **Describe threshold factors and grant size limits.** | The Department intends to propose the following in state rules. Applications for ESG funding may include a requirement for funding for multiple service types. Each service type proposed in an application will be individually considered for an award of funds. Applicants may be awarded an amount not to exceed $350,000 street outreach activities, rapid re-housing, homeless prevention, and emergency shelter activities. Funds for HMIS are limited to 10% of the total award amount, and funds for administration are limited to 3% of the total award amount.<br><br>Threshold requirements include current status of required single audits and submission of an audit certification form; information necessary to conduct a previous participation review, and documentation sufficient to determine that the subrecipient has adequate capacity to administer the ESG funds. |
| | **What are the outcome measures expected as a result of the method of distribution?** | The expected outcome is that funds will be awarded to organizations that have the administrative and performance capacity to provide the services needed in their communities, with a broad distribution of funding to reach as many areas of the state with quality services as possible. The expected outcome of TDHCA's plan to allow local competitions is that the same will be accomplished, but with CoC-wide planning rather than with only State planning. |
| **19** | **State Program Name:** | Texas HOPWA Program |
| | **Funding Sources:** | HOPWA |
| | **Describe the state program addressed by the Method of Distribution.** | DSHS selects seven AAs across the state through a combination of competitive Requests for Proposal (RFP) and intergovernmental agency contracts. The AAs act as an administrative arm for DSHS by administering the HOPWA program locally. The AAs do not receive any HOPWA administrative funds from DSHS; all AA administrative costs are leveraged from other funding sources. The AAs, in turn, select HOPWA Project Sponsors to cover all 26 HSDAs through local competitive processes. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | Information on grant applications, available funding opportunities, application criteria, etc. can be found on the DSHS website: http://www.dshs.texas.gov/fic/default.shtm. Contracting and procurement services for DSHS HOPWA is overseen by Texas Health and Human Services Procurement and Contracting Services (PCS) Division. This division handles the solicitation, contract development, contract execution, and is the office of record for DSHS' contracting needs. Evaluation Criteria as noted in the most recent RFP process for AAs for Ryan White/State Services and HOPWA programs were: Respondent Background = 30%; Assessment Narrative = 15%; Performance Measures = 10%; Work Plan = 35%; and Budget = 10%. |

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| | **Identify the method of selecting project sponsors (including providing full access to grassroots faith-based and other community-based organizations). (HOPWA only)** | The AAs select HOPWA Project Sponsors to cover all 26 HSDAs through local competitive processes. Community-based organizations, minority organizations, minority providers, grassroots and faith-based organizations are encouraged to apply. Historically, many of the agencies that have provided services to TDHCA's client population are grassroots, community-based, and minority organizations. |
| | **Describe how resources will be allocated among funding categories.** | Texas HOPWA funding allocations are geographically distributed across the state to the 26 HSDAs based on factors such as population of PLWH and unmet need. Texas HOPWA serves PLWH and their household members, all of whom are at or below 80% of AMI, and most fall into the extremely low-income category. Allocations generally mirror the Ryan White Program allocation formula, which takes into account population of PLWH, HIV incidence, number of PLWH accessing Ryan White services, percent of PLWH eligible for Medicaid, and other considerations. The allocations are then adjusted based on unmet need, prior performance and expenditures, geographic-specific data provided by Project Sponsors, and any other relevant factors. After allocations to each HSDA are determined, it is then up to the Project Sponsor to allocate between activities of TBRA, STRMU, Facility-Based Housing Subsidy Assistance, PHP, Supportive Services, Housing Information Services, Resource Identification, and administrative expenses (not to exceed 7% of their allocation) and submit those to their AA and DSHS for approval. Project Sponsors base allocations on many factors, including but not limited to, number of clients projected to continue into the next year, area unmet need, rental costs, prior number of clients served, average expenditures per client, and changes in HIV population living in poverty, etc. Funds are also reallocated during the year within HSDAs under each AA as needed when needs change. |
| | **Describe threshold factors and grant size limits.** | Texas HOPWA serves PLWH and their household members, all of whom are at or below 80% of AMI.<br>The majority of HOPWA clients are classified as extremely low income, which is between 0% and 30% of AMI. |
| | **What are the outcome measures expected as a result of the method of distribution?** | TBRA, STRMU, Facility-Based Housing Subsidy Assistance, and Supportive Service activities each have their own outcome measures. TBRA measures housing stability by assessing a household's destination at the end of the service. STRMU measures housing stability by assessing a household's housing status at the end of the service. Facility-Based Housing Subsidy Assistance measures housing stability by assessing a household's destination at the end of the service. Supportive Services measures access to health care and supportive services outcomes at the end of the service. |

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| **21** | **State Program Name:** | Urgent Need Fund |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | Urgent Need (UN) Fund assistance is available for activities that will restore water and/or sewer infrastructure whose sudden failure has resulted in death, illness, injury, or poses an imminent threat to life or health within the affected applicant's jurisdiction. The infrastructure failure must not be the result of a lack of maintenance and must be unforeseeable. An application for UN Fund assistance will not be accepted until discussions between the potential applicant and representatives of TDA, TWDB, and the Texas Commission on Environmental Quality (TCEQ) have taken place. Through these discussions, a determination shall be made whether the situation meets eligibility requirements and if a potential applicant should be invited to submit an application for the UN Fund.<br><br>Construction on an UN Fund project must begin within ninety (90) days from the start date of the CDBG contract. TDA may de-obligate the funds under an UN Fund contract if the grantee fails to meet this requirement. |

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| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | To qualify for the UN Fund:<br>1. The situation addressed by the applicant must not be related to a proclaimed state or federal disaster declaration.<br>2. The situation addressed by the applicant must be both unanticipated and beyond the control of the local government (e.g., not for facilities or equipment beyond their normal, useful life span).<br>3. The problem being addressed must be of recent origin. For UN assistance, this means that the situation first occurred or was first discovered no more than 30 days prior to the date that the potential applicant provides a written request to the TDA for UN assistance. UN funds cannot fund projects to address a situation that has been known for more than 30 days or should have been known would occur based on the applicant's existing system facilities.<br>4. Each applicant for these funds must demonstrate that local funds or funds from other state or federal sources are not available to completely address the problem.<br>5. The applicant must provide documentation from an engineer or other qualified professional that the infrastructure failure cannot have resulted from a lack of maintenance or been caused by operator error.<br>6. UN funds cannot be used to restore infrastructure that has been cited previously for failure to meet minimum state standards.<br>7. The infrastructure requested by the applicant cannot include back-up or redundant systems.<br>8. The UN Fund will not finance temporary solutions to the problem or circumstance.<br>9. TDA may consider whether funds under an existing CDBG contract are available to be reallocated to address the situation, if eligible.<br>10. The distribution of these funds will be coordinated with other state agencies.<br>Each applicant for UN Funds must provide matching funds. If the applicant's most recent Census population is equal to or fewer than 1,500 persons, the applicant must provide matching funds equal to 10 percent of the CDBG funds requested. If the applicant's most recent Census population is over 1,500 persons, the applicant must provide matching funds equal to 20 percent of the CDBG funds requested. For county applications where the beneficiaries of the water or sewer improvements are located in unincorporated areas, the population category for matching funds is based on the number of project beneficiaries. |

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| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Guidelines, applications and additional program documentation can be found on TDA's website at www.texasagriculture.gov. |
| | **Describe how resources will be allocated among funding categories.** | No funds will be allocated on the first day of the Program Year; however, the amount for this funding category may be adjusted during the 2019 PY as needed. |
| | **Describe threshold factors and grant size limits.** | Maximum $250,000/Minimum $25,000 |
| | **What are the outcome measures expected as a result of the method of distribution?** | Meet other community development needs of particular urgency which represent an immediate threat to the health and safety of residents of the community |
| **22** | **State Program Name:** | State Revolving Fund |
| | **Funding Sources:** | CDBG |
| | **Describe the state program addressed by the Method of Distribution.** | TxCDBG retains the program income generated by economic development activities and reinvests the funds to continue supporting economic development activities. |
| | **Describe all of the criteria that will be used to select applications and the relative importance of these criteria.** | Application Guides for the Texas Capital Fund Real Estate and Infrastructure Development Programs, Main Street / Downtown Revitalization Programs and the Small and Micro Enterprise Revolving Fund can be found on the TDA website. |

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| | **If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)** | Application Guides for the Texas Capital Fund Real Estate and Infrastructure Development Programs, Main Street / Downtown Revitalization Programs and the Small and Micro Enterprise Revolving Fund can be found on the TDA website. |
| | **Describe how resources will be allocated among funding categories.** | Program Income generated by the State Revolving Fund will be allocated to the Texas Capital Fund Real Estate and Infrastructure Development Programs, Main Street / Downtown Revitalization Programs and the Small and Micro Enterprise Revolving Fund. |
| | **Describe threshold factors and grant size limits.** | The amount of program income generated will determine the amount of funds available. |
| | **What are the outcome measures expected as a result of the method of distribution?** | Activities Benefitting LMI Persons through Job Creation/Retention and the elimination of slum and blight conditions. |

**Discussion:**

The distribution process for 4% HTC Program, 9% HTC Program, HHSP, State Housing Trust Fund Program, MCC Program, My First Texas Home Program, NSP PI Program, Section 8 HCV Program, Section 811 PRA Program, and TCAP RF can be found in the documents that govern these programs, all available at http://www.tdhca.state.tx.us/. The CDBG Colonia Set-Aside Methods of Distribution will be included in Action Plan Section 48, which is specifically about colonias.

Along with selecting appropriate entities to administer funding, the State must ensure that the funding is appropriately spent. For example, in addition to an output measure of the number of clients/households supported with HOPWA housing subsidies assistance, AAs routinely monitor Project Sponsors' for compliance and performance. DSHS monitors the AAs and annually compiles AAs' and Project Sponsors program progress reports and reviews cumulative data for number of households assisted compared to goals, expenditures, and stability outcomes of households served. More information on CPD Programs monitoring efforts are described in Strategic Plan Section 80, Monitoring.

Additional information for Allocation of CDBG program income and deobligated funds has been provided as an attachment.

# Program Specific Requirements

## AP-90 Program Specific Requirements – 91.320(k)(1,2,3)

### Introduction:

Program specific requirements as referenced in 24 CFR 91.320 (k)(1,2,3) are described below for the CDBG, HOME, and ESG programs.

For the CDBG Program, it is expected that the total amount of program income for PY 2018 and that has not yet been reprogrammed will be $2,000,000, including $520,000 program income collected by the state and program income retained by local subgrantees. The amount of CDBG urgent need activities is estimated to be $3,500,000. The 85% of CDBG funds to benefit persons of low to moderate income includes PY 2015-2018.

**Community Development Block Grant Program (CDBG)**
**Reference 24 CFR 91.320(k)(1)**

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

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| 1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed | 2,000,000 |
| 2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan. | 0 |
| 3. The amount of surplus funds from urban renewal settlements | 0 |
| 4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan | 0 |
| 5. The amount of income from float-funded activities | 0 |
| **Total Program Income:** | **2,000,000** |

### Other CDBG Requirements

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| 1. The amount of urgent need activities | 3,000,000 |
| 2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan. | 85.00% |

## HOME Investment Partnership Program (HOME)
## Reference 24 CFR 91.320(k)(2)

1. A description of other forms of investment being used beyond those identified in Section 92.205 is as follows:

   The State is not proposing to use any form of investment in its HOME Program that is not already listed as eligible for investment in 24 CFR §92.205(b).

2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in §92.254, is as follows:

   If the participating jurisdiction intends to use HOME funds for homebuyers, the guidelines for resale or recapture must be described as required in 24 CFR §92.254(a)(5). Recapture provisions are not applicable for HOME-assisted multifamily rental projects; in the case of default, sale, short sale, and/or foreclosure, the entire HOME investment must be repaid.

   TDHCA has elected to utilize the recapture provision under 24 CFR §92.254(a)(5)(ii) as its primary method of recapturing HOME funds under any program the State administers that is subject to this provision. The following methods of recapture would be acceptable to TDHCA and will be identified in the note prior to closing.

   A. Recapture the amount of the HOME investment reduced on a pro rata share based on the time the homeowner has owned and occupied the unit measured against the required affordability period. The amount subject to recapture will be calculated by determining number of complete years that the affordability requirements were met regardless of any additional months, and deducting that number from the number of years in the affordability period. The total HOME subsidy will be divided by the number of years of the affordability period; the result will then be multiplied by the number of years resulting from the calculation above. The calculation would appear as follows:

   (Number of years in affordability period-Number of complete years affordability was met) X (Total HOME subsidy/Number of years in affordability period) = Amount subject to recapture

   B. The recapture amount is subject to available net proceeds in the event of sale or foreclosure of the housing unit. In the event of sale or foreclosure of the housing unit, if the net proceeds (i.e., the sales price minus closing costs; any other necessary transaction costs; and loan repayment, other than HOME funds) are less than the HOME investment that is subject to recapture, then the Department will recapture the available amount of net proceeds. If there are no net proceeds from the sale, no repayment will be required of the homebuyer and the balance of the loan shall be forgiven. TDHCA will not recapture more than the amount available through net proceeds.

   C. The household can sell the unit to any willing buyer at any price.

   D. In the event that the ownership of assisted property is not transferred, and the assisted property is rented or leased, or otherwise ceases to be the principal residence of the initial household prior to the end of the affordability period, the entire HOME investment is subject to recapture.

   E. In the event of sale to a subsequent low-income purchaser of a HOME-assisted homeownership unit, the low-income purchaser may assume the existing HOME loan and recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the subsequent homebuyer. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR §92.254(a)(4) are as follows:

   In certain limited instances, TDHCA may choose to utilize the resale provision at 24 CFR §92.254(a)(5)(i) under any activity the State administers that is otherwise subject to this provision. The following method of resale would be acceptable to TDHCA and will be identified in the note prior to closing:

   A. Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, or if the initial Household is no longer occupying the property as their Principal Residence.

   B. Resale requirements must ensure that, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, the housing is made available for subsequent purchase at an affordable price to a reasonable range of low- or very low-income homebuyers that will use the property as their principal residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent of the area median family income and meet all program requirements.

   C. The resale requirement must ensure that the price at resale provides the original HOME-assisted owner a fair return on investment. Fair return on investment is defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of $500. Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then fair return shall remain in force.

   D. The initial homebuyer's investment of down payment and closing costs divided by TDHCA's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer. The balance of appreciated value shall be paid to TDHCA. If appreciated value is zero, or less than zero, then no appreciated value exists. The HOME loan balance will be transferred to the subsequent buyer and the affordability period will remain in effect. The period of affordability is based on the total amount of HOME funds invested in the housing.

   E. In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid. In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

4. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR §92.206(b), are as follows:

TDHCA may use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds as described in 24 CFR §92.206(b)(2). TDHCA shall use its underwriting and evaluation standards, site and development requirements, and application and submission requirements found in 10 TAC, Chapters ~~10~~11 and 13, for refinanced properties in accordance with its administrative rules. TDHCA may allow for lower per-unit rehabilitation costs than those required in 10 TAC §11.101(b)(3), potentially allowing rehabilitation costs as low as $1,000 per unit provided (1) those minimal rehabilitation costs can be supported in a ~~Property Condition Assessment and/or Capital Needs Assessment~~Scope and Cost Review, (2) the request is in accordance with this plan, TDHCA's rules, and the applicable NOFA, and (3) TDHCA's Board agrees to waive the minimum rehabilitation costs in 10 TAC §11.101(b)(3). At a minimum, this requires the following:

• That rehabilitation is the primary eligible activity for developments involving refinancing of existing debt by requiring that the HOME eligible rehabilitation costs – whether funded entirely or partially by TDHCA's HOME funds – are greater than the refinancing costs (i.e. payoff amount plus closing and title costs);
• That a minimum funding level – minimal rehabilitation costs as described above, or the applicable per unit costs in 10 TAC §11.101(b)(3) – is set for rehabilitation on a per unit basis;
• That a review of management practices is required to demonstrate that disinvestments in the property has not occurred;
• That long-term needs of the project can be met;
• That the financial feasibility of the development will be maintained over an extended affordability period;
• That whether new investment is being made to maintain current affordable units and/or creates additional affordable units is stated;
• That the required period of affordability is specified;
• That the HOME funds may be used throughout the entire jurisdiction (except as TDHCA may be limited by the Texas Government Code) is specified; and
• That HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG, is stated.

**Discussion:**

For HOME, the State is not proposing to use any form of investment in its HOME Program that is not already listed as an eligible for investment in 24 CFR §92.205(b). As described above, TDHCA may use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated as described in 24 CFR §92.206(b). TDHCA shall use its underwriting and evaluation standards, site and development requirements, and application and submission requirements found in 10 Texas Administrative Code, Chapters 10, 11, and 13, for refinanced properties in accordance with its administrative rules.

## Emergency Solutions Grant (ESG)
## Reference 91.320(k)(3)

1. **Include written standards for providing ESG assistance (may include as attachment)**

ESG Written Standards are evaluated based on questions that are in the 2018 One Year Action Plan. These questions will be maintained for the 2019 program year but re-evaluated in 2020.

2. **If the Continuum of Care has established centralized or coordinated assessment system that meets HUD requirements, describe that centralized or coordinated assessment system.**

Each of the 11 CoCs in Texas has a different centralized or coordinated assessment system. TDHCA ensures that its Subrecipients participate in the local CoC's coordinated assessment. Applicants for ESG funding are required to certify their participation in the CoC centralized or coordinated assessment system. ESG Subrecipients are required to use this process per 24 CFR §576.400(d), with an exception for victim service providers. ESG Subrecipients are also required to certify that they have written standards that are consistent with the CoC's screening, assessment and referral of ESG program participants, or to certify that the Subrecipient is a victim services provider and not required to participate in coordinated assessment/entry.

3. **Identify the process for making sub-awards and describe how the ESG allocation available to private nonprofit organizations (including community and faith-based organizations).**

In the competitive process with TDHCA, applications are selected based on: Program Description and Capacity; Proposed Performance; Proposed Budget and Match; CoC Participation and Coordination; and Contract History of Subrecipients in ESG Expenditure and Reporting. The allocation amounts available in each CoC region are established by formula.

For the competitive process, TDHCA will release a NOFA in anticipation of the State's receipt of ESG funding. The NOFA will award ESG 2019 funds. Eligible applicant organizations include Units of General Purpose Local Government, including cities, counties and metropolitan cities; urban counties that receive ESG funds directly from HUD; and a consolidation of units of general purpose local governments, like a Council of Governments. Other instrumentalities of a city or county, like a Local Mental Health Authority, may be eligible and should seek guidance from TDHCA to determine if they can apply. Governmental organizations such as Public Housing Authorities (PHAs) and housing finance agencies are not eligible and cannot apply directly for ESG funds.

Eligible applicants also include private nonprofit organizations that are secular or religious organizations exempt from taxation under Section 501(c) of the Internal Revenue Code of 1986, have an acceptable accounting system and a voluntary board, and practice non-discrimination in the provision of assistance. Faith-based organizations receiving ESG funds, like all organizations receiving HUD funds, must serve all eligible beneficiaries without regard to religion.

**4. If the jurisdiction is unable to meet the homeless participation requirement in 24 CFR 576.405(a), the jurisdiction must specify its plan for reaching out to and consulting with homeless or formerly homeless individuals in considering policies and funding decisions regarding facilities and services funded under ESG.**

As a State recipient, TDHCA is not required to provide for the participation of a homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity. However, TDHCA may prioritize funding for Subrecipients by allocating points if they have participation of homeless or formerly homeless individuals in their programs.

***5.* Describe performance standards for evaluating ESG.**

TDHCA has transitioned from evaluating performance based on whole numbers of persons or households served to percentages of persons or households served who achieve particular outcomes.

Subrecipients providing street outreach will be required to meet contractual performance targets for the percentage of assisted persons placed in temporary or transitional housing.

Subrecipients providing emergency shelter and transitional shelter will be required to meet contractual performance targets for the provision of essential services and the percentage of assisted persons who will exit to temporary, transitional housing destinations or permanent housing destinations.

Subrecipients providing homelessness prevention and rapid re-housing assistance will be required to meet contractual performance targets for the percentage of assisted persons receiving higher income at exit than at entry, the percentage of persons who will exit to permanent housing destinations and, the percentage of persons who will maintain housing three months or more as a result of receiving ESG assistance.

## Housing Trust Fund (HTF)
## Reference 24 CFR 91.320(k)(5)

**1. How will the grantee distribute its HTF funds? Select all that apply:**

☑ Applications submitted by eligible recipients
☐ Subgrantees that are State Agencies
☐ Subgrantees that are HUD-CPD entitlement grantees

**2. If distributing HTF funds through grants to subgrantees, describe the method for distributing HTF funds through grants to subgrantees and how those funds will be made available to state agencies and/or units of general local government. If not distributing funds through grants to subgrantees, enter "N/A".**

N/A

**3. If distributing HTF funds by selecting applications submitted by eligible recipients,**
**a. Describe the eligibility requirements for recipients of HTF funds (as defined in 24 CFR § 93.2). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".**

The state will distribute NHTF funds to eligible recipients as described in applicable sections of the TDHCA rules at Chapter 11 of the Texas Administrative Code, Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules (10 TAC §11.201 through 207), which sets forth the minimum requirements for applicant eligibility to participate in TDHCA Multifamily programs. TDHCA will require evidence of experience and capacity through the Experience Requirement at 10 TAC §11.1(122), 11.204(6), or 10 TAC §13.5(h)(1), as applicable. See attachments for full text of referenced TDHCA TAC rules.

Regarding Question 3a, for both:

- the responsibility of the Grantee to address the requirement that a recipient make acceptable assurances to the grantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities, and
- the responsibility of the Grantee to address the requirement that a recipient have familiarity and understanding of the Federal, State, and local housing programs used in conjunction with HTF funds to ensure compliance with all applicable program requirements and regulations,

please see the attached 2019 and 2020 Multifamily Direct Loan Certification that is executed by an Applicant upon applying for Direct Loan funds (including NHTF). Also, all NHTF recipients must execute a Contract and Land Use Restriction Agreement that remain in effect for a minimum of 30 years. The Land

Use Restriction Agreement contains language that makes it superior to any other instruments filed on the property.

The responsibility of the Grantee to address the requirement that a recipient demonstrate the ability and financial capacity to undertake, comply and manage the eligible activity~~, 10 TAC §13.8(c)~~.

In the event that NHTF is not the only source of Department funding, 4% or 9% housing tax credits are also being requested, meaning that other lenders' and equity providers' due diligence of the Applicant would be included to ensure the Applicant's financial capacity is sufficient to undertake, comply, and manage the eligible activity. Furthermore, if 9% credits are requested, nearly all applicants elect points under 10 TAC §11.9(e)(1) which requires a lender approval letter evidencing review of the Principals.

Furthermore, all Applications must meet the Underwriting requirements at 10 TAC §11.302, including acceptable pro forma projections through year 30, minimum 1.15 Debt Coverage Ratio, and minimum replacement reserve requirements. The attached 10 TAC §11.302(f)(1) specifically discusses developer capacity requirements.

Finally, Applicants must provide evidence of experience in owning and operating multifamily housing as required in 10 TAC §11.204(6)) – which applies to all Applicants of TDHCA funding – or the alternative experience requirement in 10 TAC §13.5(h)(1).

Regarding Question 3a and the responsibility of the Grantee to address the requirement that a recipient have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to own, construct or rehabilitate, manage and operate an affordable multifamily rental housing development. Applicants may meet the experience requirement of the Qualified Allocation Plan (10 TAC §11.204(6)) – which applies to all Applicants of TDHCA funding – or the alternative experience requirement in 10 TAC §13.5(h)(1), which states that applicants requesting MFDL (such as NHTF) as the only source of Department funding may meet the Experience Requirement under Chapter 13.5(h)(1) by providing evidence of the successful development and operation, for at least 5 years, of twice as many affordability restricted units as requested in the application. The minimum number of units for any application for funding that is submitted to TDHCA is 16 units, so the minimum number of affordability restricted units that would be subject to the successful development and operation for at least 5 years would be 32. An applicant applying for both MFDL and another TDHCA source or sources would have to meet the requirement in 10 TAC §11.204(6). The lower MFDL-only threshold for experience came about as a result of public comment the Department received in response to the draft 2016 NHTF Allocation Plan. Many mission-driven nonprofits that wanted to utilize NHTF were unable to meet the experience requirement in 10 TAC §11.204(6) and suggested this alternative experience requirement.

For more information, please see the attached 2019 Multifamily Direct Loan Certification and Table of Corresponding Requirements in 24 CFR §93.2 and State Rules.

**b. Describe the grantee's application requirements for eligible recipients to apply for HTF funds. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".**

Texas' application requirements can be found in 10 TAC Chapter 1, Administration; Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications of 10 TAC Chapter 11 (Qualified Allocation Plan); as well as 10 TAC Chapter 13 (Multifamily Direct Loan Rule). See attached Rules.

**c. Describe the selection criteria that the grantee will use to select applications submitted by eligible recipients. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".**

Selection criteria typically only applies when funds are oversubscribed; in cases where the application is layered with 9% Housing Tax Credits, for instance, scoring in 10 TAC §11.9 would be applicable. To the extent that two or more applications for NHTF ~~or HOME~~ have the same received by date, the scoring criteria listed in the attached 2019 Multifamily Direct Loan Rule (10 TAC Chapter 13), as amended will apply for annual year 2019 and the attached 2020 Multifamily Direct Loan Rule will apply for annual year 2020.

If applications for NHTF are not combined with 9% HTC or do not need to be prioritized in a regional allocation formula, they will be prioritized based on the ~~date received~~ Application Acceptance Date and reviewed to ensure the Department's threshold criteria, which takes into account all of the selection criteria in 24 CFR §91.320(k)(5)(i) is met.

The Texas Department of Housing and Community Affairs' Multifamily Division awards or allocates more than $1 billion annually of debt and equity in an efficient and compliant manner. Our processes for Application selection are comprehensive, and assure that the resulting Developments meet the highest standards for financial feasibility and long-term stability. Our Compliance Monitoring Division assures that all properties meet these standards for the duration of their affordability period, and is frequently cited as one of the best Compliance divisions nationally. Our threshold requirements for site selection assure that projects will be located in safe communities with ample opportunity for residents, and our stringent underwriting requirements assure they will be viable throughout the affordability period.

There is a well-developed set of requirements within the Texas Administrative Code that have the force of law. These requirements have been crafted over decades of work with the development community, advocates, and other stakeholders. The Uniform Multifamily Rules, Qualified Allocation Plan, and Multifamily Direct Loan Rule are all updated annually through an extensive public input process. Additionally, the QAP is approved annually by the Governor. All of the selection criteria described in §91.320(k)(5)(i) are met by some portion of our rules, although they will not all be contained in a single section dedicated to NHTF. We endeavor to hold all Applications for multifamily funds to the same strict standards through the application of consistent requirements across all fund sources.

All Applications for NHTF funds must meet threshold criteria in 10 TAC Chapter 11, Subchapters A through D, and the Multifamily Direct Loan Rule, which address Definitions, Site and Development requirements, Applicant and Application requirements, and loan structure and underwriting requirements. Without meeting all of the applicable criteria in these 120+ pages of rules, the Application will not be successful. Therefore, the selection criteria applied to NHTF Applications will be met by passing multiple review points – threshold state and federal program reviews, underwriting reviews, and compliance/ previous participation reviews – that confirm these rules are being met.

**d. Describe the grantee's required priority for funding based on geographic diversity (as defined by the grantee in the consolidated plan). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".**

Priority based upon geographic diversity
As described in SP-10 Geographic Priorities the Texas NHTF will distribute NHTF funds through a competitive NOFA process. The funds will initially be available geographically, based on the proportion of Extremely Low Income Renter households to the total population of Renter Households in each of thirteen State Service Regions. A minimum will be calculated for each region as a ratio of the available allocation divided by thirteen, and available competitively within each region prior to collapse into a statewide competition.

The State of Texas will rely on 10 TAC §13.4(b) in making funds available geographically based on the proportion of ELI renter households to the total population of renter households in each of the thirteen State Service Regions for at least the first 30 days after the NOFA is published. Thereafter, consideration of geographic diversity will not be a factor in evaluating applications. Please see attached Multifamily Direct Loan Rule for text of 10 TAC §13.4(b). Also attached are estimated Regional Allocation amounts based on the 2018 NHTF Allocation as well as a map of the Uniform State Service Regions.

**e. Describe the grantee's required priority for funding based on the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A**".

Applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner:
Applicants must provide evidence of their experience in developing and managing multifamily developments as required under 10 TAC §11.204(6) if layered with other fund sources, or 10 TAC §13.5(~~d~~h)(1) if MFDL only. Both 10 TAC §11.204(6) or 10 TAC §13.5(~~d~~h)(1) are mentioned in the table HTF Funding Priorities Question 3a.

Application criteria including readiness to proceed as evidenced by site control, appropriate zoning, architectural plans, and evidence of financing will be considered.

Furthermore, 10 TAC §13.11(~~d~~b) (2) through ~~(e~~4) states:
"(2)In order to obtain environmental clearance, Direct Loan awardees must submit a fully completed environmental review (if applicable) including any applicable reports to the Department within 90 calendar days of the Board approval date. If the awardee was contemporaneously awarded 9% HTC and selected Readiness to Proceed points under 10 TAC §11.9(c)(8), this period is 14 calendar days of the Board approval date. (3) After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract. (4) Loan closing must occur and construction must begin on or before the date described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated." ~~(d) Direct Loan awardees must execute a Contract within sixty (60) days of environmental clearance being obtained, or, if environmental clearance is not required, within 60 days after the Board approval date.~~
~~(e) Loan closing must occur and construction must begin no later than three (3) months from the effective date of a Contract.~~"

Execution of a Contract fulfills the Commitment definition in 24 CFR §93.2 in that the Contract is the "legally binding written agreement (that includes the date of the signature of each person signing the agreement) with an eligible recipient for a project that meets the definition of 'commit to a specific local project.'" Additionally, 10 TAC §13.11(~~m~~b)(10) states: "Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four (4) years of the effective date of a Direct Loan Contract." Finally, the Department may impose a 2-year ban on applying for MFDL for any applicant that fails to meet commitment and/or expenditure requirements in accordance with 10 TAC §13.11(~~b~~a), which states: "If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years. ~~If a Direct Loan award is returned after Board approval, or if the Applicant or Affiliates fail to timely close the loan, begin and complete construction, or leave a portion of the Direct loan award unexpended, penalties may apply under 10 TAC § 11.9(f) or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of 2 years."~~ See attachments for full text of referenced TDHCA 10 TAC rules.

**f. Describe the grantee's required priority for funding based on the extent to which the rental project has Federal, State, or local project-based rental assistance so that rents are affordable to extremely**

**low-income families. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".**

Of highest priority in the evaluation of applications will be the creation of new units serving ELI households that would not otherwise exist. While the availability of project-based rental assistance will be considered, only applications that demonstrate the ability to meet Underwriting requirements will be funded.

The State of Texas will consider project based rental assistance to the extent that the existence of it allows or the lack of it does not allow an application to meet TDHCA's underwriting requirements. A development that would otherwise be characterized as infeasible may be deemed feasible if the following criteria, as described in 10 TAC §11.302(i)(6)(B) are applicable. See attached text of 10 TAC §11.302(i)(6)(B).

For Applications layered with 9% credits, leveraging is a scoring item under 10 TAC §11.9(e)(4). See attached text of 10 TAC §11.9(e)(4):

If an application is not layered with 9% credits, it must have other sources of funding, such as project based vouchers, in order to be viable over the affordability period.

The attached 10 TAC §13.8 from the Multifamily Direct Loan Rule and 10 TAC §§11.301 through .306 of the Uniform Multifamily Rule will comprise TDHCA's underwriting requirements.

**g. Describe the grantee's required priority for funding based on the financial feasibility of the project beyond the required 30-year period. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".**

No priority for funding based on the feasibility of the project beyond the required 30-year period will be given except in instances where a first-lien loan ahead of an NHTF loan or grant has a term greater than 30 years that would result in the NHTF loan or grant having a term greater than 30 years. It is the Department's experience that affordability periods longer than 30 years are not reasonable without a guaranteed source of financing for a comprehensive rehabilitation within that affordability period. Texas Government Code §2306.185(c) further limits the length of the affordability period that the State can impose, stating: "The department shall require that a recipient of funding maintains the affordability of the multifamily housing development for households of extremely low, very low, low, and moderate incomes for the greater of a 30-year period from the date the recipient takes legal possession of the housing or the remaining term of the existing federal government assistance. In addition, the agreement between the department and the recipient shall require the renewal of rental subsidies if available and if the subsidies are sufficient to maintain the economic viability of the multifamily development." In other words, unless an FHA-insured loan or similar type of federal government-insured loan with a term greater than 30 years is part of the financing, the longest affordability period that the State can impose is 30 years.

**h. Describe the grantee's required priority for funding based on the merits of the application in meeting the priority housing needs of the grantee (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, or housing that serves special needs populations). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".**

The State of Texas will prioritize HTF funding for the needs of ELI households in accordance with its Analysis of Impediments (AI) and high opportunity measures of the QAP. Goal No. 1 of the AI states: "Create greater mobility and improve housing opportunities for low income households and members of protected classes."

Threshold requirements for all multifamily projects are found in 10 TAC ~~§~~Chapter 11 Subchapter B, which include criteria such as Mandatory Development Amenities, Common Amenities, Unit Requirements, Tenant Supportive Services requirements, and Development Accessibility Requirements. 10 TAC ~~§~~Chapter 11 Subchapter B also includes threshold requirements such as Undesirable Site Features and Undesirable Neighborhood Characteristics. Additionally, Applications layered with 9% Tax Credits are scored on proximity to desirable community features, as are Direct Loan Applications if the fund source or set-aside is over-subscribed.

NHTF applicants are allowed to claim points as detailed in §13.6(a) of the Multifamily Direct Loan Rule and under 10 TAC §11.9(c)(4) related to the Opportunity Index. See attached text of the Multifamily Direct Loan Rule 10 TAC §11.9(c)(4).

**i. Describe the grantee's required priority for funding based on the extent to which the application makes use of non-federal funding sources. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".**

Generally, the State of Texas prefers applications proposing developments utilizing the highest proportion of non-federal contributions. It is anticipated that Applications for NHTF will require multiple funding sources in order to meet threshold feasibility requirements. While the State plans on providing NHTF funds as deferred forgivable loans or similarly soft repayment loans, other sources will be required to meet both development and operating needs. Additionally, if NHTF is oversubscribed, the amount of subsidy per unit is a scoring factor as described in 10 TAC §13.6(4), thereby requiring less NHTF funding. See the attached 2018 Multifamily Direct Loan Rule for text of 10 TAC §13.6(4).

Without other fund sources, this range of subsidy level will not be possible, so other funding sources – whether owner equity if NHTF is the only source of Department funding or, more likely, Housing Tax Credits since NHTF works best as gap financing – are required. Finally, although not federally required, 10 TAC §11.204(7)(E) discusses documentation requirements for HOME Match funds ~~exceeding 5 percent~~ of requested Direct Loan funds. See attached Rules for text of 10 TAC §11.204(7)~~(E)~~.

Applications layered with 9% Housing Tax Credits will be subject to scoring in 10 TAC §11.9(e)(4) - Leveraging of Private, State, and Federal Resources - which states:

(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 seven (7) eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than eight (8) nine (9) percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than nine (9) ten (10) 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.

**4. Does the grantee's application require the applicant to include a description of the eligible activities to be conducted with HTF funds? If not distributing funds by selecting applications submitted by eligible recipients, select "N/A".**

☑ Yes
☐ No
☐ N/A

**5. Does the grantee's application require that each eligible recipient certify that housing units assisted with HTF funds will comply with HTF requirements? If not distributing funds by selecting applications submitted by eligible recipients, select "N/A".**

☑ Yes
☐ No
☐ N/A

**6. Performance Goals and Benchmarks. The grantee has met the requirement to provide for performance goals and benchmarks against which the grantee will measure its progress, consistent with the grantee's goals established under 24 CFR 91.315(b)(2), by including HTF in its housing goals in the housing table on the SP-45 Goals and AP-20 Annual Goals and Objectives screens.**

☑ Yes
☐ No

**7. Maximum Per-unit Development Subsidy Amount for Housing Assisted with HTF Funds. Enter or attach the grantee's maximum per-unit development subsidy limits for housing assisted with HTF funds. The limits must be adjusted for the number of bedrooms and the geographic location of the project. The limits must also be reasonable and based on actual costs of developing non-luxury housing in the area.**
**If the grantee will use existing limits developed for other federal programs such as the Low Income Housing Tax Credit (LIHTC) per unit cost limits, HOME's maximum per-unit subsidy amounts, and/or Public Housing Development Cost Limits (TDCs), it must include a description of how the HTF maximum per-unit development subsidy limits were established or a description of how existing limits developed for another program and being adopted for HTF meet the HTF requirements specified above.**

TDHCA adopted Basic Statutory Mortgage Limits for Calendar Year 2018 and the Annual Base City High Cost Percentage and High Cost Area Revisions for 2018 Mortgagee Letter 2018-04, will be the limits used for NHTF awards made out of the 2019 NOFA. However, if updates are published by HUD TDHCA may adopt these limits for 2019 PY awards made through the Multifamily 2020 NOFA. The attached limits do not vary based on geographic location in Texas since the limits were approved by HUD for use throughout the state. They will be used statewide for ease of use both for applicants and TDHCA staff.

Additional limits may apply if the NHTF funds are used in conjunction with other affordable housing programs. Also, these subsidy limits may be subject to stricter limits in NOFAs.

See the attached justification as to why the State will not establish separate maximum limitations on the total amount of NHTF.

**8. Rehabilitation Standards. The grantee must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The grantee's description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. The grantee must attach its rehabilitation standards below.**

**In addition, the rehabilitation standards must address each of the following: health and safety; major systems; lead-based paint; accessibility; disaster mitigation (where relevant); state and local codes, ordinances, and zoning requirements; Uniform Physical Condition Standards; and Capital Needs Assessments (if applicable).**

N/A. State will not use NHTF funds for rehabilitation of housing in PY 2019.

**9. Resale or Recapture Guidelines. Below, the grantee must enter (or attach) a description of the guidelines that will be used for resale or recapture of HTF funds when used to assist first-time homebuyers. If the grantee will not use HTF funds to assist first-time homebuyers, enter "N/A".**

N/A

**10. HTF Affordable Homeownership Limits. If the grantee intends to use HTF funds for homebuyer assistance and does not use the HTF affordable homeownership limits for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with §93.305. If the grantee will not use HTF funds to assist first-time homebuyers, enter "N/A".**

☐ The grantee will use the HUD issued affordable homeownership limits.
☐ The grantee has determined its own affordable homeownership limits using the methodology described in § 93.305(a)(2) and the limits are attached.
☑ N/A

**11. Grantee Limited Beneficiaries or Preferences. Describe how the grantee will limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population to serve unmet needs identified in its consolidated plan or annual action plan. If the grantee will not limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population, enter "N/A."**
**Any limitation or preference must not violate nondiscrimination requirements in § 93.350, and the grantee must not limit or give preferences to students. The grantee may permit rental housing owners to limit tenants or give a preference in accordance with § 93.303(d)(3) only if such limitation or preference is described in the action plan.**

The State will limit beneficiaries and/or give preferences to the following segments of the extremely low-income population in accordance with AP-25 of the ~~2018~~ 2019 One Year Action Plan.

**12. Refinancing of Existing Debt. Enter or attach the grantee's refinancing guidelines below. The guidelines describe the conditions under which the grantee will refinance existing debt. The grantee's refinancing guidelines must, at minimum, demonstrate that rehabilitation is the primary eligible activity**

**and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.  If the grantee will not refinance existing debt, enter "N/A."**

N/A

# Attachments

## General OYAP Attachments:

- CDBG Allocation of CDBG program income and deobligated funds
- ESG Written Standards
- Submittal Letter, SF424s and Certifications (to be provided with the Final 2019 OYAP, after Board approval)

## AP-90 NHTF Attachments:

- 2019 Multifamily Rules
    - o 10 TAC Chapter 1, Administration
    - o 10 TAC Chapter 11, 2019 Qualified Allocation Plan (PDF)
    - o 10 TAC Chapter 13, 2019 Multifamily Direct Loan Rule (PDF)
    - o 10 TAC Chapter 13, 2020 Multifamily Direct Loan Rule (PDF)

- 2019 Multifamily Direct Loan Certification

- AP-90 Question 3a – Table of Corresponding Requirements in 24 CFR §93.2 and State Rules AP-90 Question 3d – Estimated Regional Allocation Amounts and Map of the Uniformed State Service Regions

- AP-90 Question 7 – Justification Documentation for Maximum Per-unit Development Subsidy Limits

# 2020 MULTIFAMILY DIRECT LOAN RULE



**§13.1. Purpose.**

**(a) Authority.** The rules in this chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program (MFDL or Direct Loan Program) by the Texas Department of Housing and Community Affairs (the Department). Notwithstanding anything in this chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306 (sometimes referred to as the State Act), and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Part 91, Part 92, Part 93, and Part 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306, Subchapter I, Housing Finance Division.

**(b) General.** This chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan (QAP)), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. The Applicant is also required to certify that it is familiar with any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case by case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process), as applicable.

**(c) Waivers.** Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §11.207 of this title (relating to Waiver of Rules), as limited by the rules in this chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute, as provided in paragraphs (1) through (3) of this subsection.

**(1) Waivers for Layered Developments.** For Direct Loan Developments contemporaneously layered with Competitive Housing Tax Credits, the Board may not waive any provision of the Notice of Funding Availability (NOFA). The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated Plan or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD);

**(2) Waivers for Non-Layered Developments.** For Direct Loan Developments not contemporaneously layered with Competitive Housing Tax Credits, an Applicant may request that the Department amend its NOFA, amend its Consolidated Plan or OYAP, or ask HUD to grant a waiver of its regulations. If the Applicant's request is approved by the Department's Governing Board (Board), the Application Acceptance Date will then be the date the Department completes the amendment process or receives a waiver from HUD. If this date occurs after the NOFA closes, the Applicant will be required to apply, and the Direct Loan awardee (pre-closing) may be required to reapply under a new or otherwise open NOFA; and

**(3) Waivers under Closed NOFAs.** The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out. Allowable Post-Closing Amendments are described in 10 TAC §13.13 of this title.

**(d) Eligibility and Threshold Requirements.** Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan (QAP)), unless otherwise excepted in this rule or NOFA.

**§13.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200, and 10 TAC Chapters 1 of this title regarding Administration, 2 of this title regarding Enforcement, 10 of this title regarding Uniform Multifamily Rules, and 11 of this title regarding the Qualified Allocation Plan.

**(1) Application Acceptance Date**--The date the MFDL Application is considered received by the Department as described in this chapter, chapter 11 of this title, or in the NOFA.

**(2) Construction Completion**--That necessary title transfer requirements and construction work have been performed and the following documents have been issued for the Development: certificate(s) of occupancy (if new construction), Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, and a Final Construction Inspection Letter from Department staff. In addition, for Developments not layered with Housing Tax Credits, Construction Completion means all corrections requested as a result of the Department's Final Construction Inspection were cleared as evidenced by receipt of the Closed Final Development Inspection Letter.

**(3) Community Housing Development Organization (CHDO)**--A private nonprofit organization with experience developing or owning affordable rental housing that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME Investment Partnerships Program (HOME) funds under the CHDO Set-Aside. In addition, a member of a CHDO's board cannot be a Principal of the Development beyond their role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a paid executive).

**(4) 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.

**(5) Federal Affordability Period**--The period commencing on the date of Construction Completion and ending on the date which is the required number of years as defined by the federal program from the date of Construction Completion.

**(6) HOME Match-Eligible Unit**--A Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the Notice of Funding Availability (NOFA), TCAP Repayment Funds (TCAP RF) and matching contribution on NSP and NHTF Developments must meet all criteria to be classified as HOME-Match Eligible Units.

**(7) 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.

**(8) Land Use Restriction Agreement (LURA) Term**--The period commencing on the effective date of the LURA and ending on the date which, at a minimum, is the greater of the loan term or 30 years. The LURA may include the Federal Affordability Period, in addition to the State Affordability Period requirements and State restrictive criteria.

**(9) Matching contribution (Match)**--A contribution to a Development from nonfederal sources that may be in one or more of the forms provided in subparagraphs (A) through (E) of this paragraph:

(A) Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including Deferred Developer Fee and General Partner advances);

(B) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

(C) Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development (CPD) Notice 97-03;

(D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development; or

(E) Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal.

**(10) Relocation Plan**--A residential anti-displacement and relocation assistance plan for which subparagraphs (A) and (B) of this paragraph apply:

(A) Includes provisions consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655), implementing regulations at 49 CFR Part 24, and policy guidance in Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378) and the TDHCA Relocation Handbook; and in some HOME and NSP funded Developments Section 104(d) of the Housing and Community Development Act of 1974 (as amended), and 24 CFR Part 42 (as modified for NSP); and

(B) Is in form and substance consistent with requirements of the Department.

**(11) Section 234 Condominium Housing Basic Mortgage Limits (Section 234 Condo Limits)**--The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. If the high cost percentage adjustment applicable to the Section 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, then confirmation of that applicability will be included in the applicable NOFA.

**(12) Site and Neighborhood Standards**--HUD requirements for new construction or reconstruction Developments funded by NHTF (24 CFR §93.150) or new construction Developments in HOME (24 CFR §92.202). Proposed Developments that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

**(13) State Affordability Period**--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with the State Act which is usually an additional period after the Federal Affordability Period.

**(14) Surplus Cash**--Except when the first lien mortgage is a federally insured HUD mortgage which shall be subject to HUD's surplus cash definition, Surplus Cash is any cash remaining:

(A) After the payment of:

(i) All sums due or currently required to be paid under the terms of any superior lien;

(ii) All amounts required to be deposited in the reserve funds for replacement;

(iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;

(iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and

(v) All other obligations of the Development approved by the Department; and

(B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and

(C) Excluding payment of:

(i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;

(ii) Any development fees that are deferred including those in eligible basis; and

(iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

**§13.3. General Loan Requirements.**

**(a) Funding Availability.** Direct Loan funds may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements.

**(b) Oversourced Developments.** Direct Loan funds may not be contracted if an underwriting report issued by the Department's Real Estate Analysis Division concludes the Development does not need all or part of the MFDL funding for which it has applied because it is oversourced, and for which a timely appeal has been completed, as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process), as applicable.

**(c) Funding Sources.** Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD, repayment of TCAP or TCAP RF loans, HOME Program Income, NSP1 Program Income (NSP1 PI or NSP), and any other similarly encumbered funding that may become available by Board action, except as otherwise noted in this chapter. Similar funds include any funds that are identified by the Board to be loaned or granted for the development of multifamily property and are not governed by another chapter in this title, with the exception of State funds appropriated for a specific purpose.

**(d) Eligible and Ineligible Activities.**

**(1) Eligible Activities.** Direct Loan funds may be used for the predevelopment, acquisition, new construction, reconstruction, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, all subject to applicable HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist Developments previously awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions or may be restricted by a NOFA.

**(2) Ineligible Activities.** Direct Loan funds may not be used for:

**(A)** Adaptive Reuse Developments; or

**(B)** Developments layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code that have more than 15% of the Units designated as Market Rate Units.

**(e) Ineligible Costs.** All costs associated with the Development and known by the Applicant must be disclosed as part of the Application. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, Part 570, and 2 CFR Part 200, as federally required or identified in the NOFA, include but are not limited to:

(1) Offsite costs;
(2) Stored Materials;
(3) Site Amenities;
(4) Detached Community Buildings;
(5) Carports and/or garages;
(6) Parking garages;
(7) Swimming pools;
(8) Commercial Space costs;
(9) Reserve accounts not related to NHTF;
(10) TDHCA fees;
(11) Syndication and organizational costs;
(12) Delinquent fees, taxes, or charges;
(13) Costs incurred more than 24 months prior to the effective date of the Direct Loan contract, unless the Application is awarded TCAP RF;
(14) Costs that have been allocated to or paid by another fund source, including but not limited to: Deferred Developer Fee, contingency, and general partner loans and advances;
(15) Deferred Developer Fee;
(16) Bond fees;
(17) Community Facility spaces that are not for the exclusive use of tenants and their guests;
(18) The portion of soft costs that are allocated to support ineligible hard costs; and
(19) Other costs limited by Award or NOFA, or as established by the Board.

**§13.4. Set-Asides, Regional Allocation, and Priorities.**

**(a) Set-Asides.** Specific types of Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in Set-Asides. The Soft Repayment Set-Aside, CHDO Set-Aside, and General Set-Aside, as described below, are fixed Set-Asides that will be included in the annual NOFA (except if CHDO requirements are waived or reduced by HUD). The remaining Set-Asides described below are flexible Set-Asides and are applicable only if identified in a NOFA; flexible Set-Asides are not required to be programmed on an annual basis. The amount of a single award may be credited to multiple Set-Asides, in which case the credited portion of funds may be repositioned into an oversubscribed Set-Aside prior to a defined collapse deadline. Applications under any and all Set-Asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

**(1) Fixed Set-Asides:**

**(A) Soft Repayment Set-Aside.** The Soft Repayment Set-Aside will be funded primarily with NHTF allocations received by the Department. The Soft Repayment Set-Aside is reserved for developments providing Supportive Housing and/or extremely low-income and rent restrictions that would not exist otherwise. Soft repayment loans may be structured as deferred payable, deferred forgivable, or Surplus Cash flow loans at an interest rate as low as 0%. It is the responsibility of the Applicant to account for any Eligible Basis and/or taxable event implications when requesting any of the potential loan structures available in this set-aside. Applicants seeking to qualify under this set-aside must propose Developments that meet either the requirements of clause (i) or (ii) of this subparagraph:

(i) The Supportive Housing requirements in 10 TAC §11.1(d)(121) including the underwriting considerations for Supportive Housing Developments in 10 TAC §11.302(g)(3) of this title (relating to Underwriting and Loan Policy); or

(ii) The requirements in subclauses (I) - (IV) of this clause, for which all Units assisted with MFDL funds:

(I) Must be available for households earning 30% AMI or less and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b);

(II) May not also be receiving any project-based subsidy;

(III) May not be receiving tenant-based voucher or tenant-based rental assistance, to the extent that there are other available Units within the Development that the voucher-holder may occupy; and

(IV) May not be restricted to 30% AMI or less by Housing Tax Credits, or any other fund source.

**(B) CHDO Set-Aside.** Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation, will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(4) of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) set-aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor as the result of a disaster declaration. CHDO funds are typically available as fully-repayable amortizing debt consistent with 10 TAC §13.8 of this chapter (relating to Loan Structure and Underwriting Requirements). In instances where an application submitted under the CHDO Set-Aside also would qualify under the Soft Repayment Set-Aside, funds under this Set-Aside may be structured in accordance with the Soft Repayment Set-Aside requirements. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for profit special limited partner within the ownership organization chart.

**(C) General Set-Aside.** The General Set-Aside is for all other applications that do not meet the requirements of the Soft Repayment, CHDO, or Flexible Set-Asides, if any. A portion of the General Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the Set-Aside.

**(2) Flexible Set-Asides:**

**(A) 4% HTC and Bond Layered Set-Aside.** The 4% and Bond Layered Set-Aside is reserved for Applications layered with 4% Housing Tax Credits and Private Bond funds where the Development Owner does not meet the definition of a CHDO, but that the Application does meet all other MFDL requirements.

**(B) Persons with Disabilities (PWD) Set-Aside.** The PWD Set-Aside is reserved for Developments restricting Units for residents who meet the requirements of Tex. Gov't Code §2306.111(c)(2) while not exceeding the number of Units limited by 10 TAC §1.15

of this title (relating to the Integrated Housing Rule). MFDL funds will be awarded in a NOFA for the PWD Set-Aside only if sufficient funds are available to award at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

**(C) 9% HTC Layered Set-Aside.** The 9% Layered Set-Aside is reserved for Applications that are layered with 9% Housing Tax Credits that do not meet the definition of CHDO, but that do meet all other MFDL requirements. Awards under this set-aside are dependent on the concurrent award of a 9% HTC allocation; however, an allocation of 9% HTC does not ensure that a sufficient amount of MFDL funds will be available for award.

(D) Additional Set-Asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or address Department priorities. To the extent such Set-Asides are developed, they will be reflected in a NOFA or other similar governing document.

**(b) Regional Allocation and Collapse.** All funds received directly from HUD in the annual NOFA will be allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the applicable Set-Asides (unless the funds have already been through a RAF). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After expiration of the RAF, remaining funds within each respective Set-Aside may collapse on an end date identified in the NOFA. All Applications received prior to these collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, may be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

**(c) Priorities for the Annual NOFA.** Complete Applications received during the period of the RAF will be prioritized for review and recommendation to the Board, if funds are available both in the region or subregion and in the Set-Aside under which the Application is received. If insufficient funds are available in a region or subregion to fund all Applications then the oversubscribed Applications will be evaluated only after the RAF and/or Set-Aside collapse and in accordance with the additional priority levels below, unless an Application received earlier is withdrawn or terminated. If insufficient funds are available within a region, subregion, or Set-Aside, the Applicant may request to be considered under another Set-Aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board if funds are available in accordance with the order of prioritization described in paragraphs (1) - (3) of this subsection.

**(1) Priority 1.** Applications not layered with current year 9% Housing Tax Credits (HTC) that are received prior to the Market Analysis Delivery Date as described in 10 TAC §11.2 of this title (relating to Program Calendar for Housing Tax Credits). Priority 1 Applications may be prioritized based on score within their respective Set-Aside for a certain time period, for certain populations, or for certain geographical areas, as further described in the NOFA.

**(2) Priority 2.** Applications layered with current year 9% HTC will be prioritized based on their recommendation status and score for an HTC allocation under the provisions of the Qualified Allocation Plan (QAP). All Priority 2 applications will be deemed received on the Market Analysis Delivery Date identified in Chapter 11 of this title, relating to the QAP. Priority 2 applications will be recommended for approval of the MFDL award at the same meeting when the Board approves the 9% HTC allocations. Applications for 9% HTC allocations are not guaranteed the availability of MFDL funds, as further provided in §13.5(f) of this chapter.

**(3) Priority 3.** Applications that are received after the Market Analysis Delivery Date identified in the QAP will generally have a first come first served basis for any remaining funds, until the final deadline identified in the annual NOFA. However, the NOFA may describe an additional prioritization period for certain populations, or for certain geographical areas. Applications layered with 9% HTC that are on the waitlist after the late July Board meeting will be considered Priority 3 Applications; if the Applicant receives an allocation later in the year, the Application Acceptance date will be the date the Commitment Notice is issued, and MFDL funds are not guaranteed to be available.

**(d) Other Priorities.** The Board may set additional priorities for the annual NOFA, and for one time or special purpose NOFAs.

**§13.5. Award Process.**

**(a) Notice of Funding Availability (NOFA).** All MFDL funds from the annual allocation will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as set-aside and RAF amounts applicable to the MFDL program, along with scoring criteria, priorities, award limits, and other Application information. Other funds may be distributed by NOFA or through other lawful methods approved by the Board. Set-asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

**(b) Applications.** MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11 Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules).

**(c) Application Acceptance Date.** Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), and within the same Set-Aside, then score and tiebreaker factors, as described in §13.6 of this chapter (relating to Selection Criteria) for MFDL or 10 TAC §11.7 and §11.9 of this title (relating to Tie Breaker

Factors and Competitive HTC Selection Criteria, respectively) for Applications layered with 9% HTC, will be used to determine the Application's rank.

**(d) Market Analysis.** Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all habitable Units.

**(e) Environmental Clearance.** All Applicants for MFDL funds must include the following language in the purchase contract or site control agreement if the subject property is not already owned by the Applicant: "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (A) It has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (i) the purchase may proceed, or (ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."

**(f) Oversubscribed Funds for 9% HTC-Layered Applications.** Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting 9% HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapter 11 and 13 of this title, and do not impact scoring under 10 TAC Chapter 11 of this title. The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline for response. If MFDL funds become available between the Market Analysis Delivery Date, and the last Board meeting in July, they will not be reserved for 9% HTC-layered Applications, unless the reservation is described in the NOFA.

**(g) Source of Direct Loan Funds.** When determining the source of funds that an Application will receive when recommended for an award, the Department will select sources of funds for recommended Applications, as provided in paragraphs (1) – (4) of this subsection.

(1) The Department will generally select the recommended source of funds to award to an Application in the order described in subparagraphs (A) – (C) of this paragraph, which may be limited by the type of activity an Application is proposing or the proposed Development Site of an Application:

(A) Federal funds with commitment and expenditure deadlines will be selected first;

(B) Federal funds that do not have commitment and expenditure deadlines will be selected next; and

(C) Nonfederal funds that do not have commitment and expenditure deadlines will be selected last; however,

(2) The Department may also consider repayment risk or ease of compliance with other fund sources when assigning the source of funds to recommend for award to an Application;

(3) The Department may move to the next fund source prior to exhausting another selection; and

(4) The Department will make the final decision regarding the fund source to be

recommended for an award (within a Set-Aside that has multiple fund sources), and this recommendation may be not be appealed.

**(h) Eligibility Criteria and Determinations.** The Department will evaluate Applications received under the Annual NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application being ranked below another Application received prior to the subject Application.

(1) Applicants requesting MFDL as the only source of Department funds must meet the Experience Requirement as provided in either subparagraph (A) or (B) of this paragraph:

(A) The Experience Requirement as provided in 10 TAC §11.204(6) of this title (relating to Required Documentation for Application Submission); or

(B) Alternatively by providing the acceptable documentation listed in §11.204(6)(i)-(ix) of this title evidencing the successful development, and at least five years of the successful operation, of a project or projects with at least twice as many affordability restricted Units as requested in the Application.

(2) The Executive Director or authorized designee must make eligibility determinations for Applications for Developments that meet the criteria in subparagraph (A) or (B) of this paragraph regardless of available fund sources:

(A) Received an award of funds for the Development from the Department within 15 years preceding the Application Acceptance Date; or

(B) Started or completed construction, and are not proposing acquisition or rehabilitation.

(3) An Application that requires an eligibility determination must identify that fact prior to, or in their Application so that an eligibility determination may be made subject to the Applicant's appeal rights under 10 TAC §11.902 or 10 TAC §1.7 of this title, as applicable. A finding of eligibility under this section does not guarantee an award. Applications requiring eligibility determinations generally will not be funded with HOME, or NSP funds.

(A) Requests under this subsection will not be considered more than 60 calendar days prior to the first Application Acceptance Date published in the NOFA, for the Set-Aside in which the Applicant plans to apply.

(B) Criteria for consideration include clauses (i) - (iii) of this subparagraph:

(i) Evidence of circumstances beyond the Applicant's control that could not have been prevented with appropriate due diligence; or

(ii) Force Majeure events (not including weather events); and

(iii) Evidence that no further exceptional conditions exist that will delay or cause further cost increases.

(C) Criteria for consideration shall not include weather events, typical construction or financing delays.

(D) Applications for Developments that previously received an award from the Department in within 15 years preceding the Application Acceptance Date will be evaluated at no more than the amount of Developer Fee proposed the last time that the Department published an Underwriting Report. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other

Department rules.

**(i) Effective rules and contractual terms.** The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; however, any changes in federal requirements will be reflected in the contractual terms. Further provided, that if after award, but prior to execution of such Contract, there are new rules in effect, the Direct Loan awardee may elect to be governed by the new rules, provided the Application would continue to have been eligible for award under the rules in effect at the time of Application.

**§13.6. Scoring Criteria.**

The criteria identified in paragraphs (1) - (6) of this section will be used in the evaluation and ranking of Applications if other Applications have the same Application Acceptance Date, within the same Set-Aside, and having the same prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner, except as specified below. Scoring criteria in Chapter 11 of this title will always be superior to Scoring Criteria in this chapter if an MFDL Application is also concurrently requesting 9% HTC:

**(1) Opportunity Index.** Applicants eligible for points under 10 TAC §11.9(c)(4) (relating to the Opportunity Index) (7 points).

**(2) Resident Services.** Applicants eligible for points under 10 TAC §11.9(c)(3)(A) (relating to Resident Services) (10 points) and Applicants eligible for points under 10 TAC §11.9(c)(3)(B) (relating to Resident Services) (1 point).

**(3) Underserved Area.** Applicants eligible for points under 10 TAC §11.9(c)(5) (relating to Underserved Area) (up to 5 points).

**(4) Subsidy per Unit.** An Application that caps the per MFDL eligible cost per Unit subsidy limit below Section 234 Condo Limits or HUD 221(d)(4) statutory limits (as applicable) for all Direct Loan Units regardless of Unit size at:

(A) $100,000 per MFDL eligible cost per Unit (4 points).

(B) $80,000 per MFDL eligible cost per Unit (8 points).

(C) $60,000 per MFDL eligible cost per Unit (10 points).

**(5) Rent Levels of Residents.** Except for Applications submitted under the Soft Repayment Set-Aside, an Application may qualify to receive up to 13 points for placing the following rent and income restrictions on the proposed Development for the Federal and State Affordability Periods. These Units must not be restricted to 30% or less of AMI by another fund source; however, layering on other HTC Units may be considered for scoring purposes.

(A) At least 20% of all low-income Units at 30% or less of AMI (13 points);

(B) At least 10% of all low-income Units at 30% or less of AMI or, for a Development located in a Rural Area, 7.5% of all low-income Units at 30% or less of AMI (12 points); or

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

**(6) Tiebreaker.** In the event that two or more Applications receive the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of 30% AMI MFDL Units within the Development that would convert to households at 15% AMI in the event of a tie as represented in the Tiebreaker Certification submitted at the time of Application.

**§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.**

**(a) Maximum Funding Request.** The maximum funding request for an Application will be identified in the NOFA, and may vary by development type, set-aside, or fund source.

**(b) Maximum New Construction or Reconstruction Per-Unit Subsidy Limits.** While more restrictive per-Unit subsidy caps are allowable and incentivized as point scoring items in 10 TAC §13.6 of this chapter (relating to Scoring Criteria), the per-Unit subsidy limit for a Development will be determined by the Department as the Section 234 Condo limits with the applicable high cost percentage adjustment in effect at the start date of the NOFA, which are the maximum MFDL eligible cost per-Unit subsidy limits that an Applicant may use to determine the amount of MFDL funds combined with other federal funds that may subsidize a Unit.

**(c) Maximum Rehabilitation Per-Unit Subsidy Limits.** The MFDL eligible cost per-Unit to rehabilitate a Development may not exceed the HUD 221(d)(4) statutory limits, subject to high cost factors.

**(d) Minimum Number of MFDL Units.** The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits and the cost allocation analysis, which will ensure the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs.

**§13.8. Loan Structure and Underwriting Requirements.**

**(a) Loan Structures.** Except for awards made under the Soft Repayment Set-Aside, all Multifamily Direct Loans awarded under the annual NOFA as construction-to-permanent loans will be underwritten as fully repayable (must pay) at an interest rate specified in the NOFA and approved by the Board, and a 30 year amortization with a loan term that matches the term of any superior loans (within six months) at the time of Application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the Development feasible under all applicable sections of this chapter and 10 TAC §11.302 (relating to Underwriting Rules and Guidelines), or may conclude the Development is infeasible and recommend denial. The interest rate, amortization period, and term for the loan will be fixed by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

**(b) Closing Memo to Underwriting Report.** Any changes to the total development cost, expenses, income, and/or other sources of funds from time of the publication of the initial Underwriting Report at the time of award to the time of loan closing, must be reevaluated by Real Estate Analysis staff, who will typically publish a Closing Memo to the Underwriting Report, and may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan that will allow the Department to mitigate any increased risk or to ensure that the Development is not oversubsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. Increases in the principal amount or scheduled payment amounts of any superior loans that cause the total Debt Coverage Ratio (DCR) to decrease by more than .05 require approval by the Board. If the changes cause the total DCR to no longer comply with 10 TAC §11.302 of this title (relating to Underwriting Rules and Guidelines), the award may be subject to termination.

**(c) Criteria for Construction-to-Permanent Loans.** Direct Loans awarded through the

Department must adhere to the following criteria as identified in paragraphs (1) - (9) of this subsection if being requested as construction-to-permanent loans, for which the interest rate will be specified in the NOFA and approved by the Board:

(1) The construction term for MFDL loans shall be coterminous with any superior construction loan(s), but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term, the construction term shall be 24 months;

(2) No interest will accrue during the construction term;

(3) The permanent term for MFDL loans at the time of award shall be no less than 10 years and no greater than 40 years and the amortization schedule shall be 30 years. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt so long as neither exceeds 40 years and six months;

(4) For a non-surplus cash loan, an amortized loan shall be structured with a regular monthly payment beginning on the first of the month following the end of the construction term and continuing for the loan term. For a surplus cash loan, an amortized loan shall be structured with an annual payment beginning on the first of the month following the end of the construction term and continuing for the loan term;

(5) If the first lien mortgage is a federally insured HUD mortgage, the Department may approve a loan structure with annual payments beginning the following year after the end of the construction term payable from surplus cash flow as defined by HUD provided that the DCR, inclusive of the loan, continues to meet the requirements in this title;

(6) If the proposed first lien is a federally insured HUD mortgage that requires the Direct Loan to be subject to 75% of surplus cash flow as defined by HUD, staff will require the debt service coverage ratio on both the HUD insured loan and the Department's loan - as restricted to 75% of Surplus Cash Flow - to continue to meet the minimum 1.15 DCR in accordance with 10 TAC §11.302(d)(4)(D) (relating to Acceptable Debt Coverage Ratio Range), and may require payment of the remaining 25% from other sources;

(7) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to 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. Parity liens may only be considered with USDA Rural Development;

(8) If the Direct Loan amounts are more than 50% of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include documents identified in either subparagraphs (A) or (B) of this paragraph:

(A) A letter from a Third Party Certified Public Accountant verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10% 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 in the sole determination of the Department equal to at least 10% of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities; and

(9) If the Direct Loan is the only source of permanent Department funding for the Development, the Development Owner must provide all items required in subparagraphs (A) and (B) of this paragraph:

(A) Equity in an amount not less than 10% of Total Housing Development Costs**;** however,

(i) An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than 10% that would not have to meet the waiver requirements in 10 TAC §11.207 of this title. The request must specify the proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely; and

(ii) "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement; and

(B) Evidence submitted through the Application Submission Process that shows the Direct Loan amount is not greater than 80% of the Total Housing Development Costs.

**(d) Evaluations.** All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the Development and the Principals as described in 10 TAC §11.9(e)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

**(e) Criteria for Construction Only Loans.** Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

(1) The term of the construction loan must be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the Direct Loan is the only construction loan, the term may not exceed 24 months;

(2) The interest rate will be specified in the NOFA and approved by the Board; and

(3) Up to 50% of the construction loan may be advanced at loan closing should there be sufficient costs to reimburse that amount.

**(f) Criteria for Permanent Refinance Loans.** If the Department's Loan will repay existing debt, the first payment will be due the month after the month of loan closing, unless the Board approves another date.

**(g) Pass-Through Loans.** Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

**§13.9. Construction Standards.**

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2015 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in subsections (a) - (e) of this section:

**(a) Third-Party Recommendations.** Recommendations made in the Environmental Site Assessment (§11.305 of this title) and any Scope of Work and Cost Review (§11.306 of this title) with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air

conditioning) must be implemented;
**(b) Lead and Asbestos Testing.** For properties originally constructed prior to 1978, the Scope of Work and Cost Review and scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing, and the Development Owner must implement the mitigation recommendations of the testing report;
**(c) Broadband Infrastructure.** The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;
**(d) Properties in Catastrophe Areas.** Developments 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
**(e) Minimum Construction Standards**. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD.

**§13.10. Development and Unit Requirements.**
**(a) Proportionality.** The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested as a percentage of total MFDL eligible costs. As a result of this requirement, the Department will use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit described in this chapter or in the applicable NOFA. Direct Loan Units must be provided as a percentage of each Unit Type, in proportion to the percentage of total costs included in the Direct Loan.
**(b) Floating Units.** For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development unless the Development also contains public housing Units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100. For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203. Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA, or as specifically approved in writing by the Department.
**(c) Unit Match Requirements**.

(1) For a Development funded with NSP and/or NHTF, a required matching contribution will result in at least one HOME Match-Eligible Unit, in addition to the NSP and/or NHTF Units.

(2) For a Development funded with HOME, a required matching contribution may or may not result in a HOME Match-Eligible Unit, beyond the Department's HOME assisted Units.

(3) For a Development funded with TCAP RF in the annual NOFA, a matching contribution in addition to the Match that the Department counts from the TCAP RF investment will result in some amount of TCAP RF assisted Units being considered HOME Match-Eligible Units.

**(d) Minimum Affordability Period.** The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan, or 30 years unless a lesser period is approved by the Board. The Department reserves the right to extend the Affordability Period for Developments that fail to meet Program requirements.

**(e) Restricted Units.** If the Department is the only source of permanent funding for the Development by virtue of equity from HTC and MFDL funding, all Units must be income and rent restricted under a combination of HTC and Direct Loan LURAs, regardless of the amount of deferred Developer Fee as a permanent source. If the MFDL funding is the only source of permanent funding for the Development, all Units must be income and rent restricted by the Direct Loan LURA, and all costs must be MFDL eligible, regardless of the amount of deferred Developer Fee as a permanent source.
**(f) Income Levels Committed at Time of Application.** If the Direct Loan funds are used in a 9% or 4% HTC-Layered Development that is electing Income Averaging to qualify under IRC §42, the Direct Loan Units required by the LURA must continue to be provided at the income levels committed at the time of Application. Unit designations may not change to meet Income Averaging requirements.

**§13.11. Post-Award Requirements.**
**(a)** Direct Loan awardees must satisfactorily complete the following Post-Award Requirements after the Board approval date. If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.
**(b)** Extensions to the benchmarks in paragraphs (1) - (4) and (7) of this subsection may only be approved by the Executive Director or authorized designee in accordance with 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms) or 10 TAC §13.13 of this chapter (relating to Post-Closing Amendments to Direct Loan Terms), as applicable.

**(1) Award Letter and Loan Term Sheet (ALLTS).** If provided, Direct Loan awardees must execute and return to the Department an Award Letter and Loan Term Sheet provided by the Department within 15 calendar days after receipt. The ALLTS will be conditional in nature, and provide a basic outline of the terms and conditions approved by the Board.

**(2) Environmental Clearance.** In order to obtain environmental clearance, Direct Loan awardees must submit a fully completed environmental review (if applicable) including any applicable reports to the Department within 90 calendar days of the Board approval date. If the awardee was contemporaneously awarded 9% HTC and selected Readiness to Proceed points under 10 TAC §11.9(c)(8), this period is 14 calendar days of the Board approval date. Applicants or Direct Loan awardees that commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance will be subject to termination of the Direct Loan award.

**(3) Contract Execution.** After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract.

**(4) Loan Closing and Construction Commencement.** Loan closing must occur and construction must begin on or before the date described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

**(5) Quarterly Construction Status Reports.** The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.402(h) of this title (relating to Construction Status Report).

**(6) Mid-Construction Development Inspection Letter.** In addition to any other obligations required as the result of any other Department funding sources, the Development Owner must submit a Mid-Construction Development Inspection Request once the Development has met at least 25% construction completion as indicated on the G703 Continuation Sheet or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms work is being done in accordance with the applicable codes, the construction contract, and construction documents. Regardless of how Direct Loan funds are allocated among acquisition, Hard, and Soft costs, up to 50% of the Direct Loan award may be released prior to issuance of the Mid-Construction Development Inspection Letter, with the remaining 50% available for distribution in accordance with the percentage of Construction Completion.

**(7) Construction Completion.** Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if applicable), Certificate of Substantial Completion (AIA Form G704), and issuance of a Closed Final Development Inspection Letter by the Department within the construction term of any superior construction loan(s) or 24 months of the actual loan closing date if no superior construction loan(s) exist, with the repayment period beginning at the same time as the repayment on any superior permanent loan(s) or on the first day of the 25th month following the actual date of loan closing if no superior permanent loan(s) exist, unless extended in accordance with applicable provisions in §13.12 or §13.13 of this chapter. The Closed Final Development Inspection Letter issued by the Department will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements; this letter may include deficiencies that require resolution. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards (UPCS) inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter required by this subsection.

**(8) Initial Occupancy.** Initial occupancy of all MFDL assisted Units by eligible households shall occur within six months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required by the MFDL fund source.

**(9) Per Unit Repayment.** Repayment will be required on a per Unit basis for Units that have not been rented to eligible households within 18 months of the final Direct Loan draw.

**(10) Termination and Repayment for Failure to Complete.** Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract.

**(11) Loan Closing.** In preparation for closing any Direct Loan, the Development Owner must submit the items described in subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly inhibit the Department’s ability to meet closing timelines.

(A) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(B) Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department, as requested by Staff.

(C) When Department funds have a first lien position during the construction period, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee in the sole determination of the Department is required. Development Owners utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

(D) Documentation required for preparation of closing loan documents includes, but is not limited to:

(i) Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a substantially final development cost schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application.

(ii) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

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

(iv) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

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

(E) If required by the fund source, prior to Contract Execution unless an earlier period is described in Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

(i) Environmental clearance from the Department or HUD, as applicable;

(ii) Site and Neighborhood clearance from the Department;

(iii) Documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and

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

(F) The Direct Loan Contract as executed, which will be drafted by the Department’s counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

**(12) Loan Documents.** The Development Owner is required to execute all loan closing documents required by and in the form and substance acceptable to the Department's Legal Division.

(A) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents.

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

**(13) Disbursement of Funds.** The Borrower must comply with the requirements in subparagraphs (A) - (K) of this paragraph in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements is required with a request for disbursement:

(A) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require;

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

(C) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702 or HUD equivalent form. For release of retainage the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with $0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(D) At least 50% of Direct Loan funds will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(E) The initial draw request for the Development must be entered into the Department's Housing Contract System no later than 15 calendar days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(F) Up to 75% of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25% of funds;

(G) Developer Fee disbursement shall be limited by subparagraph (H) of this paragraph and is further conditioned upon clauses (i) - (iii), as applicable:

(i) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75% shall be disbursed in accordance with percent of construction completed. 75% of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25% shall be disbursed at the time of release of retainage; or

(ii) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and syndicator in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(iii) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If disbursement is withheld for any reason, disbursement of any remaining Developer Fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met; and

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

(I) Table Funding may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible softs costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing and will not be considered unless the Direct Loan Contract has been executed, and all necessary documentation has been submitted to and accepted by the Department at least 10 calendar days prior to the anticipated closing date;

(J) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or

HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually. All of the items described in clauses (i) - (xii) of this subparagraph are required in order to approve the final draw request:

(i) Fully executed Certificate of Substantial Completion (AIA Form G704) with $0 as the cost estimate of work that is incomplete. If AIA Form G704 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

(ii) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704);

(iii) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(iv) For Developments subject to the Davis-Bacon Act, evidence from the Department's Senior Labor Standards Specialist that the final wage compliance report was received and approved or confirmation that HUD maintains Davis-Bacon oversight as a result of a HUD-insured first lien loan;

(v) Certificate(s) of Occupancy (if New Construction);

(vi) Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

(vii) If applicable to the Development, certification from Architect or a licensed engineer that all HUD environmental mitigation conditions have been met; and

(K) The final draw request must be submitted within 24 months from loan closing unless Development Period has been extended in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable.

**(14) Annual Audits and Cost Certifications under 24 CFR §93.406(b).**

**(A) Annual Audits under 24 CFR §93.406(b).** Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

**(B) Cost Certifications under 24 CFR §93.406(b).**

**(i) Non-HTC-Layered Developments.** Within 180 calendar days of the later of all title transfer requirements and construction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

**(ii) HTC-Layered Developments.** With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

**§13.12. Pre-Closing Amendments to Direct Loan Terms.**

**(a) Executive Approval Required Pre-Closing.** The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection.

(1) Extensions of up to six months to the loan closing date required in 10 TAC §13.11(e) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing. An extension will not be available if an Applicant has:

(A) Failed to timely begin or complete a process required to close; including, but not limited to:

(i) The process of finalizing all equity and debt financing;

(ii) The environmental clearance process;

(iii) The due diligence processing requirements; or

(B) Made changes to the Development that require significant additional underwriting by the Department without at least 45 days to complete the review.

(2) Changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term may be approved prior to closing.

(3) Extensions of up to 12 months to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter required in 10 TAC §13.11(g) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) Changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20%, or any changes to the amortization or interest rate that increase the annual repayment amount up to 20%, may be approved prior to closing.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not be approved unless the Applicant competes for the additional funding under an open NOFA.

(6) Changes to other loan terms or requirements that would not require a Waiver, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

**(b) Board Approval Required Pre-Closing.** Board approval is necessary for any other changes prior to closing.

**§13.13. Post-Closing Amendments to Direct Loan Terms.**

**(a) Good Cause Extensions.** The Executive Director or authorized designee may approve extensions of up to 12 months under 10 TAC §13.11(g) or (m)(11) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension.

**(b) Amendments to MFDL Awards.** Except in cases of Force Majeure, changes to terms of awards subject to mandatory HUD reporting requirements will only be processed after the Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

**(c) Executive Amendments.** The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post-closing.

**(1) Changes in Terms.** Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of 10 TAC §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

**(2) Post-Closing Subordinations or Re-subordinations of MFDL Liens.** Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (E) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial repayment of the MFDL lien is made with the request; and

(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title; and

(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis.

(E) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the prosed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).

**(3) Workout Arrangements.** Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement may be approved after Construction Completion.

**(d) Contract Assignments and Assumptions of MFDL Liens.** The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) – (3) of this subsection are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph:

(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees association with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in 10 TAC §10.406 of this title (relating to Ownership Transfers), and no prospective Owner (including entity, person, Board Member, as those terms are defined in 2 CFR Part 180, including Limited Partners) have been subject to state Debarment or are on the Federal Suspended or Debarred Listing.