

Texas Department of Housing and Community Affairs



Texas Department of Housing and Community Affairs  
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**2000 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules**

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§49.1 Scope.

The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of certain low income housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low income rental housing Projects. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Department was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan (QAP) which is set forth in §49.3 through §49.8 of this title (relating to State Housing Credit Ceiling, Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments, Set-Asides, Commitments and Preferences, Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; Compliance Monitoring, Housing Credit Allocations). Sections in this chapter establish procedures for applying for and obtaining an allocation of the low income housing tax credit, along with insuring that the proper Threshold Criteria, Selection Criteria, priorities and preferences are followed in making such allocations. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state and to promote maximum utilization of the available tax credit amount. The criteria utilized to realize this goal shall include, but are not limited to, evaluation of geographic location within the state of developments applying for tax credits, concentration of tax credit developments and other affordable housing developments within specific markets and submarkets, site conditions of the developments, and a development's impact on and conformance with the goals and objectives as stated in the QAP and the Rules. The foregoing shall be implemented to be consistent with ensuring that the tax credits are allocated to owners of Projects that will serve the Department's public policy objectives and federal requirements to provide housing to persons and families of very low and low income. It is the policy of the Department to encourage the use of Historically Underutilized Businesses (HUBs) in all of the Department's programs. In response to this policy, the Department has established a minimum goal of 30% participation of HUBs in the low income housing tax credit program. Project Owners are encouraged to achieve these minimum goals. To assure maximum utilization and optimum geographic distribution of tax credits in rural areas, although not mandated to do so, the Department is developing Memorandums of Understanding (MOU) with the TxRD-USDA. Such MOUs will seek to achieve increased sharing of information, reduction of processing procedures, and fulfillment of project compliance requirements involving existing, rehabilitated, and new construction housing projects financed by TxRD-USDA.

§49.2. DEFINITIONS.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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(1) Ad Hoc Tax Credit Committee - That Committee comprised of members of the Board of the Department charged with the direct oversight of the Low Income Housing Tax Credit Program, also referred to as the "Committee."

(2) Adaptable Dwelling Unit - As described in the Fair Housing Act, a unit which meets the minimal accessibility requirements specified in the Act (i.e. usable doors, an accessible route, accessible environmental controls, and usable kitchens and bathrooms) and the "adaptable" structural feature or reinforced bathroom walls for later installation of grab bars."

(3) Affiliate - An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other Person, and specifically shall include parents or subsidiaries.

(4) Agreement and Election Statement - A document in which the Project Owner elects, irrevocably, to fix the applicable credit percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Project Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings, which Agreement and Election Statement shall be executed by the Project Owner no later than five days after the end of the month of execution of the agreement as to housing credit dollar amount.

(5) Applicable Percentage - The percentage used to determine the amount of the low income housing tax credit, as defined more fully in the Code, §42(b). The Applicable Percentage in the Application will be calculated using the formula provided in the Application Submission Procedures Manual.

(6) Applicant - Any Person and any Affiliate of such Person, corporation, a partnership, joint venture, association, or other that submits an Application to the Department requesting a tax credit allocation pursuant to the Rules and the QAP. The Applicant is also the Project Owner unless the Applicant transfers or assigns its interest in the Project (which assignment can only occur with the consent of the Department). Each Project Owner, and each of the Project Owner's successors in interest, shall be obligated to carry out the commitments made to the Department by the Applicant.

(7) Application - An Application in the form prescribed by the Department, including any required exhibits or other supporting materials, filed with the Department by a Project Owner requesting a low income housing tax credit allocation.

(8) Application Acceptance Period - That period of time during which Applications for either a Housing Credit Allocation from the State Housing Credit Ceiling or a Determination Notice for Tax Exempt Bond Projects may be submitted to the Department as more fully described in §49.12.

(9) Application Round - The period beginning with the start of the Application Acceptance Period and lasting until such time as all available credits from the State Housing Credit Ceiling (as stipulated by the Department) are allocated, provided that the Application Round not extend beyond the last day of the calendar year.

(10) Application Submission Procedures Manual - That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of Applications for low income housing tax credits, which manual may be amended from time to time by the Department.

(11) Appraiser - A real estate professional certified or licensed by the Texas Appraiser Licensing and Certification Board who has satisfied continuing education requirements. The appraiser must have, at a minimum, five (5) years appraisal experience, preferably in the geographic area of the property to be appraised. It is desirable, but not required, that the appraiser have a professional designation or be an active member of a professional accredited appraisal institution.

(12) Area Median Gross Income (AMGI) - The tenant income requirements pursuant to the qualified low income housing project requirements of the Code, §42(g).

(13) Applicable Fraction - The fraction used to determine the Qualified Basis of the qualified low income building, which is the smaller of the Unit fraction or the floor space fraction, as defined more fully in the Code, §42(c)(1).

(14) Beneficial Owner - A "Beneficial Owner" means:

(A) Any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares;

(i) voting power which includes the power to vote, or to direct the voting as any other Person or the securities thereof; and/or

(ii) investment power which includes the power to dispose, or direct the disposition of, any Person or the securities thereof.

(B) Any Person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such Person of

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Beneficial Ownership (as defined herein) of a security or preventing the vesting of such Beneficial Ownership as part of a plan or scheme to evade inclusion within the definitional terms contained herein; and

(C) Any Person who has the right to acquire Beneficial Ownership during the Compliance Period, including but not limited to any right to acquire any such Beneficial Ownership;

(i) through the exercise of any option warrant or right,

(ii) through the conversion of a security,

(iii) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or

(iv) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement.

(D) Provided, however, that any Person who acquires a security or power specified in clauses (i), (ii) or (iii) of this subparagraph, with the purpose or effect of changing or influencing the control of any other Person, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition is deemed to be the Beneficial Owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to options, warrants, rights or conversion privileges as deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such Person but are not deemed to be outstanding for the purpose of computing the percentage of the class by any other Person.

(15) Board - The governing Board of Directors of the Department.

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

(17) Carryover Allocation Document - A document issued by the Department to a Project Owner pursuant to §49.4(k) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

(18) Carryover Allocation Procedures Manual - That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of request for Carryover Allocations for low income housing tax credits, which said manual may be amended from time to time by the Department.

(19) Code - The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the Low Income Housing Tax Credit Program authorized by the Code, §42, and as may be amended from time to time.

(20) Commitment Notice - A notice issued by the Department to a Project Owner pursuant to §49.4(h) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) and also referred to as the "commitment".

(21) Compliance Period - With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

(22) Control - (including the terms "controlling," "controlled by, and/or "under common control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the general partner interest in a limited partnership, or designation as a managing general partner or the managing member of a limited liability company.

(23) Cost Certification Procedures Manual - That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of requests for IRS Form 8609s for Projects placed in service under the Low Income Housing Tax Credit Program, which said manual may be amended from time to time by the Department.

(24) Credit Period - With respect to a building within a Project, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Project Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

(25) Declaration of Land Use Restrictive Covenants (LURA) - An agreement between the Department, the Project Owner and all successors in interest in the Project Owner which encumbers the Project with respect to provisions stipulated in the Code, §42, §§49.1-49.16 of this title (relating to Low Income Housing Tax Credit Qualified Allocation Plan and Rules), and the Texas Government Code, Chapter 2306 as may be amended from time to time. The LURA includes an Extended Low Income Housing Commitment Agreement.

(26) Department - The Texas Department of Housing and Community Affairs, a public and official governmental Department of the State of Texas created and organized under the Texas Department of Housing and Community Affairs Act, Texas Government Code, Chapter 2306 and Texas Civil Statutes, Article 4413(501) as amended by the 73rd Legislature, Chapter 725 and 141.

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(27) Determination Notice - A notice issued by the Department to the Owner of a Tax Exempt Bond Project which states that the Project may be eligible to claim low income housing tax credits without receiving an allocation of credits from the State Housing Credit Ceiling, sets forth conditions which must be met by the individual project before the Department will issue the IRS Form(s) 8609 to the project owner, and specifies the amount of tax credits necessary for the financial feasibility of the project and its viability as a qualified low income housing project throughout the credit period.

(28) Development Team - All Persons or Affiliates thereof which play(s) a material role in the development, construction, rehabilitation, management and/or continuing operation of the subject Property, which will include any consultant(s) hired by the Applicant for the purpose of the filing of an Application for low income housing tax credits with the Department.

(29) Difficult Development Area - Any area which is so designated by the Secretary of the United States Department of Housing and Urban Development (HUD) as an area which has high construction, land, and utility costs relative to area median family income.

(30) Eligible Basis - With respect to a building within a Project, the building's Eligible Basis as defined in the Code, §42(d).

(31) Equity Gap - The difference between the total sources of financing for the Project and the total Project costs that is to be filled with the proceeds of the credit.

(32) Extended Low Income Housing Commitment Agreement - An agreement between the Department, the project owner and all successors in interest to the project owner concerning the extended low income housing use of buildings within the project throughout the extended use period as provided in the Code, §42(h)(6).

(33) Financial Statement - Document(s) which provides information about the Applicant's economic resources, claims against those resources, and the interests of owners at specific dates as more fully described in subparagraphs (A) through (D) of this definition.

(A) Statement of Financial Position/Balance Sheet - a listing, as of a particular date, of all assets and claims against those assets (liabilities). The difference is equity.

(B) Income Statement - a listing that relates to a specific period of time, presenting an entity's results of operations.

(C) Statement of Retained Earnings - reports all changes in retained earnings during the accounting period, reconciles beginning and ending retained earning balances and provides a connecting link between the income statement and the balance sheet.

(D) Cash Flow Statement - a report listing the changes in an entity's cash and cash equivalents, classified by principal sources and uses, for a given period.

(34) General Contractor - One who contracts for the construction, or rehabilitation of an entire building or Project, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the said subcontractors. This party may also be referred to as the "contractor".

(35) General Projects - Any project which is not a Qualified Nonprofit Project or is not under consideration in the Rural/Prison set-aside as such terms are defined by the Department.

(36) General Pool - The pool of credits that have been returned or recovered from prior years' allocations or the current year's Commitment Notices after the Board has made its initial allocation of the current year's available credit ceiling. General pool credits will be used to fund Applications on the waiting list without regard to set-aside except for the 10% Nonprofit Set-Aside allocation required under §42(h)(5) of the Code.

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

(38) Historically Underutilized Businesses - Pursuant to Texas Civil Statutes, Article 601b, §§1.02, 1.03, and 1.04, entitled State Purchasing and General Services Act which is codified at Chapter 2161, Texas Government Code, entitled Historically Underutilized Businesses, a business in the form of a corporation, partnership or joint venture which is at least 51% owned, or a sole proprietorship which is 100% owned by a person or persons who have been historically underutilized due to their identification as a member of a certain group. The following are the groups which will be considered pursuant to this definition:

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

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

(C) Asian-Pacific Americans - persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Philippines, Samoa, Guam, U.S. Trust Territories of the Pacific and the Northern Marianas;

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

(E) Women - includes all women of any ethnicity.

(39) Homeless Person - An individual or family that lacks a fixed, regular, and adequate nighttime residence as more fully defined in 24 Code of Federal Regulations, § 841.1, and as may be amended from time to time.

(40) Housing Credit Agency - A governmental entity charged with the responsibility of allocating low income housing tax credits pursuant to the Code, §42. For the purposes of these Rules, the Department is the sole "Housing Credit Agency" of the State of Texas.

(41) Housing Credit Allocation - An allocation by the Department to a Project Owner of low income housing tax credit in accordance with §49.8 of this title (relating to Housing Credit Allocations).

(42) Housing Credit Allocation Amount - With respect to a Project or a building within a Project, that amount the Department determines to be necessary for the financial feasibility of the Project and its viability as a qualified low income housing Project throughout the Compliance Period and allocates to the Project.

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

(44) Ineligible Building Types - Single family detached housing, duplexes, and triplexes shall not be included in tax credit developments (except as provided for in this definition). Fourplexes are also prohibited unless they are developed in clusters of four or more contiguous property under common ownership, management and Control. The only exceptions to this definition are:

(A) Any project comprised of single family detached homes, duplexes or triplexes of 36 units or less that is located within a city or county with a population of not more than 20,000 or 50,000, respectfully, shall not be considered to include an Ineligible Building Type. The proposed units must be located on contiguous property under common ownership, management and Control or dispersed within an existing residential subdivision.

(B) An existing Rural Project that is federally assisted within the meaning of §42(d)(6)(B) of the Code and is under common ownership, management and Control shall not be considered to include an Ineligible Building Type. For qualifying federally assisted Rural Projects, construction cannot include the construction of new residential units. Rural Projects purchased from HUD will qualify as federally assisted.

(45) Intermediary Costs - Costs associated with the sale or use of tax credits to raise equity capital. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, environmental site assessment, etc.

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

(47) Local Tax Exempt Organization - An entity which is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, and which is registered or qualified to conduct business in the State of Texas and/or the governmental unit wherein the Project will be situated.

(48) Person - Means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal.

(49) Material Deficiencies – The absence of information or documents from the Application which are essential for the complete review and scoring of the project and which remain uncorrected after notification of the Applicant as further described in subparagraphs (A) and (B) of this paragraph.

(A) The Department may request correction of deficiencies which are either administrative in nature or are caused by the need for clarification of information submitted at the time of Application. Such deficiencies include, but are not limited to, incorrect calculation of the project's unit mix, gross and net rentable areas or the submission of exhibits that contain incomplete or conflicting information. If such deficiencies are not corrected to the satisfaction of the Department within 5 business days from the deficiency notice date, then 2 points shall be deducted from the Selection Criteria score for each day the deficiency remains uncorrected. If such deficiencies are not corrected within 10 business days from the deficiency notice date, the Application shall be terminated.

(B) Deficiencies caused by the omission of exhibits required in Volume 1 of the Application or associated with the Threshold Criteria shall automatically be considered Material Deficiencies and shall be cause for termination.

(50) Material Non-Compliance – A property will be classified by the Department as being in material non-compliance status so long as the non-compliance score for such property is equal to or exceeds 30 points in accordance with the methodology and point system set forth in the Application Submission Procedures Manual.

(51) Persons with Disabilities - A person who:

(A) has a physical, mental or emotional impairment that;

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- (i) is expected to be of a long, continued and indefinite duration,
- (ii) substantially impedes his or her ability to live independently, and
- (iii) is of such a nature that the ability could be improved by more suitable housing conditions, or

(B) has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-6007).

(52) Prison Community - A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison as set forth in the Reference Manual.

(53) Project - A low income rental housing Property the owner of which represents that it is or will be a qualified low income housing Project within the meaning of the Code, §42(g). With regards to this definition, the "Project" is that Property which is the basis for the Application for low income housing tax credits. May also be referred to as the subject "property".

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

(55) Project Owner - Any Person or Affiliate thereof that owns or proposes to develop the Project or expects to acquire Control of the Project pursuant to a purchase contract satisfactory to the Department.

(56) Property - The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(57) Qualified Allocation Plan - An allocation plan executed by the Governor of the State of Texas which sets forth the Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring as provided in the Code, §42(m)(1) and as further provided in §49.3 through §49.8 of this title (relating to State Housing Credit Ceiling, Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments, Set-Asides, Commitments and Preferences, Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; Compliance Monitoring, Housing Credit Allocations).

(58) Qualified Basis - With respect to a building within a Project, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(59) Qualified Census Tract - Any census tract which is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, in which 50% or more of the households have an income which is less than 60% of the area median family income for such year.

(60) Qualified Market Analyst - A real estate appraiser certified or licensed by the Texas Appraiser or Licensing and Certification Board or a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's experience and educational background will provide the general basis for determining competency as a Market Analyst. Such determination will be at the sole discretion of the Department. The Qualified Market Analyst must not be related to or Affiliated with the Project Consultant, or the independent CPA employed for certifying the 10% test and/or the final Project cost certification.

(61) Qualified Nonprofit Organization - An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not Affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of the Code, §42(h)(5)(C).

(62) Qualified Nonprofit Project - A Project in which a Qualified Nonprofit Organization has Control (directly or through a partnership or wholly-owned subsidiary) and materially participates (within the meaning of the Code, §469(h), as may be amended from time to time) in its development and operation throughout the Compliance Period.

(63) Real Estate Owned (REO) Projects - Any existing residential development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), federally chartered bank, savings bank, savings and loan association, Federal Home Loan Bank or a federally approved mortgage company or any other federal agency.

(64) Reference Manual - That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Low Income Housing Tax Credit Program.

(65) Rehabilitation Expenditure - Amounts incurred in connection with the rehabilitation which the Project Owner represents to be "Rehabilitation Expenditures" within the meaning of the Code, §42(e)(2).

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(66) Residential Development - Any Project that is comprised of at least one "Unit" as such term is defined in this title.

(67) Rules - The Department's low income housing tax credit Rules, §§49.1-49.16 of this title (relating to Low Income Housing Tax Credit Qualified Allocation Plan and Rules) excluding §49.3 through §49.8 of this title (relating to State Housing Credit Ceiling, Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments, Set-Asides, Commitments and Preferences, Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; Compliance Monitoring, Housing Credit Allocations).

(68) Rural Project - A Project located within an area which:

(A) is situated outside the boundaries of a PMSA or MSA; or

(B) is situated within the boundaries of a PMSA or MSA if it has a population of not more than 20,000 and does not share boundaries with an urbanized area; or

(C) is located in an area that is eligible for funding by TxRD.

(69) Selection Criteria - Criteria used to determine housing priorities of the State under the Low Income Housing Tax Credit Program.

(70) Small Development - A non-Rural Project consisting of not more than 36 multifamily Units, which is not a part of, or contiguous to, a larger Project.

(71) Special Housing Project - Any Project developed specifically for Special Housing Need Groups, including mental health/mental retardation Projects, group homes, housing for the homeless, transitional housing, elderly Projects, congregate care facilities, projects for persons with HIV/AIDS, or as otherwise defined in the State Consolidated Plan.

(72) State Housing Credit Ceiling - The limitation imposed by the Code, §42(h), on the aggregate amount of housing credit allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3).

(73) Sustaining Occupancy - The figure at which occupancy income is equal to all operating expenses and mandatory debt service requirements for a Project.

(74) Tax Exempt Bond Project - A Project which receives at least 50% of its financing from the proceeds of Tax Exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4)(B).

(75) Threshold Criteria - Criteria used to determine the Project's qualifications which are the minimum level of acceptability for consideration under the Low Income Housing Tax Credit Program.

(76) Total Housing Development Cost - The total of all costs incurred or to be incurred by the Project Owner in acquiring, constructing, rehabilitating and financing a Project, as determined by the Department based on the information contained in the Project Owner's Application. Such costs include Intermediary Costs, reserves and any expenses attributable to commercial areas. Projects which include commercial space must allocate the relative portion of all applicable expenses to the commercial space and exclude the same from Total Housing Development Costs. In determining the Equity Gap calculation, the Department will not deduct from the Project's sources of funds the amount of financing associated with the commercial use, unless such financing specifically identifies in its terms that it is being provided for the commercial use.

(77) Town Home - Each Town Home living unit is one of a group of no less than four units that are adjoined by common walls. Town Homes shall not have more than two walls in common with adjacent units. Town Homes shall not have other units above or below another unit. Town Homes shall not share a common back wall. Town Homes shall have individual exterior entries.

(78) TxRD - The Rural Development (RD) services of the United States Department of Agriculture (USDA) serving the State of Texas (formerly known as TxFmHA) or its successor.

(79) Unit - Any residential rental unit in a Project consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation. The term "Unit" includes a single room occupancy housing unit used on a non-transient basis.

### §49.3. State Housing Credit Ceiling.

(a) The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C).

(b) The Department shall publish each such determination in the Texas Register within 30 days after notification by the Internal Revenue Service.

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(c) The aggregate amount of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. Housing Credit Allocations made to Tax Exempt Bond Developments are not included in the State Housing Credit Ceiling

§49.4. Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments.

(a) Any Project Owner requesting a Housing Credit Allocation for a Project must submit an Application to the Department which Application shall be originally executed by the Project Owner. The Department is authorized to request the Project Owner to provide any additional information or documentation it deems relevant as clarification to the Application or items that would be considered a deficiency. Applications not submitted in the format described in the Application Submission Procedures Manual will result in the Application being deemed incomplete and not accepted for filing. The Department will require, as a part of a completed Application, information to be submitted by the Project Owner which identifies the number of HUBs to be used in the development and/or continuous operation of the Project, in a form specified within the Application Submission Procedures Manual. Further, the Department will require the Project Owner to supply sufficient documentation to describe the means by which these HUBs were or are to be selected. The Project Owner is advised that the Department will be requesting information pertaining to the use of HUBs in the actual development of the Project at the time of final allocation of tax credits, pursuant to §49.8(f) of this title (relating to Housing Credit Allocations).

(b) As part of the complete Application the Applicant must submit the most current Phase I Environmental Assessment of the subject Property, dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Assessment on the Project is older than 12 months, the Project Owner may supply the Department with an update letter from the Person or organization which prepared the initial assessment; provided, however, that the Department will not accept any Phase I Environmental Assessment which is more than 24 months old. An environmental report that is not submitted with the Application will result in the Application being deemed incomplete and not accepted for filing.

(1) This environmental assessment should be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM) and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The environmental assessment shall be conducted by an environmental or professional engineer and be prepared at the expense of the Project Owner. The report must include, but is not limited to:

(A) a review of records, interviews with people knowledgeable about the Property;

(B) a certification that the environmental engineer has conducted an inspection of the Property, the building(s), and adjoining Properties, as well as any other industry standards concerning the preparation of this type of environmental assessment;

(C) a noise study is recommended for developments located in close proximity to industrial zones, major highways, active rail lines and civil and military airfields;

(D) a copy of the current FEMA Flood Map encompassing the site and a determination of the flood risk for the proposed development; and

(E) the report should include a statement that clearly states that the person or company preparing the environmental assessment will not materially benefit from the development in any other way than receiving a fee for the environmental assessment.

(2) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Project Owner must act on such a recommendation or provide either a plan for the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(3) Projects which have had a Phase II Environmental Assessment performed and hazards identified, the Project Owner is required to maintain a copy of said assessment on site available for review by all persons which either occupy the Property or are applying for tenancy.

(4) Projects whose funds have been obligated by TxRD will not be required to supply this information; however, the Project Owners of such Projects are hereby notified that it is their responsibility to ensure that the Property is maintained in compliance with all state and federal environmental hazard requirements.

(5) Those Projects which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms with the requirements of this subsection.

(c) The Market Study required by the Department shall comply with the Uniform Standards of Professional Appraisal Practice paragraphs (1) through (2) of this subsection and, the Market Analysis and Appraisal Policy provided in the Application Submission Procedures Manual. The Market Study shall be prepared for the Department at the expense of the



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Project Owner. The Market Study shall follow the format of and contain at a minimum, the information required by the Market Analysis and Appraisal Policy. If any of the required information in the Market Analysis and Appraisal Policy is not obtainable, the Market Analyst shall provide a statement to such effect and offer an alternative analysis intended to address the applicable question.

(1) A Market Study (must be prepared by a Qualified Market Analyst as described in this QAP and Rules and in the Market Analysis and Appraisal Policy). This Qualified Market Analyst shall be independent of the Project Owner. A Market Study, is required as part of the complete Application, unless the Project has an obligation of TxRD funds. Projects whose funds have been obligated by TxRD are not required to provide the Department with a market study; provided that the Department may request information with respect to the operating expenses, proposed new construction or rehabilitation cost or other information. The market study should not be updated more than six months prior to the first day of the Application Acceptance Period. In the event that a Market Study on a Project is older than six months, a Project Owner may supply the Department with an updated Market Study from the entity or organization which prepared the initial report. The Department will not accept any Market Study more than 12 months old.

(2) The Department may determine from time to time that information not requested in the Market Analysis and Appraisal Policy will be relevant to the Department's evaluation of the need for the Project and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the Market Analyst to meet this need.

(3) A written opinion is required from the Qualified Market Analyst who prepared the Market Study required under paragraph (1) of this subsection, stating that:

(A) the projected Total Housing Development Costs of the proposed Project do or do not appear to be reasonable. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusion with regards to the reasonableness of the projected development costs;

(B) the projected Total Operating Costs of the proposed Project do or do not appear to be reasonable. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusions with regards to the reasonableness of the projected operating costs;

(C) the proposed Project, in light of the vacancy and absorption rates for the applicable market area and/or any applicable submarket area, is or is not likely to result in an unreasonably high vacancy rate for comparable Units within the market area and/or any applicable submarket area (i.e., standard, well maintained Units within such market area that are reserved for occupancy by low and very low income tenants). The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusion with regard to the effects of the Project's development on the vacancy rates for comparable Units within the market area and/or any applicable submarket area;

(D) the projected initial rents for the Project are or are not below the rental range for comparable Projects within the market area. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusion with respect to the data on comparable rents in the Project's market area; and

(E) Project reserves are or are not adequate to cover operating shortfalls until the Project achieves Sustaining Occupancy. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusions with regards to the adequacy of the Project reserves.

(4) All Applicants shall acknowledge by virtue of filing an Application that the Department shall not be bound by any such opinion or the Market Study itself, and may substitute its own analysis and underwriting conclusions for those submitted by the Qualified Market Analyst.

(d) A Project Owner may file an Application at any time during the Application Acceptance Period(s), as published from time to time by the Department in the Texas Register. Applications that show Material Deficiencies will be terminated per subsection (e) of this section, and the Project Owners will only have the opportunity to re-apply if the Application Acceptance Period is still open.

(e) An Application that does not fulfill the requirements of this Qualified Allocation Plan and Rules and the current Application Submission Procedures Manual will be deemed not to have been timely filed and the Department shall not be deemed to have accepted the Application. The Department may, at its sole discretion, request supplemental information from an Applicant to clarify information contained in previously submitted documentation. The department may place additional time constraints for the timely filing of such documentation.

(f) Ineligible and Disqualified Applications:

(1) An Application will be ineligible if a member of the Development Team has been or is:

(A) Barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or,

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(B) convicted of, under indictment for, or on probation for a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses; or,

(C) subject to enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with any Governmental Entity unless such action has been concluded and no adverse action or finding (or entry into a consent order) has been taken with respect to such member.

(2) Additionally, the Department will disqualify an Application if it is determined by the Department that:

(A) a material misrepresentation was made in the Application or any application or other information submitted to the Department; or,

(B) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property in the state of Texas who received an allocation of tax credits in the 1999 Application Round but did not close the construction loan as required under the Carryover Allocation (including any extension period granted by the Committee) except for reasons beyond the control of the Applicant as determined by the Department; or,

(C) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property has failed to place in service buildings or removed from service buildings for which credits were allocated (either Carryover Allocation or issuance of 8609s). The Department may consider the facts and circumstances on a case-by-case basis, including whether the credits were returned prior to the expiration date for re-issuance of the credits, in its sole determination of Applicant eligibility; or,

(D) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing property in the state of Texas funded by the Department that is in Material Non-Compliance with the LURA or the program rules in effect for such property on the closing date of the Application Acceptance Period or upon the date of filing Volume I of the Application for a Tax Exempt Bond Project. The Department may take into consideration the representations of the Applicant regarding compliance violations described on Exhibit 106; however, the records of the Department are controlling; or,

(E) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing tax credit property outside of the state of Texas has incidence of non-compliance with the LURA or the program rules in effect for such tax credit property as reported on Exhibit 106 and/or as determined by the state regulatory authority for such state and such non-compliance is determined to be Material Non-Compliance by the Department.

(g) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department shall make its recommendations to the Committee and the Board. Such recommendation shall be made in advance of the meeting at which the issuance of Commitment Notices shall be discussed. Such recommendations will include a list of all submitted Applications and will describe why each project was or was not recommended for a Commitment Notice. Supporting documentation which the Committee and Board may use to evaluate the Application relative to the criteria provided in §49.6(b)(3) will be provided prior to the meeting.

(h) The Board's decisions shall be based upon its evaluation of the Project's consistency with the criteria and requirements set forth in the QAP and the Rules. In making a determination to allocate tax credits, the Department and Board shall be authorized not to rely solely on the number of points scored by an Applicant. They shall in addition, be entitled to take into account, as appropriate, such factors as Project feasibility, underwriting, concentration of low income Projects within specific markets or submarkets, geographic dispersion of multifamily housing in any particular market or submarket, as well as dispersion of the credits on a state-wide basis, site conditions, the experience of the Development Team, the type of housing being proposed and/or the Project's impact on the Low Income Housing Tax Credit Program's goals and objectives as stated in the QAP and the Rules and as otherwise provided under this chapter. The Board shall authorize the Department to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is built. In making a determination to allocate credits, the Department and the Board may also take into account the fact that Tax Exempt Bond Projects are generally not financially feasible outside of the major metropolitan areas of the state.

(1) If the Board approves the Application, the Department will issue a Commitment Notice to the Project Owner which:

(A) shall confirm that the Board has approved the Application; and

(B) shall state the Department's commitment to make a Housing Credit Allocation to the Project Owner in a specified amount, subject to the feasibility determination described at §49.8(a) of this title (relating to Housing Credit Allocations), compliance by the Project Owner with the remaining requirements of this chapter, and any other conditions

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set forth therein by the Department. This Commitment Notice shall expire on the date specified therein, unless the commitment has been accepted and the conditions to receipt of an allocation set forth therein shall have been met.

(2) The Department shall notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment Notice.

(3) If the Board disapproves or fails to act upon the Application, the Department shall issue to the Project Owner a written notice stating the reason(s) for the Board's disapproval or failure to act.

(i) A Project Owner may request that the Department extend the expiration date of a Commitment Notice which has not expired or the date for the submission of the Carryover Allocation Document by submitting a written request for such action, accompanied by the extension fee specified in §49.11 of this title (relating to Program Fees). The request shall specify the term of the extension requested and the reason(s) why the Project Owner has been unable to satisfy the requirements of this chapter prior to the original expiration date. The Department, in its sole discretion, may consider and grant such extension requests; provided, however, that in no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(j) A Project Owner must indicate acceptance of the Department's offer of a commitment of tax credit authority or determination of eligibility to claim tax credits by executing the Commitment Notice or Determination Notice and paying the commitment fee specified in §49.11 of this title (relating to Program Fees) prior to the expiration date set forth in the notice. Together with or following the Project Owner's acceptance of the commitment or determination, the owner may request the Department to execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the applicable credit percentage for the Project as that for the month in which the commitment was accepted (or the month the bonds were issued for Tax Exempt Bond Projects), as provided in the Code, §42(b)(2). Upon receipt of a duly dated and executed Agreement and Election Statement and the accepted Commitment Notice or Determination Notice, if the Project Owner is in compliance with the Rules of this chapter, the Department shall execute the Agreement and Election Statement and return a copy to the Project Owner. For non Tax Exempt Bond Projects, the Agreement and Election Statement shall be executed by the Project Owner no later than five days after the end of the month in which the offer of commitment was accepted. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Project Owner to make an effective election to fix the applicable credit percentage for a Project, the Commitment Notice must be executed by the Department and the Project Owner in the same month. The Department will cooperate with a Project Owner, as needed, to assure that the Commitment Notice can be so executed.

(k) Prior to the expiration of the Commitment Notice a Project Owner who has been issued a Commitment Notice may request the Department to execute a Carryover Allocation Document. The Carryover documentation must be submitted to the Department no later than October 15 of the year in which the Commitment Notice is issued. The Carryover Allocation must be properly completed, signed, dated and notarized by the Project Owner and delivered to the Department along with any and all other documentation prescribed in the Carryover Allocation Procedures Manual, as amended. The commitment fee as specified in §49.11 of this title (relating to Program Fees) must be received by the Department prior to the processing of any Carryover Allocation Documentation.

(l) If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Department shall place all remaining Applications which have satisfied all Threshold Criteria on a waiting list. All such waiting list Applications will be weighed one against the other and a priority list shall be developed by the Department and approved by the Ad Hoc Tax Credit Committee. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Department shall issue a Commitment Notice to Applications on the waiting list in order of priority subject to the amount of returned credits and the 10% Nonprofit Set-Aside allocation required under §42(h)(5) of the Code. In the event that the Department makes a Commitment Notice or offers a commitment within the last month of the calendar year, it will require immediate action by the Applicant to assure that an allocation or Carryover Allocation can be issued before the end of that same calendar year.

(m) Within 15 business days of the date an Application is received, the Department shall notify in writing the mayor or other equivalent chief executive officer of the municipality, if the Project or a part thereof is located in a municipality; otherwise the Department shall notify the chief executive officer of the county in which the Project or a part thereof is located, to advise such individual that the Project or a part thereof will be located in his/her jurisdiction and request any comments which such individual may have concerning such Project. Such comments shall be part of the documents required to be reviewed by the Board under this subsection if received by the Department within 30 days after receipt of such certified mail notification to said individual; otherwise, if comments are received by the Department after 30 days, same may be reviewed at the discretion of the Board under this subsection. If the local municipal authority expresses opposition to the Project, the Department will give consideration to the objections raised and will visit the proposed site or Project within 30 days of notification.

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(n) The Department shall give notice of a proposed project to the state representative and state senator representing the area where a project would be located. The state representative or senator may hold a community meeting at which the Department shall provide appropriate representation.

(o) Prior to the Department's issuance of the IRS Form 8609 declaring that the Project has been placed in service for purposes of the Code, §42, Project Owners must date, sign and acknowledge before a notary public a LURA and send the original to the Department for execution. The Project Owner shall then record said LURA, along with any and all exhibits attached thereto, in the real Property records of the county where the Project is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Project and/or the Property prior to the recording of the LURA, the Project Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department shall physically inspect the Property for compliance with the Application and the representatives, warranties, covenants, agreements and undertakings contained therein before the IRS Form 8609 is issued.

(p) Application submission log. The Department shall publish an Application submission log on its web site approximately 15 business days after the close of the Application Acceptance Period. Such log shall contain the project's name, address, set-aside, number of units, requested credits, requested selection criteria score and the owner contact name and phone number.

(q) Notice of Selection Criteria scoring. When all Applications have been scored, the Department shall publish the results of the scoring on its web site.

### §49.5. Set-Asides, Commitments and Preferences.

(a) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Projects which meet the requirements of the Code, §42(h)(5). Applicants must apply under one of the set-asides provided in paragraphs (1) through (3) of this subsection. The State Housing Credit Ceiling shall be allocated under the set-asides provided in paragraphs (1) through (3) of this subsection.

- (1) Qualified Non Profit Projects shall account for at least 10% of the State Housing Credit Ceiling
- (2) Rural Projects/Prison Communities -15%; or
- (3) General Projects - 75%.

(b) The Department may redistribute the credits depending on the level of demand exhibited during the Allocation Round; provided that no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Projects which are not Qualified Nonprofit Projects. The Department will reserve 25% of the 15% Rural Projects/Prison Communities set-aside for projects financed through Rural Development (TxRD) (formerly Farmer's Home). Projects financed through TxRD's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion of the Rural Projects/Prison Communities set-aside. Should there not be sufficient qualified applications submitted for the TxRD set-aside, then the allocations would revert back to the Rural Projects/Prison Communities set-aside pool. Information concerning the appropriate set-aside for each Application Round will be published in the Texas Register. Applicants may submit only one Application for each site.

(c) Unless the Department makes a recommendation to the Board based on the need to fulfill the goals of the Program as expressed in this QAP and Rules and the Board grants a waiver, a Commitment Notice shall not be issued with respect to any Project where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board as more specifically provided in the Application Submission Procedures Manual. The Department's recommendation to the Board shall be clearly documented. The Department will reduce the Applicant's estimate of developer's and/or Contractor fees in instances where these fees are considered excessive, as more specifically provided for within the Application Submission Procedures Manual, as amended. In the instance where the Contractor is an Affiliate of the Project Owner and both parties are claiming fees, Contractor's overhead, profit, and general requirements, the Department will reduce the total fees estimated to a level that it deems appropriate. Further, the Department shall deny or reduce the amount of low income housing tax credits on any portion of costs which it deems excessive or unreasonable. The Department also may require bids in support of the costs proposed by any Applicant.

(d) The Department may, at any time and without additional administrative process, determine to award credits to projects previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity. To the maximum extent feasible, the Department will use credits carried forward from the prior year or recovered during the current year to make awards pursuant to subparagraphs (a) through (d) of this section.

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§49.6. Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects.

(a) Threshold Criteria. To have an Application considered for Selection Criteria, a Project Owner must first supply all required information and demonstrate that the Project meets all of the requirements of the Threshold Criteria set forth as follows and as more specifically provided for in the Application Submission Procedures Manual, as amended. Applications not meeting Threshold Criteria may be terminated as otherwise provided under this chapter. No Ineligible Building Types will be considered for allocation of tax credits under this QAP and the Rules, and thus Ineligible Building Types do not satisfy Threshold Criteria. Project Owners whose Applications do not meet Threshold Criteria will be so informed in writing. The following are the Threshold Criteria that are mandatory requirements at the time of Application submission:

(1) EXHIBIT 101. Label as EXHIBIT 101, the following documents:

(A) A letter from the Project Owner specifying the type of amenities proposed for the development. If fees in addition to rent are charged for amenities reserved for an individual tenant's use (i.e. covered parking, storage, etc.), then the amenity may not be included among those provided to satisfy this exhibit. Therefore, the letter must clearly indicate those amenities for which fees may be collected. Projects larger than 36 units must provide at least four of the amenities provided in clauses (i) through (x) of this subparagraph. Small Developments (36 Units or less) and Special Housing Projects must provide at least two of the amenities provided in clauses (i) through (x) of this subparagraph.

- (i) full perimeter fencing with controlled gate access;
- (ii) designated playground and equipment;
- (iii) community laundry room/laundry hook-up in Units;
- (iv) furnished community room;
- (v) recreation facilities;
- (vi) public telephone(s) available to tenants 24 hours a day;
- (vii) on-site day care, senior center, or community meals room;
- (viii) storage areas;
- (ix) computer facilities; or
- (x) covered parking.

(B) All of the architectural drawings requested in clause (i) through (iii) of this subparagraph must be submitted. While full size design or construction documents are not required, the drawings should have a scale and/or show the dimensions.

- (i) a site plan;
- (ii) typical floor plans for each residential and common area building configuration and typical unit floor plans for each type of unit. The net rentable area as calculated in Section 9 of the Application provided in the Application Submission Procedures Manual should be clearly stated on each unit floor plan; and
- (iii) typical elevations of residential and common area buildings. Elevations should include a percentage estimate of exterior composition, i.e. 50% brick, 50% siding.

(C) Original photographs of the development site and the surrounding area. Rehabilitation Projects must also submit original photographs of the existing signage, buildings, amenities, and interior photographs. The photos for Rehabilitation Projects should clearly document the typical areas and building components which exemplify the need for rehabilitation.

(D) A letter from the Project Owner stating that the Project will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies."

(2) EXHIBIT 102. Label as EXHIBIT 102, the completed "Project Cost Schedule" form provided in the Application Submission Procedures Manual. Rehabilitation developments must establish that the rehabilitation will be substantial and will involve at least \$6,000 per unit in direct hard costs. Additionally, all rehabilitation Projects must provide a detailed work write-up/physical assessment report prepared by a registered architect, professional engineer or general Contractor. The work write-up/physical assessment report must detail the scope of work to be performed throughout the rehabilitation and must specify the estimated cost associated with each item of work to be performed.

(3) EXHIBIT 103. There shall exist evidence of readiness to proceed in the form of at least one of the items under each of subparagraphs (A) through (E) of this paragraph:

- (A) Label as EXHIBIT 103(A), evidence of site control through one of the following:

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(i) a recorded warranty deed in the name of the ownership entity, or entities which comprise the Applicant;

(ii) a contract for sale or lease (the minimum term of the lease must be at least 45 years) in the name of the ownership entity, or entities which comprise the Applicant which is valid for the entire period the development is under consideration for tax credits or at least 90 days, whichever is greater; or

(iii) an exclusive option to purchase in the name of the ownership entity, or entities which comprise the Applicant which is valid for the entire period the development is under consideration for tax credits or at least 90 days, whichever is greater.

(B) Label as EXHIBIT 103(B), evidence of current and appropriate zoning in the form of a letter from the appropriate municipal authority. In lieu of such documentation the Applicant must submit evidence that a rezoning request has been filed with the appropriate municipal authority as of the date of submission of the Application. Any commitment of tax credits to the Applicant will be contingent upon proper rezoning prior to Carryover Allocation. If zoning is not required, the Applicant must submit a letter from the local municipal/county authority so stating. If the Property is currently a non-conforming use as presently zoned, provide the following:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) owners rights to reconstruct in the event of damage; and
- (iv) penalties of noncompliance.

(C) Label as EXHIBIT 103(C), evidence of the availability of all necessary utilities/services to the development site. Exhibits must be in the form of a letter from the appropriate municipal provider/local service provider, or in the form of the last monthly bill which must clearly identify the development by name and address. If utilities are not already accessible, then the letter must clearly state an estimated time frame for provision of the utilities and an estimate of the infrastructure cost that will be borne by the developer. Letters from the appropriate provider must not be older than 12 months from the first day of the Application Acceptance Period. If utilities are not already accessible (undeveloped areas), the letter should not be older than 3 months from the first day of the Application Acceptance Period. Necessary utilities are GAS/ELECTRIC, TRASH, WATER, and SEWER.

(D) Label as EXHIBIT 103(D), evidence of permanent financing in only one of the following forms:

(i) bona fide permanent financing in place as evidenced by a valid and binding loan agreement and a deed(s) of trust in an amount not less than the projected liens to be placed upon the Project upon completion of construction in the name of the ownership entity which identifies the mortgagor as the Applicant or entities which comprise the general partner;

(ii) bona fide commitment or term sheet issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the ownership entity, or entities which comprise the Applicant and which has been executed and accepted by both parties (the term of the loan must be for a minimum of 15 years with at least a 25 year amortization); or

(iii) if the development will be financed through owner contributions, provide a letter from an independent CPA verifying the capacity of the Applicant to provide the proposed financing and that funds are committed solely for such purpose with a letter from the Applicant's bank or banks confirming that such funds have been provided for or deposited in a separate account at said bank(s).

(E) Label as EXHIBIT 103(E), either:

(i) a copy of the current title policy which shows that the ownership of the land/Project is vested in the exact name of the Applicant, or entities which comprise the Applicant; or

(ii) a copy of a current title commitment with the proposed insured matching exactly the name of the Applicant or entities which comprise the Applicant and the title of the land/Project vested in the name of the exact name of the seller as indicated on the sales contract.

(4) EXHIBIT 104. Label as EXHIBIT 104, evidence of pre-Application notification by the Applicant to the local chief executive officer(s) (i.e., mayor and county judge), state senator, and state representative of the locality of the development. The pre-Application notification will consist of a letter which at least includes the text described in Exhibit 113. Evidence of such notification shall be a copy of the letter sent to the official and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said official. Proof of notification should not be older than three months from the first day of the Application Acceptance Period.

(5) EXHIBIT 105. Label as Exhibit 105, all of the following documentation (As instructed in the Application Submission Procedures Manual, this documentation should be filed separately from the volume containing the Threshold Criteria.):

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(A) Using Exhibit 105(A) in the Application Submission Manual, provide a current financial statement for each Applicant (as defined in the QAP). Applicant's statement must not be older than 12 months from the first day of the Application Acceptance Period. If submitting partnership and corporate financials in addition to the individual statements, the certified financial statements should not be older than 90 days; and

(B) the Authorization to Release Credit Information, Exhibit 105(B) (which is provided as part of the Application Submission Procedures Manual), must be completed by all Persons in Control of the Applicant.

(6) EXHIBIT 106 – Label as EXHIBIT 106 all of the following documentation:

(A) The original copy of the completed and executed Exhibit 106, Previous Participation and Background Certification Form, Exhibit 106A, which is provided in the Application Submission Procedures Manual. This form must be completed with respect to the ownership entity (including all Persons with an ownership interest), general partner, general contractor and their respective principals and Affiliates;

(B) label as Exhibit 106B, a chart which clearly illustrates the complete organizational structure of the Project Owner. This chart should provide the names and ownership percentages of all entities and sub-entities with an ownership interest in the development. The percentage ownership of all Persons in Control of these entities and sub-entities must also be clearly defined and the Articles of incorporation, corporate by-laws, and certificate of good standing for corporations or statement of partnership and partnership agreement for limited or general partnerships should be included; and

(C) if the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates is active in the ownership or control of any other low income housing tax credit property either in the State of Texas or any other state and such property was cited as in violation of any the rules or regulations by the Department or by the appropriate regulatory authority in any other state, such property should be clearly identified in Exhibit 106(A) and a copy of any corrective action plan or similar document by the appropriate regulatory entity to correct the non-compliance should be provided as Exhibit 106(C).

(7) EXHIBIT 107. Label as EXHIBIT 107, a current rent roll for occupied Projects undergoing rehabilitation. The rent roll must disclose terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, dates of first occupancy and expiration of lease. Vacant and proposed new construction Projects are exempt from this requirement.

(8) EXHIBIT 108. Label as EXHIBIT 108, for new construction and rehabilitation developments, a 15-year proforma estimate of operating expenses and supporting documentation used to generate projections (excerpts from the market study, operating statements from comparable properties, etc.). Rehabilitation developments must also submit historical monthly operating statements of the subject development for 12 consecutive months ending not more than 45 days prior to the first day of the Application Acceptance Period. In lieu of the monthly operating statements, two annual operating statement summaries may be provided. If 12 months of operating statements or two annual operating summaries can not be obtained, then the monthly operating statements since the date of acquisition of the development and any other supporting documentation used to generate projections may be provided.

(9) EXHIBIT 109. Label as EXHIBIT 109 on the cover page only, a Market Study addressing all items listed in §49.4(c) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) and/or required by the Application Submission Procedures Manual.

(10) EXHIBIT 110. Label as EXHIBIT 110 on the cover page only, a Phase I Environmental Study prepared in accordance with §49.4(c) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

(11) EXHIBIT 111. Label as EXHIBIT 111, for Applicants seeking credits from the Non Profit Set-Aside, all of the following documents that confirm that the Applicant is a Qualified Nonprofit Organization pursuant to Code, §42(h)(5)(C):

(A) an IRS determination letter which states that the Qualified Nonprofit Organization is a 501(c)(3) or (4) entity;

(B) if the Project involves a joint-venture between a Qualified Nonprofit Organization and a for-profit entity, an agreement which shows that the nonprofit organization Controls the Project (directly or indirectly) and will materially participate (within the meaning of the Code §469(h) in the development and operation of the Project throughout the Compliance Period;

(C) a current list of all directors and officers of the nonprofit organization, along with information pertaining to their primary occupations and disclosing any relationship; as an Affiliate or otherwise, with other members of the Applicant and/or any members or Affiliate of the Development Team, including any market analyst, CPA, appraiser, or other professional performing any services with respect to the Project and/or the subject Property; and

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(D) a copy of the articles of incorporation of the nonprofit organization which specifically states the fostering of affordable housing is one of the entities exempt purposes.

(12) EXHIBIT 112. Label as EXHIBIT 112, for Applicants applying for acquisition credits or if the Applicant is affiliated with the seller, all of the following documentation:

(A) an appraisal, which complies with the Market Analysis & Appraisal Policy provided in the Application Submission Procedures Manual, of the Property separately stating the value of the land and the improvements where applicable;

(B) a valuation report from the county tax appraisal district; and

(C) a bona fide valid contract verifying the acquisition cost and clearly identifying the selling Persons or entities, and details any relationship between the seller and the Applicant or any Affiliation with the Development Team, Qualified Market Analyst or any other professional or other consultant performing services with respect to the Project.

(13) EXHIBIT 113. Label as EXHIBIT 113, a copy of the public notice published in a widely circulated newspaper in the area in which the proposed development will be located. Such notice must run at least twice within a two week period, except on holidays, prior to the submission of the Application to the Department. The notice must be prepared in accordance with the guidelines established in the Application Submission Procedures Manual. Such notice can not be older than 3 months from the first day of the Application Acceptance Period. In communities located in close proximity to a larger metropolitan area and whose citizens may subscribe to a local newspaper as well as a widely circulated metropolitan newspaper, the notice should be published in both newspapers.

(14) EXHIBIT 114. This exhibit must be the original copy of the completed and executed General Contractor Certification Form provided as part of the Application Submission Procedures Manual.

(b) Evaluation Factors. The Department will consider Applications for a housing credit allocation using the evaluation and point system described in this subsection and in the Application Submission Procedures Manual.

(1) Applications will be initially evaluated against the Threshold Criteria as they are accepted for filing in the Department during any Application Acceptance Period. Applications found to have Material Deficiencies will be terminated and returned to the Applicant without further review. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any oversight or failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. All Applicants may withdraw and subsequently refile an Application, as well as file a new Application before the filing deadline.

(2) Applications will then be ranked according to the points scored under the Selection Criteria in accordance with the Rules and the Application Submission Procedures Manual. Applications not scored by the Department's staff shall be deemed to have the points allocated through self-scoring by the Applicants until actually scored. This shall apply only for ranking purposes.

(3) In addition to the number of points scored, the Department's the decision to underwrite a Project shall be subject to considerations contained in subparagraphs (A) through (H) of this paragraph. The Department, Committee, and Board shall evaluate an Application for recommendation of a Commitment Notice on the basis of additional factors beyond scoring criteria. These additional factors include the items described in subparagraphs (A) through (H) of this paragraph.

(A) Project Feasibility. A determination by the Department, pursuant to the Internal Revenue Code, that the amount of credits recommended for allocation to a project is necessary for the financial feasibility of the project and its long-term viability as a qualified low income housing property. In making this determination, the Department will take into account:

(i) the project's total development costs;

(ii) actual or projected operating expenses and reserves for replacement;

(iii) project's sources of financing;

(iv) proceeds from the syndication of the tax credits;

(v) the project's debt coverage ratio and break-even occupancy; and

(vi) the project's overall conformance with the Department's underwriting guidelines as stated in the Application Submission Procedures Manual.

(B) Geographic dispersion of projects statewide shall be evaluated under one or more of clauses (i) through (iv) of this subparagraph:

(i) number of tax credit and other affordable housing projects within a city and county and the number of units attributable to such projects;



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(ii) population of a city and county in relation to the number of existing tax credit and affordable units created;

(iii) city and county population and employment growth trends; and

(iv) rental housing affordability trends.

(C) The concentration of tax credit developments and other affordable housing developments within specific markets and submarkets shall be evaluated under one or more of clauses (i) through (iv) of this subparagraph.

(i) occupancy levels projected for the proposed project and the occupancy level of existing projects;

(ii) market and submarket absorption levels;

(iii) the percentage of comparable affordable housing projects and units in the submarket; and

(iv) any other information (such as employer relocation) that could have an impact on the submarket.

(D) Site conditions shall be evaluated through a physical site inspection of the site by Departmental staff. Such inspection will evaluate the site and provide a site evaluation of “Excellent,” “Acceptable,” “Poor” or “Unacceptable”. The evaluations shall be based on condition of the surrounding neighborhood and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site’s visibility to prospective tenants and accessibility of the site via the existing transportation infrastructure and public transportation systems shall be considered. “Unacceptable” sites would include a non-mitigable environmental factor that would impact the health and safety of the residents.

(E) Experience of the Development Team as it relates to the perceived ability to successfully complete the Project will be considered.

(F) Housing type may be considered in order to serve a broad segment of the population.

(G) Project’s impact on the Low Income Housing Tax Credit Program’s goals and objectives including, but not limited to, the project’s inconsistency with local needs or its impact as part of a revitalization or preservation plan.

(H) The need to allocate credits among as many different entities as required under the Rider from the 75<sup>th</sup> Legislature.

(4) If such evaluation warrants, the Application will be forwarded to the Committee and to the Board for approval. In making its recommendation to the Board, the Department shall enumerate the reason(s) for the Project’s selection, including all discretionary factors used in making its determination. The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate. The expense of any third party underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(5) Applications which have not received a Commitment Notice at the end of the Application Round may be placed on a waiting list to be established by the Department and approved by the Committee and the Board. At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated, unless the Department shall determine to retain or act upon such Applications as provided hereinafter at §49.15 (relating to Forward Reservations; Binding Commitments). The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) Selection Criteria. Pursuant to subsection (b) of this section, Applications receiving the highest number of points in each set aside category, in each Application Acceptance Period, if a sufficient amount of the State Housing Credit Ceiling is available, will be eligible for an evaluation by an Underwriter subject to §49.4(h) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments). All Applications will be ranked according to the Selection Criteria listed in paragraphs (1) through (9) of this subsection. If no additional set-aside credits are available, the Application shall be scored and evaluated in the General Pool using the criteria to which such General Pool Applications are subject, without special set-aside scoring points being considered.

### (1) DEVELOPMENT LOCATION.

(A) EXHIBIT 201. Label as EXHIBIT 201, evidence that the subject Property is located within:

(i) a Qualified Census Tract (QCT) as defined by the Secretary of HUD and qualifies for the 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), a Difficult Development Area (DDA) or a Targeted Texas County (TTC). Developments in a QCT should submit a copy of the census map must clearly show that the proposed development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department’s Reference Manual. Applicants for Projects in a Difficult Development Area or a Targeted Texas County must indicate this designation in the space provided in the Application Submission Procedures Manual;

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(ii) a designated state or federal empowerment/enterprise zone. Such developments must submit a letter and a map from a city/county official verifying that the proposed development is located within such a designated zone. Letter should be no older than 90 days from the first day of Application Acceptance Period; or

(iii) a city-sponsored Tax Increment Financing Zone (TIF), Public Improvement District (PIDs), or other neighborhood preservation/redevelopment district organized under the Texas Local Government code. Such developments must submit all of the following documentation: a letter from a city/county official verifying that the proposed development is located within the city sponsored zone or district; a map from the city/county official which clearly delineates the boundaries of the district; and a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, or county commissioners court which documents that the designated area was:

(I) created by the local city council/county commission,

(II) targets a specific geographic area which was not created solely for the benefit of the Applicant,

and

(III) offers tangible and significant area-specific incentives or benefit over and above those normally provided by the city or county (5 points).

### (2) HOUSING NEEDS CHARACTERISTICS.

(A) The proposed development is located in a county in which 10% or more of the households are below the poverty level as set forth in the Department's "County Data Elements Guide" incorporated into the Reference Manual. Utilize the percentages in clauses (i) through (iv) of this subparagraph to assess the appropriate score:

(i) 10% to 20% of households are below the poverty level (3 points);

(ii) 21% to 31% of households are below the poverty level (5 points);

(iii) 32% to 42% of households are below the poverty level (7 points); or

(iv) 42% + of households are below the poverty level (9 points).

(B) The proposed development is located in a county in which 20% or more of the rental units have a cost burden as set forth in the County Data Elements guide. Utilize the following percentages to assess the appropriate score:

(i) 20% to 30% of rental units have a cost burden (4 points);

(ii) 31% to 41% of rental units have a cost burden (6 points); or

(iii) 42% + of rental units have a cost burden (8 points).

### (3) PROJECT CHARACTERISTICS.

(A) EXHIBIT 202. Label as EXHIBIT 202, evidence that the proposed development to be purchased qualifies as a federally assisted building within the meaning of the Code, §42(d)(6)(B), and is in danger of having the mortgage assigned to HUD, TxRD, or creating a claim on a federal mortgage insurance fund (such evidence must be a letter from the institution to which the development is in danger of being assigned); OR evidence that the Applicant is purchasing(ed) a Property owned by HUD, an insured depository institution in default, or a receiver or conservator of such an institution, or is an REO Property. Such evidence must be in the form of a binding contract to purchase from such federal or other entity as described in this paragraph, closing statements, or recorded warranty deed (5 points).

(B) EXHIBIT 203. Label as EXHIBIT 203, evidence that the proposed development is a low income building with mortgage prepayment eligibility as provided for in the Code, §42(d)(6)(C). Such evidence must be a copy of the HUD regulatory agreement which evidences the prepayment clause (5 points).

(C) The proposed development's composition offers a Unit mix which is conducive to housing large families. To qualify for these points, these Units must have at least 1000 square feet of net rentable area for three bedrooms or 1200 square feet of net rentable area for four bedrooms. Unless the building is served by an elevator, the 3 or 4 bedroom Units should not be located above the building's second floor. If the Project is a mixed-income development, only tax credit Units should be used in computing the percentage of qualified Units for this selection item.

(i) 15% of the Units in the development are three or four bedrooms (5 points); and

(ii) an additional point will be awarded for each additional 5% increment of Units that are three or four bedrooms up to 30% of the Units (a maximum of three points) (3 points).

(D) EXHIBIT 204. Label as Exhibit 204, a letter from the design architect which certifies that at least four of the following energy saving devices will be utilized in the construction of each tax credit Unit. The devices selected must be certified as included in each tax credit Unit of the Project upon Cost Certification. Letter must specify where the items will be used and what efficiency standards will be met (R-values, SEER rating, flue efficiencies, etc.) (3 Points):

(i) ceiling fans in living room and each bedroom;

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- (ii) insulation of at least R-19 for walls and R-30 for ceilings;
- (iii) solar screens;
- (iv) gas heating system with a minimum 80% flue efficiency;
- (v) energy efficient air conditioning system with a 12 SEER or above rating;
- (vi) dual pane insulating, low-e windows;
- (vii) evaporative cooling system; or
- (viii) utilization of appliances and residential light fixtures that qualify for the US EPA and the US

Department of Energy's Energy Star Label. At a minimum, this shall include the installation of programmable thermostats, water heaters, refrigerators and dishwashers in each unit.

(E) The proposed development provides low density housing of less than 16 Units per acre or as follows:

- (i) 16 Units or less per acre (6 points); or
- (ii) 17 to 20 Units per acre (4 points).

(F) The subject Project is an existing Residential Development without maximum rent limitations or set-asides for affordable housing seeking rehabilitation credits. If maximum rent limitations had existed previously, then the restrictions must have expired at least one year prior to the date of Application to the Department (8 points).

(G) The subject Project is a mixed-income development comprised of both market rate Units and qualified tax credit Units. To qualify for these points, the project must be located in a submarket where the average rents for comparable market rate units are at least 10% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. Additionally, the proposed rents for the market rate units in the project must be at least 5% higher on a per net rentable square foot basis than the maximum allowable rents under the Program.

- (i) Project's Applicable Fraction is no greater than 75% (6 points).
- (ii) Project's Applicable Fraction is no greater than 60% (10 points).

(H) EXHIBIT 205. Label as EXHIBIT 205, evidence that the proposed historic residential development has received an historic property designation by a federal, state or local governmental entity. Such evidence must be in the form of a letter from the designating entity identifying the development by name and address and stating that the project is:

- (i) listed in the National Register of Historic Places under the U.S. Department of the Interior in accordance with the National Historic Preservation Act of 1966;
- (ii) located in a registered historic district and certified by the U.S. Department of the Interior as being of historic significance to that district;
- (iii) identified in a city, county, or state historic preservation list; or
- (iv) designated as a state landmark (6 points).

(I) Property Owner will set-aside Units for households with incomes at 50% or less of Area Median Gross Income (AMGI). The rents for these Units must not be higher than the allowable tax credit rents at the 50% AMGI level. The property owner will set aside Units at 50% AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. For the purposes of this subparagraph (maintaining the promised percentage of set aside 50% AMGI Units), if at re-certification the tenant's household income exceeds 140% of the 50% AMGI level, then the Unit remains a 50% AMGI Unit until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the over 50% AMGI Unit is replaced, then the rent for the previously qualified 50% AMGI Unit may be increased under the LIHTC requirements. Rent increases, if any, should comply with lease provisions and local tenant-landlord laws. If the Project is a mixed-income development, only tax credit Units should be used in computing the percentage of qualified Units for this selection item. Utilize the percentages in clause (i) through (ii) of this subparagraph to assess the appropriate score.

- (i) four points will be awarded for the first 10% of the Units in the development that are set-aside for tenants with incomes at 50% or less of AMGI (4 points);and
- (ii) an additional point will be awarded for every 5% of additional Units set-aside for tenants with incomes at 50% or less of AMGI up to a maximum of four points (4 points).

(J) Proposed development is comprised of fourplexes in clusters of four or more buildings or Town Home development of at least 16 Units. To qualify for these points the development must be on contiguous property under common ownership, management, and Control and must have a density of no more than 16 Units per acre (5 points).

(K) EXHIBIT 206. Label as EXHIBIT 206, for rehabilitation evidence that a majority of the development's residential Units, as of the end of the Application Acceptance Period, are vacant and uninhabitable. Such evidence must

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be in the form of a letter and report from the local municipal authority citing substantial code violations. To qualify for these points, the Applicant or its Affiliates must not have owned a significant interest in, or have had Control of the Project during the period in which such Units were rendered uninhabitable (4 points).

(L) EXHIBIT 207. Label as EXHIBIT 207, evidence from the local municipal authority stating that the proposed development fulfills a need for additional affordable rental housing as evidenced in a local Consolidated Plan, Comprehensive Plan, State Low Income Housing Plan or other planning document and is supported by the local municipal authority. If the State Low Income Housing Plan is utilized for this exhibit, then a letter from the local municipal authority stating that there is no local plan and that the city supports the state plan must be submitted with the letter from the state (5 points).

(M) The Project is a Small Development. A Small Development is defined as a Project consisting of not more than 36 multifamily Units, which is not a part of, or contiguous to, a larger Project. A Project may not receive points for this characteristic if it would otherwise qualify as a Rural Project (5 points).

### (4) SPONSOR CHARACTERISTICS.

(A) EXHIBIT 208. Label as EXHIBIT 208, evidence that the Project Owner's general partner, General Contractor or their principals have a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel). Evidence must be one of the following documents: AIA Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other appropriate documentation verifying that the general partner, General Contractor or their principals have the required experience. While points may be awarded for experience under §49.6(c)(4)(A) during the application process, the criteria and conditions related to a General Contractor as outlined in §49.8(c) of this title (relating to Housing Credit Allocations) must be met in order to receive a final allocation of credits. If the General Contractor or its principals is shown not to have the required experience upon review of documents required pursuant to §49.8(c), then the conditions of the Commitment Notice or carryover agreement will not have been met and the final allocation of credits may be denied. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least \$6,000 of direct hard cost per unit.

(i) The evidence must clearly indicate:

(I) that the project has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion.);

(II) that the names on the forms and agreements tie back to the ownership entity, general partner, general contractor and their respective principals as listed in the Application; and

(III) the number of units completed or substantially completed.

(ii) The term "successfully" is defined as acting in a capacity as the general contractor or developer of:

(I) at least 100 residential units or comparable commercial property; or

(II) at least 36 residential units or comparable commercial property if the project applying for credits is a Rural Project. (10 points).

(B) EXHIBIT 209. Label as EXHIBIT 209, evidence that a Historically Underutilized Business ("HUB") as certified by the General Services Commission is the Project Owner or Controls the Project Owner. With respect to the filing of an Application and the development, operation and ownership of a Project, the historically underutilized person or persons whose ownership interests comprise a majority of a corporation, partnership, joint venture or other business entity, must maintain this majority and must demonstrate regular, continuous, and substantial participation in the operation and management activities of the entity. Likewise, with regard to a sole proprietorship, the individual who comprises the sole proprietorship must demonstrate regular, continuous, and substantial participation in the development, operation and ownership of the Project. The Department shall, during and after the Application Round, monitor those individuals whose purported ownership interest(s) and participation form the basis upon which the designation of HUB is being claimed and may require the submission of additional documentation as required to verify said evidence. The Department's goal is to have substantive participation by those individuals whose purported ownership interest(s) and participation form the basis which the designation as a HUB is claimed. A determination by the Department that there has been a material misrepresentation as to such participation or that insufficient evidence has been provided to substantiate such participation will be final and points awarded for HUB participation will be withdrawn accordingly. The following documentation must be provided to qualify for these points:

(i) certification from the General Services Commission that the Person is a HUB; and

(ii) evidence of regular, continuous and substantial participation. This evidence shall include, but not be limited to, the agreement to personally guarantee the interim construction loan secured relative to the development of a Project (and to personally provide all other guarantees to the equity investor) by the person or persons whose purported

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ownership interest(s) and participation form the basis upon which the designation of a HUB is being claimed. Any such guarantee wherein an Affiliate, partner and or Beneficial Owner of the guarantor agrees to indemnify, in whole or in part, the guarantor from the liability arising from the guarantee, shall not constitute said evidence (5 points).

(5) **PARTICIPATION OF LOCAL TAX EXEMPT ORGANIZATIONS. EXHIBIT 210.** Evidence that the Property owner has an executed agreement with a Local Tax Exempt Organization for the provision of special supportive services for the tenants. The supportive service will be included in the Declaration of Land Use Restrictive Covenants (“LURA”). (Up to 5 points)

(A) The services must provide a benefit that would not be readily available to the tenants if they were not residing in the development.

(B) Evidence of each organization’s tax exempt status is required.

(C) The supportive services will be evaluated based upon the criteria provided in clauses (i) through (v) of this subparagraph.

(i) **Cost of Services** – The cost of the service to the Project Owner is included in the Project’s operating budget and proforma and the costs are reasonable for the benefit derived by the tenants.

(ii) **Availability** - Services provided on site or services provided with transportation to another location.

(iii) **Duration of Contract** - All services must be fully described (including cost, duration, provider, experience of provider, benefit to tenants, and anticipated tenant population served) in a fully executed contract between the service provider and the project owner with a duration of no less than five years.

(iv) **Experience of Service Provider** - The Department will evaluate the experience of the organization as well as the professional and educational qualifications of the individuals delivering the services.

(v) **Appropriateness** - Services must be appropriate and provide a tangible benefit in enhancing the standard of living of a majority of tenants.

(6) **TENANT POPULATIONS WITH SPECIAL HOUSING NEEDS.**

(A) This criterion applies to elderly Projects which must provide significant facilities and services specifically designed to meet the physical and social needs of the residents. Significant services may include congregate dining facilities, social and recreation programs, continuing education, welfare information and counseling, referral services, transportation and recreation. Other attributes of such Projects include providing hand rails along steps and interior hallways, grab bars in bathrooms, routes that allow for barrier-free travel, lever type doorknobs and single lever faucets. All multistory buildings (two or more floors) must be served by an elevator. Individual Units shall not be multistory. Elderly Projects must not contain any Units with three or more bedrooms. Such a Project must conform to the Federal Fair Housing Act and must be a Project which:

(i) is intended for, and solely occupied by Persons 62 years of age or older; or

(ii) is intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one person who is 55 years of age or older; and

(iii) adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older (10 points).

(B) **EXHIBIT 211.** Label as EXHIBIT 211, evidence which establishes that Units will be provided for persons with physical or mental disabilities as described in clause (i) or (ii) of this subparagraph. The points for clause (i) and (ii) are mutually exclusive.

(i) The Project Owner agrees to set aside Units for Persons with Disabilities. The Department will require a minimum of nine months during which the set aside Units must either be occupied by tenants who are physically or mentally disabled or held vacant while being marketed to such tenants. The nine month period will begin on the date that each building receives its certificate of occupancy. For buildings which do not receive a certificate of occupancy, the nine month period will begin on the placed in service date as provided in the Cost Certification Procedures Manual. When a qualified tenant is located, the Project Owner will be responsible for adapting the Unit per the tenant's requirements. The cost of adapting the Unit will be borne by the Project Owner. If the Project Owner is unable to locate qualified Persons with Disabilities following a good-faith effort throughout the nine month set aside period, then the Units may be rented to tenants without disabilities, provided that the next available Unit (from among those set aside for Persons with Disabilities) shall first be made available to Persons with Disabilities. To comply with this provision, the Project Owner must maintain a waiting list of qualified tenants with disabilities throughout the Compliance Period. Each time a Unit set aside for Persons with Disabilities becomes available, the Project Owner must contact an individual on the waiting list and/or provide notice to local service providers that the Unit is available. If the waiting list or the local service provider cannot locate a qualified tenant for the next available Unit, then the Unit may be rented to a tenant without disabilities.

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The documentation requirements at the time of Application and the point system for this clause are contained in subclauses (I) through (IV) of this clause (documentation for all three subclauses, (I) through (III), must be provided):

(I) evidence verifying that Adaptable Dwelling Units will be specifically set aside for persons with physical or mental disabilities. Such evidence for physical disabilities must be in the form of a certification from an accredited architect stating the number of Units which are/will be designed to meet American National Standards for buildings and facilities providing accessibility and usability for Persons with Disabilities (ANSI A117.1 - 1986) and will conform to the Fair Housing Act. Such evidence for persons with mental disabilities must be in the form of a contract to provide appropriate supportive services for persons with mental disabilities between the Project Owner and an experienced service provider;

(II) a copy of the section from the market study which clearly establishes that there is a demand for the percentage of Units being set aside for Persons with Disabilities; and

(III) a copy of the Project Owner's marketing plan for Persons with Disabilities which conforms to the guidelines provided in the Application Submission Procedures Manual.

(IV) The point system for this clause is:

(-a-) at least 7% of the Units are set-aside for persons with physical or mental disabilities (5 points); or

(-b-) at least 10% of the Units are set-aside for persons with physical or mental disabilities (8 points).

(ii) Submit evidence verifying that the Project provides Units specifically accessible to persons with physical, visual or hearing disabilities as required by §504 of the Rehabilitation Act of 1973. As required by §504, a one time inspection and corresponding accessibility transition plan will be required upon completion of construction. Project Owners making this election must also comply with the Fair Housing Act. The documentation requirements at the time of Application and the point system for this clause are contained in subclauses (I) through (IV) of this clause (documentation for all three subclauses, (I) through (III), must be provided):

(I) a certification from an accredited architect stating the number of Units which are/will be accessible per the requirements of §504 as governed by the Uniform Federal Accessibility Standards (UFAS); and

(II) a copy of the section from the market study which clearly establishes that there is a demand for the percentage of Units being set aside for Persons with Disabilities; and

(III) a copy of the Project Owner's marketing plan for Persons with Disabilities which conforms to the guidelines provided in the Application Submission Procedures Manual.

(IV) The point system for this clause is:

(-a-) At a minimum, 5% of the Units must be usable for persons with mobility impairments and 2% of the Units shall be made accessible for people with hearing or visual impairments (5 points); or

(-b-) At a minimum 10% of the Units must be usable for persons with mobility impairments and 2% of the Units shall be made accessible for people with hearing or visual impairments (8 points).

(C) EXHIBIT 212. Label as EXHIBIT 212, evidence that the Project is designed solely for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist tenants in locating and retaining permanent housing. Such evidence must include a detailed narrative describing the type of proposed housing; a referral agreement with an established organization which provides services to the homeless; and a marketing plan designed to attract qualified tenants and housing providers, as well as a list of supportive services (15 points).

(7) PUBLIC HOUSING WAITING LISTS. EXHIBIT 213. Label as EXHIBIT 213, evidence that the Property owner has committed in writing to the local public housing authority (PHA) the availability of Units and that the Property owner agrees to consider households on the PHA's waiting list as potential tenants. Evidence of this commitment must include all of the following documentation:

(A) a copy of the Property owner's letter to the PHA. If no PHA is within the locality of the development, the Property owner must utilize the nearest authority or office responsible for administering Section 8 programs;

(B) a copy of the marketing plan submitted with letter to the local PHA;

(C) verification of receipt by the PHA in the form of certified return receipt or overnight mail receipt; and

(D) a letter received from an appropriate municipal authority or local PHA stating the need for additional affordable housing Units within its jurisdiction (3 points).

(8) SUBSTANTIAL READINESS TO PROCEED. EXHIBIT 214. Label as EXHIBIT 214, evidence of substantial readiness to proceed. Such evidence must be in the form of an enforceable construction financing commitment from a regulated financial institution that is actively and regularly engaged in the business of lending money. Such a

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commitment must be a written approval of a loan or grant (i.e., preliminary approval by the lender's loan committee) and be subject only to conditions fully under the control of the Applicant to satisfy (excluding the allocation of tax credits) (4 Points).

### (9) BONUS POINTS.

(A) EXHIBIT 215. Label as Exhibit 215, evidence that Sponsor agrees to provide a right of first refusal to purchase the Project upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, § 42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department; and an individual tenant with respect to a single family building or a tenant cooperative and/or a resident management corporation in the Project or other association of tenants in the Project with respect to multifamily developments (together, including the tenants of a single family building, a "Tenant Organization"). Sponsor may qualify for this bonus by agreeing that the LURA with respect to the Project will, in substance, contain the following terms.

(i) Upon the earlier to occur of:

(I) the Sponsor's determination to sell the Project, or

(II) the Sponsor's request to the Department, pursuant to §42(h)(6)(I) of the Code, to find a buyer who will purchase the Project pursuant to a "qualified contract" within the meaning of §42 (h)(6)(F) of the Code, the Sponsor shall provide a notice of intent to sell the Project ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Sponsor determines that it will sell the Project at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period.

(ii) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Project only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(I) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. § 92.1 (a "CHDO") and is approved by the Department,

(II) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(III) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iii) After the later to occur of:

(I) the end of the Compliance Period; or

(II) two years from delivery of a Notice of Intent, the Sponsor may sell the Project without regard to any right of first refusal established by the LURA if no offer to purchase the Project at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of such offer without the sale having occurred, provided that the failure to close within such 120-day period shall not have been caused by the Sponsor or matters related to the title for the Project.

(iv) At any time prior to the giving of the Notice of Intent, the Sponsor may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Project for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Project by such organization in accordance with and subject to the priorities set forth in paragraph (ii) of this section.

(v) The Department shall, at the request of the Sponsor, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Project at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in clause (ii) of this subparagraph (5 points).

(B) Application is received within the first ten working days of the Application Acceptance Period (2 points).

(d) Final Ranking. The Department will evaluate Projects according to the strength of the Project in meeting the Threshold and Selection Criteria. In the event that two or more Applications receive the same number of points in any given set-aside category, the Department in addition to factors outlined in §49.4(h) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) will utilize the following factors in the order presented in paragraphs (1)through(7) of this subsection in making a determination as to which Project will receive a preference in consideration for a tax credit commitment:

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(1) which serve the lowest income tenants;

(2) which serve low income tenants for the longest period of time, in the form of a longer Compliance Period and/or extended low income use period (as set forth in the Extended Low Income Housing Commitment Agreement);

(3) which is a Special Housing Project as defined in §49.2 of this title (relating to Definitions);

(4) which have substantial community support as evidenced by the commitment of local public funds toward the construction, rehabilitation and acquisition and subsequent rehabilitation of the Project;

(5) which demonstrates the highest substantial readiness to proceed as evidenced by the Selection Criteria, more specifically provided for in subsection (c)(8) of this section;

(6) which provide for the most efficient usage of the low income housing tax credit on a per Unit basis; and

(7) whose Unit composition provides the highest percentage of three bedrooms or greater sized Units.

### (e) Credit Amount.

(1) The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Project throughout the Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Project by the Department. The Department will limit the allocation of tax credits to no more than \$1.2 million per Project or \$1.8 million per Applicant. For these purposes this limitation will apply to all Affiliates of any Applicant, developer, Project Owner, general partner, sponsor or their Affiliates or related entities unless otherwise provided for by the Department. Tax Exempt Bond Project Applications are not subject to the per Project and per Applicant credit limitations.

(2) In making determinations with respect to the limitation the Department may take into account such factors as the percentage of interest held by a particular individual or any Affiliate thereof in a Project, the amount of fees or other compensations paid to a particular individual or any Affiliate thereof with respect to a Project, any other financial benefits, either directly or indirectly through Beneficial Ownership received by a particular individual or any Affiliate thereof with respect to a Project. The Committee, in its sole discretion, may allocate credits to a Project Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Project's financial viability as a qualified low income Project. The limitation does not apply:

(A) to an entity which raises or provides equity for one or more Projects, solely with respect to its actions in raising or providing equity for such Projects (including syndication related activities as agent on behalf of investors);

(B) to the provision by an entity of "qualified commercial financing" within the meaning of the Code, §49(a)(1)(D)(ii) (without regard to the 80% limitation thereof);

(C) to a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Project by such organization consists of the provision of loan funds or grants; and

(D) to a Project Consultant with respect to the provision of consulting services.

### (f) Limitations on the Size of Projects.

(1) Minimum Project size will be limited to 16 units unless otherwise provided for under the Ineligible Building Types definition.

(2) Rural Projects involving new construction must not exceed 76 Units. All other Projects involving new construction or requesting a combination of rehabilitation and new construction tax credits will be limited to 250 Units. (248 Units if four-plexes).

### (g) Tax Exempt Bond Financed Projects.

(1) Tax Exempt Bond Project Applications are also subject to evaluation under the QAP and Rules and the requirements and underwriting review criteria described in the Application Submission Procedures Manual. Such projects must meet all Threshold Criteria requirements stipulated in the most recently approved QAP and Rules. Tax Exempt Bond Financed Projects are not subject to the Selection Criteria and related items and are not required to submit such documentation. Tax Exempt Bond Project Applications must demonstrate the Project's consistency with the bond issuer's consolidated plan or other similar planning document. Consistency with the local municipality's consolidated plan or similar planning document must also be demonstrated in those instances where the city or county has a consolidated plan.

(2) Tax Exempt Bond Project Applications are subject to the size restrictions specified in §49.6(f).

(3) Tax Exempt Bond Project Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of such services will be included in the Declaration of Land Use Restrictive Covenants ("LURA").

(4) The issuer (if other than the Department) may, at its discretion, enter into a contractual agreement to allow the Department to underwrite the Project for financial feasibility. If the Department is not the issuer and does not have



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such an agreement, it will require evidence that the issuer has underwritten the Project for financial feasibility in accordance with the Department's guidelines contained in the Application Submission Procedures Manual. The Department will review the issuer's feasibility determination and may make such changes in the amount of credits to be taken as are appropriate under those guidelines. In the absence of a contractual agreement between the issuer and the Department or evidence that the issuer has underwritten the Project, the Department will underwrite the Project and may make such changes in the amount of credits to be taken as are appropriate under the Department's guidelines.

(5) Tax Exempt Bond Project Applications are subject to review and approval by the Ad Hoc Tax Credit Committee of the concentration of low income Projects within specific markets or submarkets, geographic dispersion of multifamily housing in any particular market or submarket and site conditions.

(6) If the Department determines that all requirements have been met, the Ad Hoc Tax Credit Committee, without further action, shall authorize the Department to issue an appropriate notice to the Sponsor that the Project satisfies the requirements of the QAP and Rules in accordance with §42(m)(1)(D).

(h) Adherence to Obligations. All representations, undertakings and commitments made by an Applicant in the applications process for a Project, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Project, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Project, shall be reflected in the LURA. All such representations are enforceable by the Department, including enforcement by administrative penalties for failure to perform as stated in the representation and enforcement by inclusion in deed restrictions to which the Department is a party.

### §49.7. Compliance Monitoring.

(a) The Code, §42 (m)(1)(B)(iii), requires each State Allocating Agency to include in its "Qualified Allocation Plan" a procedure that the agency (or an agent or other private Contractor of such agency) will follow in monitoring Projects for noncompliance with the provisions of the Code, §42 and in notifying the Internal Revenue Service (the "Service"), or its successor, of such noncompliance of which such agency becomes aware. This procedure does not address forms and other records that may be required by the Service on examination or audit.

(b) The Department will also monitor compliance with any additional covenants made by the Project Owner in the Extended Low Income Housing Commitment Agreement.

(c) The owner of a low income housing Project must keep records for each qualified low income building in the Project showing:

(1) the total number of residential rental Units in the building (including the number of bedrooms and the size in square feet of each residential rental Unit);

(2) the percentage of residential rental Units in the building that are low income Units;

(3) the rent charged on each residential rental Unit in the building including documentation to support the utility allowance;

(4) the number of occupants in each low income Unit;

(5) the low income Unit vacancies in the building and information that shows when, and to whom, the next available Units were rented;

(6) the annual income certification of each low income tenant per Unit, in the form designated by the Department in the Compliance Reference Guide, as may be amended;

(7) documentation to support each low income tenant's income certification, consistent with the verification procedures required by HUD under §8 of the United States Housing Act of 1937 (§8). In the case of a tenant receiving housing assistance payments under §8, the documentation requirement is satisfied if the public housing authority provides a statement to the Project Owner declaring that the tenant's income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Reference Guide;

(8) the Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period;

(9) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under the Code, §42(d), (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project); and

(10) additional information as required by the Department.

(d) Record retention provision. The owner of a low income housing Project is required to retain the records described in subsection (c) of this section for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the tax Credit Period must be retained for at least six years

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beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

### (e) Certification and Review.

(1) On or before February 1st of each year, the Department will send each Project Owner of a completed Project an Owner's Certification of Program Compliance to be completed by the Owner and returned to the Department on or before the first day of March of each year in the Compliance Period. Any Project for which the certification is not received by the Department, is received past due, or is incomplete, improperly completed or not signed by the Project Owner, will be considered not in compliance with the provisions of the Code. The Owner Certification of Program Compliance shall cover the proceeding calendar year and shall include the following statements of the Owner:

(A) the Project met the minimum set-aside test which was applicable to the Project;

(B) there was no change in the Applicable Fraction of any building in the Project, or that there was a change, and a description of the change;

(C) the owner has received an annual income certification from each low income tenant and documentation to support that certification;

(D) each low income Unit in the Project was rent-restricted under the Code, §42(g)(2) and Internal Revenue Service Final Regulation §1.42 - 10 regarding utility allowances;

(E) all Units in the Project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under the Code, §42(i)(3)(B)(iii));

(F) each building in the Project was suitable for occupancy, taking into account local health, safety, and building codes;

(G) either there was no change in the Eligible Basis (as defined in the Code, §42(d)) of any building in the Project, or that there has been a change, and the nature of the change;

(H) all tenant facilities included in the Eligible Basis under the Code, §42(d), of any building in the Project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) if a low income Unit in the Project became vacant during the year, reasonable attempts were, or are being, made to rent that Unit or the next available Unit of comparable or smaller size to tenants having a qualifying income before any other Units in the Project were, or will be, rented to tenants not having a qualifying income;

(J) if the income of tenants of a low income Unit in the Project increased above the limit allowed in the Code, §42(g)(2)(D)(ii), the next available Unit of comparable or smaller size in the Project was, or will be, rented to tenants having a qualifying income;

(K) a LURA including an extended low income housing commitment agreement as described in the Code, §42(h)(6)(B), was in effect for buildings subject to the Revenue Reconciliation Act of 1989, §7106(c)(1) (generally any building receiving an allocation after 1989);

(L) no change in the ownership of a Project has occurred during the reporting period;

(M) the Project Owner has not been notified by the Internal Revenue Service that the Project is no longer "a qualified low income housing project" within the meaning of the Code, §42; and

(N) the Project met all terms and conditions which were recorded in the LURA, or if no LURA was required to be recorded, the Project met all representations of the Project Owner in the Application for credits.

### (2) Review.

(A) The Department will review each Owner's Certification of Program Compliance for compliance with the requirements of the Code, §42.

(B) Each year, the Department will perform monitoring reviews of at least 20% of the low income housing Projects. A monitoring review will include an inspection of the income certification, the documentation the Project Owner has received to support that certification, the rent record for each low income tenant, and any additional information that the Department deems necessary, for at least 20% of the low income Units in those Projects. The Department shall give reasonable notice to the Project Owner that an inspection will occur; however, the Projects and records to be reviewed will be selected by the Department in its discretion. Monitoring reviews will be performed at the location of the Project, unless the Project is required to have fewer than ten low income Units.

(C) The Department may, at the time and in the form designated by the Department, require the Project Owners to submit for compliance review, information on tenant income and rent for each low income Unit, and may require a Project Owner to submit for compliance review a copy of the income certification, the documentation the Project Owner has received to support that certification and the rent record for any low income tenant.

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(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the TxRD, whereby the TxRD agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the TxRD under its §515 program. Owners of such buildings may be excepted from the review procedures of paragraph (2)(B) or (C) of this subsection or both; however, if the information provided by TxRD is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the Project Owner must provide the Department with additional information.

(f) Inspection provision. The Department retains the right to perform an on site inspection of any low income housing Project including all books and record pertaining thereto through either the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment Agreement, whichever is later. An inspection under this subsection may be in addition to any review under subsection (e)(2) of this section.

(g) Notices to Owner. The Department will provide prompt written notice to the owner of a low income housing Project if the Department does not receive the certification described in subsection (e)(1) of this section or discovers through audit, inspection, review or any other manner, that the Project is not in compliance with the provisions of the Code, §42. The notice will specify a correction period which will not exceed 90 days, during which the owner may respond to the Department's findings, bring the Property into compliance, or supply any missing certifications. The Department may extend the correction period for up to six months if it determines there is good cause for granting an extension. If any communication to the Project Owner under this section is returned to the Department as unclaimed or undeliverable, the Project may be considered not in compliance without further notice to the Project Owner.

(h) Notice to the Internal Revenue Service.

(1) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823, Low Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner, but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the Project Owner has corrected the noncompliance or has otherwise responded to the Department's findings.

(2) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain the certification and records described in this section for three years from the end of the calendar year the Department receives the certifications and records.

(i) Notices to the Department.

(1) A Project Owner must notify the Department in writing prior to any sale, transfer, exchange, or renaming of the Project or any portion of the Project, and this notification requirement shall be included in a LURA with respect to each Project. For Rural Projects that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any apportionment of the entire tax credit development.

(2) A Project Owner must notify the Department in writing of any change of address to which subsequent notices or communications shall be sent.

(j) Liability. Compliance with the requirements of the Code, §42 is the sole responsibility of the owner of the building for which the credit is allowable. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the owner including the owner's noncompliance with the Code, §42.

(k) These provisions apply to all buildings for which a low income housing credit is, or has been, allowable at any time. The Department is not required to monitor whether a building or Project was in compliance with the requirements of the Code, §42, prior to January 1, 1992. However, if the Department becomes aware of noncompliance that occurred prior to January 1, 1992, the Department is required to notify the Service in a manner consistent with subsection (g) of this section.

### §49.8. Housing Credit Allocations.

(a) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Project throughout the Compliance Period. Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a housing credit allocation; and/or the date the building is placed in service. Any housing credit allocation amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department dependent upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), AND THE DEPARTMENT IN NO WAY OR MANNER REPRESENTS OR WARRANTS TO ANY PROJECT OWNER, SPONSOR, INVESTOR, LENDER OR OTHER ENTITY THAT THE PROJECT IS, IN FACT, FEASIBLE OR VIABLE.

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(b) When the Project Owner is in full compliance with the QAP and the Rules in this chapter, the Commitment Notice, the Carryover Allocation Procedures Manual and all fees as specified within §49.11 of this title (relating to Program Fees) have been received by the Department, the Department, if requested, shall execute a Carryover Allocation Document which has been properly completed, executed and notarized by the Project Owner. The Department shall return one executed copy to the Project Owner. Requirements for Carryover Allocations apply only to projects which receive an allocation from the State Housing Credit Ceiling.

(c) The General Contractor hired by the Project Owner must meet specific criteria as defined by the Seventy-fifth Legislature. A general contractor hired by an applicant or an applicant, if the applicant serves as general contractor must demonstrate a history of constructing similar types of housings without the use of federal tax credits. Evidence must be submitted to the Department which sufficiently documents that the general contractor has constructed some housing without the use of low income housing credits. This documentation will be required as a condition of the commitment notice or carryover agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) All Carryover Allocations will be contingent upon the following:

(1) the Project Owner's closing of the construction loan shall occur not later than June 15th of the year after the execution of the Carryover Allocation Document with the possibility of a one-time 30 day extension. All requests for extensions by Applicants shall be submitted to the Department for review. The Committee may grant extensions, in its sole discretion, on a case-by-case basis. The Committee may, in its sole discretion, waive related fees. Copies of the closing documents must be submitted to the Department within two weeks after the closing. The Carryover Allocation will automatically be revoked if the Project Owner fails to meet the aforementioned closing deadline, and all credits previously allocated to that Project will be returned to the general pool for reallocation; and

(2) the Project Owner must commence and continue substantial construction activities not later than November 15th of the year after the execution of the Carryover Allocation Document and evidence such activity in a format prescribed by the Department, (as more fully defined in the Carryover Allocation Procedures Manual), outlining progress towards placing the Project in service in an expeditious manner. All requests for extensions by Applicants shall be submitted to the Department for review, and the Committee may grant extensions, in its sole discretion, on a case-by-case basis.

(e) The Department shall not allocate additional credits to a Project Owner who is unable to provide evidence, satisfactory to the Department, of progress towards placements in service for a Project(s) that is in carryover or that has received a Determination Notice. An allocation will be made in the name of the Applicant identified in the related Commitment Notice or Determination Notice. If an allocation is made in the name of the party expected to be the general partner in an eventual owner partnership, the Department may, upon request, approve a transfer of allocation to such owner partnership in which such party is the sole general partner. Any other transfer of an allocation will be subject to review and approval by the Department. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete documentation regarding the new owner including all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant

(f) The Department shall make a housing credit allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Project Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.11 of this title (relating to Program Fees), have been received by the Department. For Tax Exempt Bond Projects, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Project with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Project Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will only occur only after the Project Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for low income housing tax credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification requests. A separate housing credit allocation shall be made with respect to each building within a Project which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a project basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Project until the issuance of IRS Form 8609s with respect to such buildings.

(g) In making a housing credit allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum applicable percentage and the maximum Qualified Basis amount, the Department

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shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The housing credit allocation made by the Department shall not exceed the amount necessary to support the extended low income housing commitment as required by the Code, §42(h)(6)(C)(i).

(h) Project inspections shall be required to show that the Project is built or rehabilitated according to required plans and specifications. At a minimum, all Project inspections must include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Project is placed in service. All such Project inspections shall be performed by the Department or by an independent, third party inspector acceptable to the Department. The Project Owner shall pay all fees and costs of said inspections.

(i) After the entire Project is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document, the Project Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. A newly constructed or rehabilitated building is not placed in service until all units in such building have been completed and certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire project, therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the new construction or rehabilitation and, if applicable, a closing statement for the acquisition of the Project as well as for the closing of all interim and permanent financing for the Project. If the Applicant does not fulfill all representations made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609 or may withhold issuance of the IRS Form 8609s until these representations are met.

### §49.9. Department Records; Certain Required Filings.

(a) At all times during each calendar year the Department shall maintain a record of the following:

- (1) the cumulative amount of the State Housing Credit Ceiling that has been reserved pursuant to reservation notices during such calendar year;
- (2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;
- (3) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;
- (4) the cumulative amount of housing credit allocations made during such calendar year; and
- (5) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) Not less frequently than quarterly during each calendar year, the Department shall publish in the Texas Register each of the items of information referred to in subsection (a) of this section.

(c) The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes housing credit allocations, the original of each completed (as to Part I) IRS Form 8609, a copy of which was mailed or delivered by the Department to a Project Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low Income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of IRS Form 8609 will be mailed or delivered to the Project Owner by the Department in the year in which the building(s) is placed in service, and thereafter the original will be mailed to the Internal Revenue Service in the time sequence in this subsection. The original of the Carryover Allocation Document will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The original of all executed Agreement and Election Statements shall be filed by the Department with the Department's IRS Form 8610 for the year a housing credit allocation is made as provided in this section.

### §49.10. Department Responsibilities.

In making a housing credit allocation under this chapter, the Department shall rely upon information contained in the Project Owner's Application to determine whether a building is eligible for the credit under the Code, §42. The Project Owner shall bear full responsibility for claiming the credit and assuring that the Project complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a Project Owner who receives a housing credit allocation from the Department will qualify for the housing credit. The Department will reject, and consider barring the Project Owner from future participation in the Department's tax credit program as a consequence thereof, any Application in which fraudulent information, knowingly false documentation or other misrepresentation has been provided. The aforementioned policy will apply at any stage of the evaluation or approval process.

### §49.11. Program Fees.

(a) Each Project Owner that submits an Application shall submit to the Department, along with such Application, a non refundable Application fee, as set forth in the Application Submission Procedures Manual.

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(b) For each Project that is to be evaluated by an independent third party underwriter in accordance with §49.6(b)(3) of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects), the Project Owner will be so informed in writing prior to the commencement of any reviews by said underwriter. The cost for the third party underwriting will be set forth in the Application Submission Procedures Manual, and must be received by the Department prior to the engagement of the underwriter. The fees paid by the Project Owner to the Department for the third party underwriting will be credited against the commitment fee established in subsection (c) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Project Owner.

(c) Each Project Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the commitment billing notice, a non refundable commitment fee, as set forth in the Application Submission Procedures Manual. The commitment fee shall be paid by cashier's check. Projects located within one of the targeted Texas counties, as indicated in the Reference Manual, will be exempt from the requirement to pay a commitment fee, in the event that Commitment Notice is issued.

(d) Each Project Owner that requests an extension of the expiration date of a Commitment Notice, or an extension of the documentation submission date for Carryover, Closing of Construction Loan, Substantial Construction Commencement, Placed in Service and Cost Certification, shall submit to the Department, along with such request, a non refundable extension fee. The amount of the extension fee shall be set forth in the Application Submission Procedures Manual. This fee shall be paid by cashier's check and shall be submitted as discussed in §49.12 of the QAP and Rules. All extensions shall be granted at the discretion of the Department.

(e) Upon the Project being placed in service, the Project Owner will pay a compliance monitoring fee in the form of a cashier's check, as set forth in the Application Submission Procedures Manual. The compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the Project.

(f) Public information requests are processed by the Department in accordance with the provisions of Texas Civil Statutes, Article 6252-17a, codified as Government Code, Chapter 552, and as amended by the Acts during the 73rd Legislature, and as may be amended from time to time. The General Services Commission and the Department determine the cost of copying, and other costs of production.

(g) The amounts of the Application fee, commitment fee, compliance monitoring fee, administrative fees, extension fee, and other applicable fees as specified in the Application Submission Procedures Manual will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses.

### §49.12. Manner and Place of Filing Applications.

(a) An Application for a Housing Credit Allocation from the State Housing Credit Ceiling may be filed at any time during the Application Acceptance Periods published periodically in the Texas Register.

(b) Applications for a Determination Notice for a Tax Exempt Bond Project may be submitted to the Department as described below in paragraphs (1) and (2):

(1) Applicants which receive advance notice of a Program Year 2001 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application per the requirements of §49.6(g) of the Qualified Allocation Plan and Rules not later than 60 days after the date of the TBRB lottery.

(2) Applicants which receive advance notice of a Program Year 2001 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit the Application fee along with Volume 1 of the Application prior to the Applicant's bond reservation date as assigned by the TBRB. All outstanding documentation required under §49.6(g) of the Qualified Allocation Plan and Rules must be submitted to the Department at least 45 days prior to the Ad Hoc Tax Credit Committee meeting at which the decision to issue a Determination Notice would be made.

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

(d) All Applications and related documents submitted to the Department shall be mailed to the Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or be delivered by hand or courier to 507 Sabine, Suite 300, Austin, Texas 78701.

### §49.13. Withdrawals, Cancellations, Amendments.

(a) A Project Owner may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation.

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(b) The Department may consider an amendment to a Commitment Notice, Determination Notice or Carryover Allocation or other requirement with respect to a Project if the revisions:

- (1) are consistent with the Code and the tax credit program;
- (2) do not occur while the Project is under consideration for tax credits;
- (3) do not involve a change in the number of points scored (unless the Project's ranking is adjusted because of such change);
- (4) do not involve a change in the Project's site; or
- (5) do not involve a change in the set-aside election.

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

- (1) the Project Owner or any member of the Development Team, or the Project, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Project Owner in the applications process for the Project;
- (2) any statement or representation made by the Project Owner or made with respect to the Project Owner, the Development Team or the Project is untrue or misleading;
- (3) an event occurs with respect to any member of the Development Team which would have made the Project's Application ineligible for funding pursuant to §49.4(f) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments), if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or
- (4) the Project Owner, any member of the Development Team, or the Project, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

### §49.14. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules in cases of natural disasters such as fires, hurricanes, tornadoes, earthquakes, or other acts of nature as declared by Federal or State authorities.

(b) The Department may amend this chapter and the Rules contained herein at any time in accordance with the provisions of Texas Civil Statutes, Article 6252-13a, codified as Government Code, Chapter 2001, and as amended by the Acts of the Seventy-third Legislature, and as may be amended from time to time.

### §49.15. Forward Reservations; Binding Commitments.

(a) Anything in §49.4 of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) or elsewhere in this chapter to the contrary notwithstanding, the Department with approval of the Board may determine to issue commitments of tax credit authority with respect to Projects from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment"). The Department may make such forward commitments:

- (1) with respect to Projects placed on a waiting list in any previous Application Round during the year; or
- (2) pursuant to an additional Application Round.

(b) If the Department determines to make forward commitments pursuant to a new Application Round, it shall provide information concerning such round in the Texas Register. In inviting and evaluating Applications pursuant to an additional Allocation Round, the Department may waive or modify any of the set-asides set forth in §49.5(a) and (b) of this title (relating to Set-Asides, Commitments and Preferences) and make such modifications as it determines appropriate in the Threshold Criteria, evaluation factors and Selection Criteria set forth in §49.6 of this title (relating to Threshold Criteria, Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects) and in the dates and times by which actions are required to be performed under this chapter. The Department may also, in an additional Application Round, include Projects previously evaluated within the calendar year and rank such Projects together with those for which Applications are newly received.

(c) Unless otherwise provided in the Commitment Notice with respect to a Project selected to receive a forward commitment or in the announcement of an Application Round for Projects seeking a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the anticipated allocation rather than in the calendar year of the forward commitment.

(d) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. No more than 15% of the per capita component of State Housing Credit Ceiling anticipated to be available in the State of Texas in a particular year shall be allocated pursuant to forward commitments to Project Applications carried forward without being ranked in the new Application Round pursuant to subsection (f) of this section. If a forward commitment shall be made with respect to

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a Project placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(e) If tax credit authority shall become available to the Department later in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Project which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Project.

(f) In addition to or in lieu of making forward commitments pursuant to subsection (a) of this section, the Department may determine to carry forward Project Applications on a waiting list or otherwise received and ranked in any Application Round within a calendar year to the subsequent calendar year, requiring such additional information, Applications and/or fees, if any, as it determines appropriate. Project Applications carried forward may, within the discretion of the Department, either be awarded credits in a separate allocation round on the basis of rankings previously assigned or may be ranked together with Project Applications invited and received in a new Application Round. The Department may determine in a particular calendar year to carry forward some Project Applications under the authority provided in this subsection, while issuing forward commitments pursuant to subsection (a) of this section with respect to others.

§49.16. Deadlines for Allocation of Low Income Housing Tax Credits.

(a) Not later than November 15 of each year, the Department shall prepare and submit to the Board for adoption the draft Qualified Allocation Plan required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program.

(b) The Board shall adopt and submit to the governor the Qualified Allocation Plan not later than January 31.

(c) The governor shall approve, reject, or modify and approve the Qualified Allocation Plan not later than February 28.

(d) An Applicant for a low income housing tax credit to be issued a Commitment Notice during the initial Application Round in a calendar year must submit an Application to the Department not later than May 15.

(e) The Board shall authorize the Department to issue a Commitment Notice for allocation for the initial Application Round of low income housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31.