

# **SUPPLEMENT FOR SEPTEMBER 6, 2012 BOARD MEETING**



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

**BOARD REPORT ITEM**  
**MULIFAMILY FINANCE**  
**September 6, 2012**

Presentation and Discussion of the new Multifamily Umbrella Rules

**REPORT ITEM**

The proposed new 10 TAC Chapter 10 is intended to repeal and replace 10 TAC Chapter 1 §1.1 concerning the 2012 Definitions and Amenities for Housing Program Activities. This change stems primarily from the Department's reorganization and consolidation of multifamily activities centralized in a single division. Staff expanded the previously named Definitions and Amenities for Housing Program Activities rule to a Uniform Multifamily Rule. Essentially, staff moved eligibility, threshold and other criteria previously in the Qualified Allocation Plan (QAP) that would be applicable across all multifamily funding sources to this general rule. Moreover, with the transfer of the Department's multifamily HOME program into the multifamily division, staff has incorporated those requirements specific to the Department's HOME funds into this Uniform Multifamily Rule and in doing so has eliminated the need for a separate rule to address the Department's HOME funding for multifamily activities. The Uniform Multifamily Rule is organized into subchapters that reflect the following:

Subchapter A – Provides general information regarding the Department's multifamily funding and also includes an expanded section on definitions which incorporates those definitions that were previously in the following rules: the QAP, the HOME multifamily program rule, Real Estate Analysis, Compliance Administration, Right of First Refusal and Qualified Contract.

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

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

Subchapter D - Includes the underwriting and loan policies relating to the Department's direct loans, other multifamily funding and the requirements thereof.

Subchapter E - This subchapter pertains to the post award requirements and corresponding documentation benchmarks as well as asset management requirements. Additionally, it includes procedural requirements on the Department's direct loans, loan closing and corresponding documents and describes the process for the disbursement of funds, including developer fees. Information regarding amendments to an application, award or LURA as well as ownership transfers can be found in this subchapter. The Right of First Refusal and Qualified Contract rules, previously housed in a separate rule, have been incorporated into this subchapter.

Subchapter F – This subchapter incorporates the Department's compliance administration and monitoring rules which includes but is not limited to material noncompliance methodology and utility allowances.

Subchapter G - This section contains information regarding Department fees and other general requirements, including but not limited to, the appeals process, adherence to obligations and the alternative dispute resolution policy. This subchapter also contains various templates and certifications that are part of the application.

For the purposes of approval by the Board, staff has divided the rules into several separate agenda items based on the division primarily responsible for administration. Additionally, the division of the rules into separate items will facilitate more organization in the public comment and in addressing the Board's questions and any possible modifications to staff's recommendations.

**BOARD ACTION REQUEST  
MULTIFAMILY FINANCE DIVISION  
SEPTEMBER 6, 2012**

Presentation, Discussion and Possible Action regarding the proposed repeal of 10 TAC Chapter 1 §1.1 concerning 2012 Definitions and Amenities for Housing Program Activities, the proposed repeal of 10 TAC Chapter 53, Subchapters A, B, H and I concerning HOME Program Rule, and a proposed new 10 TAC Chapter 10, Subchapters A, B, C and G concerning 2013 Uniform Multifamily Rules, for publication and public comment in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, the Department's Governing Board approved organizational changes on April 12, 2012, of which a key component was the consolidation of multifamily program activities in the Multifamily Finance Division to establish consistency and efficiency among all multifamily programs, and;

**WHEREAS**, the current Definitions and Amenities for Housing Program Activities rule has been expanded to include general requirements associated with the Department's multifamily funding sources, therefore it is hereby

**RESOLVED**, that the proposed repeal of the current 10 TAC, Chapter 1 §1.1 Definitions and Amenities for Housing Program Activities, the proposed repeal of 10 TAC Chapter 53, Subchapters A, B, H and I concerning HOME Program Rule and proposed new 10 TAC Chapter 10, Subchapters A, B, C and G concerning 2013 Uniform Multifamily Rules together with the preambles presented to this meeting, are approved for publication in the *Texas Register* for public comment.

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

**BACKGROUND**

*General Information:* Attached behind this Board Action Request is the 2013 proposed Uniform Multifamily Rule which reflects staff's recommendations for the Board's consideration. This rule establishes the general requirements associated in making an award of multifamily development funding. In developing and proposing this initial draft staff has undertaken a process which is continuous and ongoing. Staff hosted a roundtable discussion on June 15, 2012, to begin discussions with interested stakeholders on proposed changes to the Department's multifamily program rules. Moreover, staff launched a discussion forum on August 8, 2012, to allow interested registered users of the forum an opportunity to engage with the Department and one another and provide feedback on possible changes to eligibility, threshold and/or other requirements that may be included in the 2013 proposed Uniform Multifamily Rules. An all-day workshop was held on August 28, 2012, and additional meetings are yet to be held. It is fully anticipated that there will be extensive public comment.

Rule-Making Timeline: Upon Board approval, the draft Uniform Multifamily Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted via mail, email or facsimile between September 21<sup>st</sup> and October 22<sup>nd</sup>. There will also be consolidated public hearings during this time to garner public comment. The Uniform Multifamily Rules will be brought before the Board in November for final approval and subsequently published in the *Texas Register*.

Subchapters for this Action Request: This Board Action Request includes the subchapters, as noted below, that are part of the 2013 draft Uniform Multifamily Rule. The other subchapters (*e.g.*, Subchapters D, E and F) are found under a separate Board Action Request and include specific changes to those rules.

Subchapter A – Provides general information regarding the Department's multifamily funding and includes an expanded section on definitions which now includes those definitions that were previously in the following rules: the QAP, the HOME multifamily program rule, Real Estate Analysis, Compliance Administration and Qualified Contract.

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

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

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

Assessment of Remedial Plan: The 2013 draft Uniform Multifamily Rules as recommended by staff includes several requirements as a result of the Remedial Plan (the "Plan") filed by the Department and subsequent Memorandum Opinion and Order and Judgment entered by the court on August 7, 2012. The inclusion of the Plan requirements in this multifamily rule is not solely limited to the five-county remedial area. Staff notes that there are requirements per the Plan that are not identified in this draft rule; however, they are addressed in the 2013 Draft QAP and Compliance Administration rules that is also on the Board agenda today. The specific Plan requirements reflected in the Uniform Multifamily Rule include the items noted below. Page numbers have been indicated for ease of reference.

- Inclusion of Undesirable Area Features for development sites proposed to be located in an area that would not qualify as high opportunity and located between 301 feet – 1,000 feet from any of the following characteristics: a history of significant or recurring flooding, significant presence of blighted structures, fire hazards which will increase the fire insurance premiums for the proposed development or locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports. Proximity to such undesirable features will require disclosure by the applicant at the time of pre-application (if applicable to the program) and pre-clearance must be granted by the Department. (*Page 2 of 10 of subchapter B*)

- A certification that the development owner will adhere to any and all notices required by the Department. This certification is the result of a fair housing choice disclosure that advises prospective tenants where they can obtain more information regarding alternative housing and their rights under fair housing laws as stipulated in the Plan. (*Certification of Development Owner form in subchapter C*)

Summary of Other Proposed Changes to the Uniform Multifamily Rule: This section outlines some of the more significant recommendations by staff outside of the Plan requirements described above. Citation and page references are indicated for ease of reference.

1. **Subchapter A §10.003(b) Definitions** (*Pages 14 of 15 in subchapter A*). This section includes a provision for requests for staff determinations. Specifically, where the definitions of development, development site, new construction, rehabilitation, reconstruction, adaptive re-use and target population fail to fully account for the activities proposed in an application, an applicant may request from staff a determination explaining how staff will review an application in relation to these terms and their usage in the rules.
2. **Subchapter B §10.101 Site and Development Requirements and Restrictions** (*Page 1 of 10 in subchapter B*). Proposed new this year is a requirement for developments to be located near certain site characteristics/amenities which in the prior year were a scoring item for competitive housing tax credit applications. This section eliminates the development size maximum requirements in urban areas for new construction and adaptive reuse developments (*Page 4 of 10*). Moreover, in §10.101(b)(6)(A) the minimum unit size requirements for efficiency, one and two bedroom types have been changed and there is no distinction between general and elderly developments (*Page 8 of 10*). The unit maximum percentages per bedroom type as well as considerations for developments proposed in central business districts have been removed. The stipulation that rehabilitation developments over 40 years old are considered ineligible has also been removed.
3. **Subchapter C §10.201(a)(7) Procedural Requirements for Application Submission** (*Page 4 of 22 in subchapter C*). This section clarifies the administrative deficiency process. Specifically, it states that issues initially identified as an administrative deficiency may ultimately be determined to be beyond the scope of such based on the response provided by the applicant. While staff may, in good faith, provide an applicant with confirmation that such administrative deficiency response has been received or that such response is satisfactory, final determinations regarding the sufficiency of documentation and the distinction between material and non-material missing information are reserved for executive staff and Board. Moreover, this section includes a process relating to limited priority reviews. Specifically, if after an application is submitted the applicant identifies an error that would generally be the subject of an administrative deficiency, the applicant may request a limited priority review of such issue. The limited priority review is only intended to address those situations where staff would have difficulty identifying the clarification and such clarification is only accessible through applicant disclosure or to address those situations that involve a technical correction that would cause an application deemed non-competitive to be deemed competitive.
4. **Subchapter C §10.204(5) Required Documentation for Application Submission** (*Page 10 of 22 in subchapter C*). The experience certification requirement in this section has been modified to exclude the general contractor, when performing solely in this capacity, from qualifying for an experience certificate. To the extent a general contractor is also acting as guarantor and providing

a guarantee beyond that of a construction guarantee then such individual could provide the necessary experience for an application.

5. **Subchapter C §10.205(5) Required Third Party Reports** (*Page 18 of 22 in subchapter C*). The changes to this section clarify that an Appraisal report is required for applications claiming any portion of the building acquisition in eligible basis. Moreover, this section includes the addition of another report for new construction developments, the Civil Engineering Feasibility Study. This report was required as part of the Additional Evidence of Preparation to Proceed scoring item in the 2012 application round and staff is proposing to make the report a threshold item.
6. **Subchapter C §10.207 Waiver of Rules** (*Page 21 of 22 in subchapter C*). This section has been modified to state that requests for waivers of the rules must be submitted at or prior to the submission of the pre-application for competitive housing tax credit applications or at the time of Application submission for all other applications. Additionally, this section states that a requested waiver must establish how it is necessary to address circumstances beyond the applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirements of law.
7. **Subchapter C §10.208 Forms and Templates** (*Beginning on page 22 of subchapter C*). In prior years the various forms and templates the Department provides as part of the uniform application have been available as supplemental material to the application. This section is created to include those various forms and certifications as part of the rule. In addition, certifications that are required from the development owner and/or applicant were previously listed as part of the threshold criteria. The specific certifications are only found on the form in the proposed rule.
8. **Subchapter G §10.901 Fee Schedule** (*Page 1 of 7 in subchapter G*). This section establishes a new fee related to challenges submitted on competitive housing tax credit applications. Additionally, fees relating to Challenges to HTC Applications, Right of First Refusal, Qualified Contract Pre-Request, Qualified Contract Request, and Ownership Transfer fees have been incorporated.

**Attachment 1. Proposed new 10 TAC, Chapter 10, Subchapter A, §§10.001 - 10.004, General Information and Definitions**

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter A §§10.001 - 10.004, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to explain the purpose of the uniform multifamily rules, define terms, and provide guidance on program dates.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There will not be any economic cost to any individuals required to comply with the new sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.

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

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

**NEW RULE: Chapter 10, Subchapter A, General Information and Definitions**

*§10.001*

Purpose

*§10.002*

General

*§10.003*

Definitions

*§10.004*

Program Dates



## **Uniform Multifamily Rules**

### **Subchapter A. General Information and Definitions.**

#### **§10.001. PURPOSE.**

The rules in this chapter apply to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the “Department”) and establish the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program, including but not limited to, chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to 2013 Multifamily Housing Revenue Bond Rules) and other Department rules. This rule does not apply to any project-based rental or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this rule remain subject to this rule.

#### **§10.002. GENERAL.**

- (a) These rules may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally, Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:
- (1) Deadlines for filing Applications and other documents;
  - (2) Any additional submission requirements that may not be explicitly provided for in this chapter;
  - (3) Any applicable Application set-asides and requirements related thereto;
  - (4) Award limits per Application or Applicant;
  - (5) Any federal or state laws or regulations that may supersede the requirements of this chapter; and
  - (6) Other reasonable parameters or requirements necessary to implement a program or administer funding effectively.
- (b) *Due Diligence and Applicant Responsibility.* Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the multifamily rules or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

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

### **§10.003. DEFINITIONS.**

- (a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property administered by Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code, Chapter 2306, Internal Revenue Code, §42, the HOME Final Rule, and other Department rules as applicable.
- (1) **Adaptive Reuse**--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (*e.g.*, school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.
  - (2) **Administrative Deficiencies**--Information requested by the Department staff that is required to clarify or correct one or more inconsistencies in an Application that in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.
  - (3) **Affiliate**--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.
  - (4) **Affordability Period**--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code, §42(i)(1) and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP Developments that fail to meet program requirements. During the Affordability Period the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.
  - (5) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code, §42(b).
    - (A) For purposes of the Application, the Applicable Percentage will be projected at:

- (i) nine percent if the Development is proposed to be placed in service prior to December 31, 2013 or such timing as deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress;
  - (ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or
  - (iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.
- (B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:
- (i) the percentage indicated in the Agreement and Election Statement, if executed; or
  - (ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or
  - (iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.
- (6) **Application Acceptance Period**--That period of time during which Applications may be submitted to the Department.
- (7) **Bank Trustee**--A bank authorized to do business in this state, with the power to act as trustee.
- (8) **Bedroom**--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.
- (9) **Breakeven Occupancy**--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.
- (10) **Building Costs**--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.
- (11) **Carryover Allocation**--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and U.S. Treasury Regulations, §1.42-6.
- (12) **Carryover Allocation Agreement**--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).
- (13) **Cash Flow**--The funds available from operations after all expenses and debt service required to be paid have been considered.
- (14) **Certificate of Reservation**--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.
- (15) **Code**--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other

official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

- (16) **Code of Federal Regulations (CFR)**--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the *Federal Register*.
- (17) **Colonia**--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:
  - (A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Texas Water Code, §17.921; or
  - (B) has the physical and economic characteristics of a colonia, as determined by the Department.
- (18) **Commitment (also referred to as Contract)**--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.
- (19) **Commitment of Funds**--Occurs when the Development is approved by the Department and a Commitment is executed between the Department and a Development Owner or Applicant. For the HOME Program, this occurs when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). This may also be referred to as an Obligation.
- (20) **Comparable Unit**--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, overall condition, location, age, unit amenities, utility structure, and common amenities.
- (21) **Competitive Housing Tax Credits (HTC)**--Tax credits available from the State Housing Credit Ceiling.
- (22) **Compliance Period**--With respect to a building, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.
- (23) **Continuously Occupied**--The same household has resided in the Unit for at least twelve (12) months.
- (24) **Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")**--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Multiple Persons may be deemed to have Control simultaneously.
- (25) **Contract Rent**--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.
- (26) **Credit Underwriting Analysis Report**--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

- (27) **Debt Coverage Ratio (DCR)**--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by debt service required to be paid during the same period.
- (28) **Deobligated Funds**--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.
- (29) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.
- (30) **Developer**--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a developer fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control and receiving less than 10 percent of the total Developer fee.
- (31) **Development Site**--The area, or if scattered site, areas on which the Development is proposed to be located.
- (32) **Development**--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)
- (33) **Development Consultant or Consultant**--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, or post award documents as required by the program.
- (34) **Development Owner (also referred to as "Owner")**--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)
- (35) **Development Team**--All Persons or Affiliates thereof that play a role in the Development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.
- (36) **Direct Loan**--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.
- (37) **Economically Distressed Area**--An area that has been identified by the Water Development Board as meeting the criteria for an economically distressed area under Texas Water Code, §17.92(1).
- (38) **Effective Gross Income (EGI)**--The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.
- (39) **Efficiency Unit**--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

- (40) **Eligible Hard Costs**--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.
- (41) **Environmental Site Assessment (ESA)**--An environmental report that conforms with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.
- (42) **Executive Award and Review Advisory Committee (also referred to as the "Committee")**--The Department committee created under Texas Government Code, §2306.1112.
- (43) **Existing Residential Development**--Any Development Site which contains existing residential units at the time the Application is submitted to the Department.
- (44) **Extended Use Period**--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:
- (A) the date specified in the Land Use Restriction Agreement; or
  - (B) the date which is fifteen (15) years after the close of the Compliance Period.
- (45) **First Lien Lender**--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.
- (46) **General Contractor (including "Contractor")**--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. Prime subcontractors will also be treated as a General Contractor if any of the criteria in subparagraphs (A) and (B) of this paragraph are true (in which case, such subcontractor fees will be treated as fees to the General Contractor):
- (A) More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor ("prime subcontractors"); or
  - (B) More than 75 percent of the contract sum in the construction contract is subcontracted to three or less subcontractors, material suppliers, and equipment lessors ("prime subcontractors"); or
  - (C) The General Contractor has less than seven (7) subcontractors.
- (47) **General Partner**--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for or Control of the limited liability company.
- (48) **Governing Body**--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.
- (49) **Governmental Entity**--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.
- (50) **Gross Capture Rate**--Calculated as the Relevant Supply divided by the Gross Demand.

- (51) **Gross Demand**--The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.
- (52) **Gross Program Rent**--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.
- (53) **Guarantor**--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.
- (54) **HTC Development**--Sometimes referred to as "HTC Property." A Development using Housing Tax Credits allocated by the Department.
- (55) **Hard Costs**--The sum total of Building Cost, Site Work costs, Off-Site Construction costs and contingency.
- (56) **Historically Underutilized Businesses (HUB)**--A business that is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51 percent of the business is owned, operated, and actively controlled and managed by a minority or woman and that meets the requirements in Texas Government Code, Chapter 2161.
- (57) **Housing Contract System (HCS)**--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.
- (58) **Housing Credit Allocation**--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 10 of this title (relating to Qualified Allocation Plan).
- (59) **Housing Credit Allocation Amount**--With respect to a Development or a building within a Development, the amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period and which the Board allocates to the Development.
- (60) **Housing Quality Standards (HQS)**--The property condition standards described in 24 CFR §982.401.
- (61) **Initial Affordability Period**--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.
- (62) **Integrated Disbursement and Information System (IDIS)**--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.
- (63) **Land Use Restriction Agreement (LURA)**--An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)
- (64) **Low-Income Unit**--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department.
- (65) **Managing General Partner**--A general partner of a partnership that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability

company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

- (66) **Market Analysis**--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.
- (67) **Market Analyst**--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.
- (68) **Market Rent**--The rent for a particular Comparable Unit determined after adjustments are made to rents charged by owners of Comparable Units on properties without rent and income restrictions.
- (69) **Material Deficiency**--Any individual Application deficiency or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application.
- (70) **Material Noncompliance**--Defined as:
- (A) a Housing Tax Credit (HTC) Development located within the State of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds (30 points) in accordance with the Material Noncompliance provisions, methodology, and point system in Subchapter F of this chapter (relating to Compliance Administration);
  - (B) non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds (30 points). Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds (50 points). Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds (80 points); and
  - (C) for all programs, a Development will be in Material Noncompliance if the noncompliance is stated in Subchapter F of this chapter to be in Material Noncompliance.
- (71) **Multifamily Programs Procedures Manual**--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.
- (72) **Net Operating Income (NOI)**--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.
- (73) **Net Program Rent**--Calculated as Gross Program Rent less Utility Allowance.
- (74) **Net Rentable Area (NRA)**--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.



- (75) **Non-HTC Development**--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.
- (76) **Notice of Funding Availability (NOFA)**--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.
- (77) **Off-Site Construction**--Improvements up to the Development Site such as the cost of roads, water, sewer and other utilities to provide access to and service the Site.
- (78) **Office of Rural Affairs**--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.
- (79) **One Year Period (1YP)**--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.
- (80) **Person**--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.
- (81) **Persons with Disabilities**--With respect to an individual, means that such person has:
- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
  - (B) a record of such an impairment; or
  - (C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.
- (82) **Post Carryover Activities Manual**--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.
- (83) **Potential Demand**--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.
- (84) **Primary Market (PMA)**--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter (concerning Market Analysis requirements) from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.
- (85) **Principal**--Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:
- (A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;
  - (B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation and any individual who has Control with respect to such stock holder; and

- (C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.
- (86) **Pro Forma Rent**--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.
- (87) **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.
- (88) **Property Condition Assessment (PCA)**--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.
- (89) **Qualified Contract (QC)**--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.
- (90) **Qualified Contract Price ("QC Price")**--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.409 of this chapter (relating to Qualified Contract Requirements).
- (91) **Qualified Contract Request (Request)**--A request containing all information and items required by the Department relating to a Qualified Contract.
- (92) **Qualified Elderly Development**--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of "housing for older persons" under the federal Fair Housing Act.
- (93) **Qualified Nonprofit Organization**--An organization that meets the requirements of Texas Government Code §2306.6706 and §2306.6729, and §42(h)(5) of the Code and is seeking Competitive Housing Tax Credits.
- (94) **Qualified Nonprofit Development**--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.
- (95) **Qualified Purchaser**--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.
- (96) **Reconstruction**--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of units or less on the Development Site.
- (97) **Rehabilitation**--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural

components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

- (98) **Related Party**--Includes certain individuals or entities as defined in Texas Government Code, §2306.6702. Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.
- (99) **Relevant Supply**--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:
- (A) the proposed subject Units;
  - (B) Comparable Units in another development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(a)(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not have been presented to the Board for decision;
  - (C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
  - (D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.
- (100) **Reserve Account**--An individual account:
- (A) created to fund any necessary repairs for a multifamily rental housing Development; and
  - (B) maintained by a First Lien Lender or Bank Trustee.
- (101) **Right of First Refusal**--An Agreement to provide a right to purchase the Property to a nonprofit or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.
- (102) **Rural Area**--An area that is located:
- (A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;
  - (B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area; or
  - (C) in an area that is eligible for funding by the Texas Rural Development Office of the USDA, other than an area that is located in a municipality with a population of more than 50,000.
- (103) **Secondary Market (SMA)**--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.
- (104) **Single Room Occupancy (SRO)**--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

- (105) **Site Control**--Ownership or a current contract or series of contracts that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to require conveyance to the Applicant.
- (106) **Site Work**--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, fencing, pools and landscaping.
- (107) **State Housing Credit Ceiling**--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code and Treasury Regulation 1.42-14.
- (108) **Sub-Market**--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.
- (109) **Supportive Housing**--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt. The services offered generally address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.
- (110) **Target Population**--The designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.
- (111) **Tax-Exempt Bond Development**--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.
- (112) **Tax Exempt Bond Process Manual**--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax Exempt Bonds.
- (113) **TDHCA Operating Database**--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this title, and published on the Department's web site ([www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)).
- (114) **Third Party**--A Person who is not:
- (A) an Applicant, General Partner, Developer, or General Contractor; or
  - (B) an Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor;
  - (C) anyone receiving any portion of the administration, contractor or Developer fees from the Development,; or
  - (D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) – (C) of this paragraph.

- (115) **Total Housing Development Cost**--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation and financing of the Development.
- (116) **Transitional Housing**--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:
- (A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within 24 months; and
  - (B) is owned by a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.
- (117) **Underwriter**--The author(s) of the Credit Underwriting Analysis Report.
- (118) **Uniform Physical Condition Standards (UPCS)**--As developed by the Real Estate Assessment Center of HUD.
- (119) **Unit**--Any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.
- (120) **Unit of General Local Government**--A city, town, county, village, tribal reservation or other general purpose political subdivision of the State. For purposes of §11.9 of this title (related to Competitive Selection Criteria) Unit of General Local Government shall mean a city or county.
- (121) **Unit Type**--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than one-hundred twenty (120) square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.
- (122) **Unstabilized Development**--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider a development stabilized in the Market Study.
- (123) **Urban Area**--The area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an area described by paragraph (102)(B) of this subsection or eligible for funding as described by paragraph (102)(C) of this subsection.
- (124) **U.S. Department of Agriculture (USDA)**--Texas Rural Development Office (TRDO) serving the State of Texas.
- (125) **U.S. Department of Housing and Urban Development (HUD)-regulated Building**--A building for which the rents and utility allowances of the building are reviewed by HUD.
- (126) **Utility Allowance**--The estimate of tenant-paid utilities made in accordance with Treasury Regulation §1.42-10 and §10.607 of this chapter (relating to Utility Allowances).

(127) **Work Out Development**--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) *Request for Staff Determinations.* Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Re-use and Target Population fail to fully account for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A determination cannot be challenged by any other party.

#### **§10.004. PROGRAM DATES.**

This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to 2013 Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

- (1) Full Application Neighborhood Organization Request Date. The request must be sent no later than fourteen (14) calendar days prior to the submission of Parts 5 & 6 of the Application for Tax Exempt Bond Developments or at Application for other programs.
- (2) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. Such deadline will generally be defined in the applicable NOFA.
- (3) Notice to Submit Lottery Application Delivery Date. No later than December 14, 2012, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

- (4) Applications Associated with Lottery Delivery Date. No later than December 28, 2012 Applicants that participated in the BRB Lottery must submit the complete tax credit Application to the Department.
- (5) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).
- (6) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable). For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.
- (7) Market Analysis and Civil Engineer Feasibility Study Delivery Date. For Direct Loan Applications, the Market Analysis must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Market Analysis must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

**Attachment 1. Proposed new 10 TAC, Chapter 10, Subchapter B, §10.101, Site and Development Requirements and Restrictions**

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter B §10.101, concerning the Uniform Multifamily Rules. The purpose of the proposed new section is to provide guidance on multifamily development design and site selection for developments that receive funding or assistance from the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be thoughtful site selection and development design of affordable housing. There will not be any economic cost to any individuals required to comply with the new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.

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

The proposed new section affects Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

**NEW RULE: Chapter 10, Subchapter B, Site and Development Requirements and Restrictions**

*§10.101*

Site and Development Requirements and Restrictions



## Uniform Multifamily Rules

### Subchapter B. Site and Development Restrictions and Requirements.

#### §10.101. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS.

- (a) *Site Requirements and Restrictions.* The purpose of this section is to identify specific restrictions related to a Development Site seeking multifamily funding or assistance from the Department.
- (1) *Floodplain.* New Construction or Reconstruction Developments located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the Unit of General Local Government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments.
- (2) *Mandatory Site Characteristics.* Developments Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) services. Only one service of each type listed in subparagraphs (A) - (R) of this paragraph will count towards the number of services required. A map must be included identifying the Development Site and the location of the services by name. All services must exist or, if under construction, must be under active construction, post pad (*e.g.* framing the structure) by the date the Application is submitted:
- (A) Full service grocery store;
  - (B) Pharmacy;
  - (C) Convenience Store/Mini-market;
  - (D) Department or Retail Merchandise Store;
  - (E) Bank/Credit Union;
  - (F) Restaurant (including fast food);
  - (G) Indoor public recreation facilities, such as civic centers, community centers, and libraries;
  - (H) Outdoor public recreation facilities such as parks, golf courses, and swimming pools;
  - (I) Medical offices (physician, dentistry, optometry) or hospital/medical clinic;
  - (J) Public Schools (only eligible for Developments that are not Qualified Elderly Developments);
  - (K) Senior Center;

(L) Religious Institutions;

(M) Day Care Services (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);

(N) Post Office;

(O) City Hall;

(P) County Courthouse;

(Q) Fire; or

(R) Police Station.

(3) *Undesirable Site Features.* Development Sites with the undesirable features identified in subparagraphs (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA are exempt. For purposes of this requirement, the term 'adjacent' means sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph, staff may request a determination from the Board as to whether such feature is unacceptable.

(A) Developments located adjacent to or within 300 feet of junkyards;

(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Developments in which the buildings are located within the easement of any overhead high voltage transmission line or inside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles;

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

(G) Developments located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002.

(4) *Undesirable Area Features.* If the Development Site is located between 301 feet – 1,000 feet of any of the undesirable area features in subparagraphs (A) – (D) of this paragraph then the Applicant must disclose the presence of such feature to the Department. The standard to be applied in making a determination under this paragraph is whether the undesirable area feature is of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive Selection Criteria). For a Housing Tax Credit Application the Applicant is required to disclose the presence of such feature

at the time the pre-application (as applicable) is submitted to the Department so as to expedite the review of such information. For all other types of Applications, and for those Housing Tax Credit Applicants who did not submit a pre-application, the Applicant is required to disclose the presence of such feature at the time the Application is submitted to the Department. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application. Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the Board pursuant to §10.902 of this chapter (relating to Appeals Process). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of site ineligibility and termination of the Application cannot be appealed. The Board's decision cannot be appealed.

- (A) A history of significant or recurring flooding;
- (B) Significant presence of blighted structures;
- (C) Fire hazards that could impact the fire insurance premiums for the proposed Development; or
- (D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports.

(5) Unacceptable sites include, without limitation, those containing an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated. If the Department makes such a determination, the Applicant will be allowed an opportunity to address any identified concerns.

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

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

(A) ***General Ineligibility Criteria.***

- (i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code).
- (ii) Any Development with any building(s) with four or more stories that does not include an elevator;
- (iii) A Housing Tax Credit Development that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
- (iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);
- (v) A Development seeking Housing Tax Credits that is reasonably believed by staff to clearly not meet the general public use requirement under Treasury Regulation §1.42-9 unless the Applicant has obtained a private letter ruling that the proposed Development is permitted; or
- (vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d), requirements and proposing Rehabilitation or Reconstruction,

if the Applicant is not proposing the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) *Ineligibility of Qualified Elderly Developments.*

- (i) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;
- (ii) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or
- (iii) Any Qualified Elderly Development (including Qualified Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

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

(3) *Rehabilitation Costs.* Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, at a minimum, and will involve at least \$25,000 per Unit in Building Costs and Site Work. If financed with USDA the minimum is \$19,000 and for Tax-Exempt Bond Developments, less than twenty (20) years old, the minimum is \$15,000 per Unit. These levels must be maintained through the issuance of IRS Forms 8609.

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

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Laundry Connections;

(C) Blinds or window coverings for all windows;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

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

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which may include compact fluorescent bulbs;

- (K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);
- (L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units in Supportive Housing Developments only); and
- (M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly.

(5) *Common Amenities.*

- (A) All Developments must provide sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with:
  - (i) Developments with 16 Units must qualify for one (1) point;
  - (ii) Developments with 17 to 40 Units must qualify for four (4) points;
  - (iii) Developments with 41 to 76 Units must qualify for seven (7) points;
  - (iv) Developments with 77 to 99 Units must qualify for ten (10) points;
  - (v) Developments with 100 to 149 Units must qualify for fourteen (14) points;
  - (vi) Developments with 150 to 199 Units must qualify for eighteen (18) points; or
  - (vii) Developments with 200 or more Units must qualify for twenty-two (22) points.
- (B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site.
- (C) The common amenities and respective point values are set out in clauses (i) - (xxix) of this subparagraph. Some amenities may be restricted to a specific Target Population. An Application can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:
  - (i) Full perimeter fencing (2 points);
  - (ii) Controlled gate access (2 points);
  - (iii) Gazebo w/sitting area (1 point);
  - (iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
  - (v) Community laundry room with at least one washer and dryer for each 25 Units (3 points);
  - (vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);

- (vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);
- (viii) Swimming pool (3 points);
- (ix) Splash pad/water feature play area (1 point);
- (x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);
- (xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 30 Units loaded with basic programs, 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);
- (xii) Furnished Community room (2 points);
- (xiii) Library with an accessible sitting area (separate from the community room) (1 point);
- (xiv) Enclosed community sun porch or covered community porch/patio (1 point);
- (xv) Service coordinator office in addition to leasing offices (1 point);
- (xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);
- (xvii) Health Screening Room (1 point);
- (xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- (xix) Horseshoe pit, putting green or shuffleboard court (1 point);
- (xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot; (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or
- (xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;
- (xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
- (xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);

- (xvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);
- (xvii) Common area Wi-Fi (1 point); or
- (xviii) Twenty-four hour monitored camera/security system in each building (3 points);
- (xxix) Secured bicycle parking (1 point);
- (xxx) Green Building Certifications. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED) and National Green Building Standard (NAHB) Green. A Development may qualify for no more than four (4) points total under this clause.
  - (I) Limited Green Amenities (2 points). The items listed in subclauses (I) – (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six of the nine items listed under items (-a-) - (-i-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this item;
    - (-a-) at least 20 percent of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved greywater collection system. This can include rainwater harvested from gutters and downspouts to a storage tank or cistern where it can be treated or filtered for potable uses; untreated rainwater may be used for non-potable uses;
    - (-b-) native trees and plants installed that are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;
    - (-c-) install water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;
    - (-d-) all of the HVAC condenser units are located so they are fully shaded 75 percent of the time during summer months (i.e. May through August);
    - (-e-) install Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;
    - (-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;
    - (-g-) healthy finish materials including the use of paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;
    - (-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell

controls for all lighting not intended for 24-hour operation or required for security;

(-i-) recycling service provided throughout the compliance period.

(II) Enterprise Green Communities (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(III) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e. Certified, Silver, Gold or Platinum).

(IV) National Green Building Standard (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) *Unit Requirements.*

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

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

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

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

(iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit;

(B) *Unit Amenities.* Housing Tax Credit Applications may select amenities for scoring under this section but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax Exempt Bond Developments must include enough amenities to meet a minimum of (7 points). Applications not funded with Housing Tax Credits (*e.g.* HOME Program) must include enough amenities to meet a minimum of (4 points). The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points) and Supportive Housing Developments will start with a base score of (5 points).

(i) Covered entries (0.5 point);

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



- (iii) Microwave ovens (0.5 point);
- (iv) Self-cleaning or continuous cleaning ovens (0.5 point);
- (v) Refrigerator with icemaker (0.5 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
- (vii) Laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (1.5 points);
- (viii) Thirty (30) year shingle or metal roofing (0.5 point);
- (ix) Covered patios or covered balconies (0.5 point);
- (x) Covered parking (including garages) of at least one covered space per Unit (1 point);
- (xi) 100 percent masonry on exterior (1.5 points) (Applicants may not select this item if clause (xii) of this subparagraph is selected);
- (xii) Greater than 75 percent masonry on exterior (0.5 point) (Applicants may not select this item if clause (xi) of this subparagraph is selected);
- (xiii) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);
- (xiv) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);
- (xv) High Speed Internet service to all Units (1 point).

(7) *Tenant Supportive Services.* The supportive services include those listed in subparagraphs (A) – (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of (8 points); Applications not funded with Housing Tax Credits (*e.g.* HOME Program or other Direct Loans) must include enough amenities to meet a minimum of (4 points). The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.614 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

- (A) joint use library center, as evidenced by a written agreement with the local school district (2 points);
- (B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc. (2 points);
- (C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

- (D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);
  - (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);
  - (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);
  - (G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom course is not acceptable (1 point);
  - (H) annual health fair (1 point);
  - (I) quarterly health and nutritional courses (1 point);
  - (J) organized team sports programs or youth programs offered by the Development (1 point);
  - (K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);
  - (L) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);
  - (M) weekly exercise classes (2 points);
  - (N) twice monthly arts, crafts and other recreational activities such as Book Clubs and creative writing classes (2 points);
  - (O) annual income tax preparation (offered by an income tax prep service) (1 point);
  - (P) monthly transportation to community/social events such as lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc. (1 point);
  - (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
  - (R) specific and pre-approved caseworker services for seniors, Persons with Disabilities or Supportive Housing (1 point);
  - (S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc. and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points); and
  - (T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point).
- (8) *Development Accessibility Requirements.* All Developments must meet all specifications and accessibility requirements reflected in the Certification of Development Owner as set forth in §10.208 of this chapter (relating to Forms and Templates) and any other applicable state or federal rules and requirements.

**Attachment 1. Proposed new 10 TAC, Subchapter C, §§10.201 - 10.208, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules**

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter C §§10.201 - 10.208, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide guidance for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be qualified applicants, thorough applications, and a consistent approach to making awards of funding or assistance for affordable multifamily developments. There is the potential for some new direct cost impact as a result of the proposed adoption of the new sections due to a third party report, specifically a civil engineer feasibility study which has previously been performed at the discretion of the developer at a later stage in the process, but the difference in impact at this stage could be considered minimal. It is difficult to forecast the amount of change in economic cost to any individual required to comply with the proposed new subchapter because each development proposed is unique. However, the report is estimated to cost the applicant from \$2,000.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses, other than the movement of the civil engineer feasibility study to a different stage of the process, and the difference in impact at this stage of the process could be considered minimal. There is no anticipated difference in cost of compliance between small and large businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.

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

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

**NEW RULE: Chapter 10, Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules**

*§10.201*

Procedural Requirements for Application Submission

*§10.202*

Ineligible Applicants and Applications

*§10.203*

Public Notifications

*§10.204*

Required Documentation for Application Submission

*§10.205*

Required Third Party Reports

*§10.206*

Board Decisions

*§10.207*

Waiver of Rules for Applications

*§10.208*

Forms and Templates

## **Uniform Multifamily Rules**

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

#### **§10.201. PROCEDURAL REQUIREMENTS FOR APPLICATION SUBMISSION.**

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

(1) *General Requirements.*

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

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

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

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

(2) *Filing of Application for Tax-Exempt Bond Developments.* Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications will be considered to be one Application as identified in Texas Government Code,

Chapter 1372. Applications that receive a Certificate of Reservation from the Texas Bond Review Board (TBRB) on or before November 15 of the prior program year will be required to satisfy the requirements of the prior year QAP and Uniform Multifamily Rules. Applications that receive a Certificate a Reservation from the TBRB on or after January 2 of the current program year will be required to satisfy the requirements of the current program year QAP and Uniform Multifamily Rules.

- (A) *Lottery Applications.* For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.004 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application fee described §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.004 of this chapter.
- (B) *Waiting List Applications.* Applications designated as Priority 1 or 2 by the TBRB and receive advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. Those Applications designated as Priority 3 must submit Parts 1 - 4 within fourteen (14) calendar days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. The remaining parts of the Application and any other outstanding documentation, regardless of TBRB Priority designation, must be submitted to the Department at least seventy-five (75) calendar days prior to the Board meeting at which the decision to issue a Determination Notice would be made.
- (3) *Certification of Tax Exempt Bond Applications with New Docket Numbers.* Applications that receive an affirmative Board Determination, but do not close the bonds prior to the Certificate of Reservation expiration date, and subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the TBRB and meet the following requirements:
  - (A) The new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The Application must remain unchanged which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration; or

- (B) If there are changes to the Application as referenced in subparagraph (A) of this paragraph or if there is public opposition, the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued.
- (4) *Withdrawal of Application.* An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal or cancellation. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.
- (5) *Evaluation Process.* Priority Applications will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. Applications believed likely to be competitive are sometimes referred to as Priority Applications. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be Priority Applications may change from time to time. The Department shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.
- (6) *Prioritization of Applications under various Programs.* This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.
- (A) *De-concentration and Capture Rate.* Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:
- (i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the Texas Bond Review Board (TBRB); and
  - (ii) For all other Developments, the date the Application is received by the Department; and
  - (iii) Notwithstanding the foregoing, after July 31 a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.
- (B) *General Review Priority.* Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of

Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints.

- (7) *Administrative Deficiency Process.* The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification, correction or non-material missing information to resolve inconsistencies in the original Application. Staff will request the deficient information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, or if an e-mail address is not provided in the Application, by facsimile to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post award submissions. Issues initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, based upon a review of the response provided by the Applicant. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. However, final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.
- (A) *Administrative Deficiencies for Competitive HTC and Rural Rescue Applications.* Unless an extension has been timely requested and granted; and if Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.
- (B) *Administrative Deficiencies for all other Applications or sources of funds.* If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice then a late fee of \$500 for each business day the deficiency remains unresolved will be assessed and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination.
- (8) *Limited Priority Reviews.* If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the



Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. A limited priority review is intended to address the following:

- (A) Clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or
- (B) Technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and therefore subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

### **§10.202, INELIGIBLE APPLICANTS AND APPLICATIONS.**

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

(1) *Applicants.* An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) – (M) of this paragraph apply to the Applicant. If any of the criteria apply to any member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department’s rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

- (A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; (§2306.6721(c)(2))
- (B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application deadline;
- (C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;
- (D) has breached a contract with a public agency and failed to cure that breach;
- (E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the

scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

- (F) has been identified by the Department as being in Material Noncompliance with or has repeatedly violated the LURA or if such Material Noncompliance or repeated violation is identified during the Application review or the program rules in effect for such property as further described in Chapter 60 of this title (relating to Compliance Administration) and remains unresolved; (§2306.6721(c)(3))
- (G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;
- (H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an Application is to be made;
- (I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;
- (J) has previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations and the Party is on notice that such deobligation results in ineligibility under these rules;
- (K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of these rules and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title; or
- (L) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, voluntarily or involuntarily, that has terminated or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be terminated based upon factors in the disclosure. If, not later than 30 days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the Executive Director makes an initial determination that the person or persons should not be involved in the Application, that initial determination shall be brought to the Board for a hearing and final determination. If the Executive Director has not made and issued such an initial determination on or before the day 30 days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be

presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the following factors shall be considered:

- (i) The amount of resources in a development and the amount of the benefit received from the development;
- (ii) The legal and practical ability to address issues that may have precipitated the termination or propose termination of the relationship;
- (iii) The role of the person in causing or materially contributing to any problems with the success of the development; and
- (iv) The person's compliance history, including compliance history on other developments; and
- (v) Any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application.

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

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

- (A) A violation of Texas Government Code, §2306.1113 exists relating to Ex Parte Communication. (§2306.1113) An ex parte communication occurs, when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.
- (B) The Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or
- (C) For any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:
  - (i) At the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department),

- the Applicant or a Related Party is or has been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; (§2306.6703(a)(1)); or
- (ii) The Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in Texas Government Code, §2306.6703(a)(2) are met.

**§10.203. PUBLIC NOTIFICATIONS.** (§2306.6705(9))

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted and for all other Applications no older than three (3) months prior to the date the Application is submitted. If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

*(1) Neighborhood Organization Requests.*

- (A) In accordance with the requirements of this subparagraph, the Applicant must request from local elected officials a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site. No later than the Full Application Neighborhood Organization Request Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) or §10.004 of this chapter (relating to Program Dates) (as applicable), the Applicant must e-mail, fax or mail with return receipt requested a completed Neighborhood Organization Request letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or its ETJ, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the submission of the Application.

(2) *Notification Recipients.* No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraph (A) – (H) of this paragraph whose jurisdiction is over or whose boundaries include the Development Site. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted.

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

(B) Superintendent of the school district;

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

(D) Mayor of the municipality;

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

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

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

(H) State Senator and State Representative.

(3) *Contents of Notification.* The notification must include, at a minimum, all of the following:

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

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

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

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

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

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

#### **§10.204. REQUIRED DOCUMENTATION FOR APPLICATION SUBMISSION.**

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

- (1) *Certification of Development Owner.* This form, included in §10.208 of this chapter (relating to Forms and Templates), must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification. Applicants are encouraged to read the certification carefully as it contains certain construction and Development specifications that each Development must meet.
- (2) *Certification of Principal.* This form, included in §10.208 of this chapter, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department.
- (3) *Architect Certification Form.* This form, included in §10.208 of this chapter, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)
- (4) *Designation as Rural or Urban.* Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B) for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Notwithstanding the foregoing, an Applicant proposing a Development in a place listed as urban by the Department may be designated as located in a Rural Area if the municipality has less than 50,000 persons, as reflected in Site Demographics and Characteristics Report, and a letter or other documentation from USDA is submitted in the Application that indicates the Site is located in an area eligible for funding from USDA in accordance with §2306.004(28-a)(C). For any Development not located within the boundaries of a municipality, the applicable designation is that of the closest municipality or place.
- (5) *Experience Requirement.* Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application. Experience of multiple parties may not be aggregated to meet this requirement.
  - (A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development of 150 units or more. Acceptable documentation to meet this requirement shall include:
    - (i) an experience certificate issued by the Department in the past two (2) years; or
    - (ii) any of the items in subclauses (I) – (IX) of this clause:

- (I) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner & Contractor;
  - (II) AIA Document G704--Certificate of Substantial Completion;
  - (III) AIA Document G702--Application and Certificate for Payment;
  - (IV) Certificate of Occupancy;
  - (V) IRS Form 8609, (only one per development is required);
  - (VI) HUD Form 9822;
  - (VII) Development agreements;
  - (VIII) Partnership agreements; or
  - (IX) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience.
- (B) For purposes of this requirement any individual attempting to use the experience of another individual must demonstrate they have or had the authority to act on their behalf that substantiates the minimum 150 unit requirement.
- (i) The names on the forms and agreements in subparagraph (A)(ii) of this paragraph must tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application.
  - (ii) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing that has been in material non-compliance under the Department's rules or for affordable housing in another state, has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.
  - (iii) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.
  - (iv) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

**(6) *Financing Requirements.***

- (A) *Non-Department Debt Financing.* Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and

corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

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

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

(I) have been executed by the lender;

(II) be addressed to the Development Owner;

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

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

(V) include any required Guarantors; and

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

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

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

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

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

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

(iii) pay-in schedules;

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



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

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

**(7) *Operating and Development Cost Documentation.***

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

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

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

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

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

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

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

of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

- (F) *Rental Assistance/Subsidy.* (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.
- (G) *Occupied Rehabilitation Developments.* The items identified in clauses (i) – (vii) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied or if the Application proposes the demolition of any occupied housing. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the following is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:
- (i) at least one of the following items identified in subclauses (I) – (IV) of this clause:
    - (I) historical monthly operating statements of the Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;
    - (II) the two (2) most recent consecutive annual operating statement summaries;
    - (III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or
    - (IV) all monthly or annual operating summaries available; and
  - (ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;
  - (iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))
  - (iv) for Qualified Elderly or Supportive Housing Developments, identification of the number of existing tenants qualified under the Target Population elected under this chapter;
  - (v) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))
  - (vi) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and
  - (vii) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

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

(A) A site plan which:

- (i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
- (ii) identifies all residential and common buildings;
- (iii) clearly delineates the flood plain boundary lines and shows all easements;
- (iv) if applicable, indicates possible placement of detention/retention pond(s); and
- (v) indicates the location of the parking spaces.

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

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

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

(9) **Site Control.**

(A) Evidence that the Development Owner has the ability to compel legal title to a developable interest in the Development Site or , Site Control must be submitted. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

- (B) In order to establish Site Control, one of the following items described in clauses (i) – (iii) of this subparagraph must be provided:
- (i) a recorded warranty deed with corresponding executed settlement statement; or
  - (ii) a contract for lease with a minimum term of forty-five (45) years and is valid for the entire period the Development is under consideration for Department funding; or
  - (iii) a contract for sale, an option to purchase or a lease that includes an effective date; price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;
- (C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.
- (10) **Zoning.** (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) – (D) of this paragraph.
- (A) *No Zoning Ordinance in Effect.* The Application must include a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a Unit of General Local Government that has no zoning.
- (B) *Zoning Ordinance in Effect.* The Application must include a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.
- (C) *Requesting a Zoning Change.* The Application must include a signed release that was provided to the Unit of General Local Government agreeing to hold the Unit of General Local Government and all other parties harmless in the event that the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.
- (D) *Zoning for Rehabilitation Developments.* The Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction which addresses the items in clauses (i) - (iv) of this subparagraph:
- (i) a detailed narrative of the nature of non-conformance;
  - (ii) the applicable destruction threshold;
  - (iii) Owner's rights to reconstruct in the event of damage; and
  - (iv) penalties for noncompliance.
- (11) **Title Commitment/Policy.** A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months old as of the close of the Application Acceptance Period then a letter from the title company indicating that nothing further has transpired on the commitment or policy must be submitted.

- (A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.
- (B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(12) ***Ownership Structure.***

- (A) *Organizational Charts.* A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.
- (B) *Previous Participation.* Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved. Documentation for individual board members and executive directors, any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer fee and Units of General Local Government are all required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed and authorize the parties overseeing such assistance to release compliance histories to the Department.

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

- (A) *Competitive HTC Applications.* Applications for Competitive Housing tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.
  - (i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;
  - (ii) The Nonprofit Participation exhibit as provided in the Application;
  - (iii) A Third Party legal opinion stating:

- (I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;
  - (II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;
  - (III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;
  - (IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;
  - (V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;
  - (VI) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and
  - (VII) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:
    - (-a-) in this state, if the Development is located in a Rural Area; or
    - (-b-) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.
- (B) *All Other Applications.* Applications that involve a §501(c)(3) or (4) nonprofit General Partner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4) then they must disclose in the Application the basis of their nonprofit status.

### **§10.205 REQUIRED THIRD PARTY REPORTS.**

The Environmental Site Assessment, Property Condition Assessment and Appraisal (if applicable) must be submitted no later than the Third Party Report Delivery Date as identified in §10.004 of this chapter (relating to Program Dates) and §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis Report and Civil Engineer Feasibility Study must be submitted no later than the Market Analysis and Civil Engineer Feasibility Study Delivery Date as identified in §10.004 of this chapter and §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline the Application will be terminated. A searchable electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policies). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the

Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

- (1) *Environmental Site Assessment*. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.
  - (A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.
  - (B) If the report includes a recommendation that an additional assessment be performed then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.
- (2) *Market Analysis*. This report, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then an updated Market Analysis from the Person or organization which prepared the initial report must be submitted. The Department will not accept any Market Analysis which is more than twelve (12) months old as of the first day of the Application Acceptance Period.
  - (A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;
  - (B) Applications in the USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))
  - (C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.
- (3) *Property Condition Assessment (PCA)*. This report, required for Rehabilitation and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then an updated PCA from the Person or organization which prepared the initial report must be submitted. The Department will not accept any PCA which is more than twelve (12) months old as of the first day of the Application Acceptance Period. For Developments which

require a capital needs assessment from USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter.

- (4) *Appraisal*. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then an updated appraisal from the Person or organization which prepared the initial report must be submitted. The Department will not accept any appraisal which is more than twelve (12) months old as of the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.
- (5) *Civil Engineer Feasibility Study*. This report, required for any New Construction Development, prepared in accordance with this paragraph, that reviews site conditions and development requirements of the proposed Development.
  - (A) Executive Summary.
  - (B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey no older than six (6) months to the beginning of the Application Acceptance Period; or Category 1B - Standard Land Boundary Survey no older than twelve (12) months from the beginning of the Application Acceptance Period).
  - (C) Preliminary site plan identifying all structures, site amenities, parking and driveways, topography, drainage and detention, water and waste water utility distribution, retaining walls and any other typical or required items.
  - (D) Review of the Environmental Site Assessment.
  - (E) Review of Geotechnical Report/Study (attachment).
  - (F) Storm Water Management (Detention/Retention/Drainage).
  - (G) Topography Review (provide existing topography survey or USGS Topography).
  - (H) Site Ingress/Egress Requirements (Fire/TxDot/Median Cuts, Deceleration Lanes).
  - (I) Off-Site requirements (Utilities/Roadways/Other).
  - (J) Water/Sanitary Sewer Service Summary (attach distribution maps).
  - (K) Electric, Gas, and Telephone Service Summary (attach distribution maps).
  - (L) Zoning/Site Development Ordinances (do not include copies of ordinances).
  - (M) Building Codes/Ordinances/Design Requirements Summary (do not include copies of ordinances).
  - (N) Entitlement/Site Development/Building Permit Process Summary, Fees and Timing.



(O) Other Considerations, Conditions, Issues or Topics Relevant to Development of the Site as proposed.

**§10.206 BOARD DECISIONS.** (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

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

**§10.207. WAIVER OF RULES FOR APPLICATIONS**

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

(b) *Waivers and/or Pre-Clearance Granted by the Executive Director.* The Executive Director may waive or grant pre-clearance as provided in this rule. Even if this rule grants the Executive Director authority to waive or pre-clear a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver or pre-clear any item to the extent such requirement is mandated by statute. Denial of a waiver and/or pre-clearance by the Executive Director may be appealed to the Board in accordance

with §10.902 of this chapter (relating to Appeals Process). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

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

#### **§10.208. FORMS AND TEMPLATES.**

This section includes forms and templates to be used in the Uniform Application.

**2013 Electronic Application Filing Agreement**

Texas Department of Housing & Community Affairs (TDHCA)

Mailing Address: P.O. Box 13941, Austin, TX 78711-3941

Physical Address: 221 East 11th Street, Austin, TX 78701

This completed form must be submitted with the pre-application, or with the full Application if a pre-application is not submitted. All Application identification numbers will be assigned when pre-applications or full Applications are received. The form will be used for submitting subsequent pre-application or Application information and documents.

**APPLICANT INFORMATION**

Name of Applicant or Contact: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Applicant or Contact Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email (Owner email address required): \_\_\_\_\_

List of other email addresses of those who need to be emailed the FTP setup/login information:

Name:		Email:	
Name:		Email:	
Name:		Email:	

**DEVELOPMENT INFORMATION**

Development Name:			
Development Address:			
City:		State:	
Region:		County:	

**Select Program(s) for Application:**

	Housing Tax Credits (HTC) - Competitive 9%		Private Activity Mortgage Revenue Bond - 4% HTC
	Housing Trust Fund (HTF)		HOME Program (HOME)
	Rural Rescue Housing Tax Credits (HTC) - 9%		Other:
	Neighborhood Stabilization Program (NSP)		

This is an agreement between the Texas Department of Housing and Community Affairs and the Multifamily Housing Program Applicant to facilitate electronic submission of application documents for multifamily housing programs in accordance with the Department policy.

This agreement authorizes the Applicant to file application documents by means of electronic transmission for the duration of this Agreement and as specified by Department procedures.

This agreement must be signed by the Applicant. The term "application documents" is defined to include responses to Administrative Deficiencies issued by the Department, supplemental reports, and any documentation required to meet ongoing multifamily program review and Department reporting requirements.

The signature of the Applicant on this Agreement is deemed to appear on all electronically filed application documents as if actually so appearing.

The Applicant's electronic submission of application documents must be in the manner prescribed by the Texas Department of Housing and Community Affairs multifamily housing programs.

This Agreement is effective as of the latest date specified below and remains effective until terminated by written notification from either party.

This Agreement may be amended at any time by the execution of a written addendum to this agreement by the Applicant and the Texas Department of Housing and Community Affairs.

SIGNED on the date indicated below.

Applicant Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Please include a completed and signed copy of this document with the pre-application or Application submission.

**2013 Uniform Application Certification**

**Mailing Address: P.O. Box 13941, Austin, TX 78711-3941**

**Physical Address: 221 East 11th Street, Austin, TX 78701**

**Development Name:** \_\_\_\_\_

The undersigned hereby makes an Application to Texas Department of Housing and Community Affairs. The Applicant affirms that they have read and understand the 2013 Uniform Multifamily Rules and Qualified Allocation Plan (QAP). Specifically, the undersigned understands the requirements under Chapter 10, Chapter 11 and Chapter 12 of the Texas Administrative Code, as well as Internal Revenue Code Section 42 and Texas Government Code Chapter 2306. By signing this document, Applicant is affirming that all statements and representations made in this document, including all supporting materials, are true and correct under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §1.01 - §71.05 et seq. (VERNON 2003 & SUPP. 2007).

**By:**

\_\_\_\_\_  
*Signature of Applicant*

\_\_\_\_\_  
*Notary Public, State of*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*County of*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*My Commission Expires*

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that **[Insert Name of Applicant]** whose name is signed to the foregoing statement, and who is known to me in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this        day of        , 20        .

(SEAL)

\_\_\_\_\_  
*Notary Public Signature*

## Neighborhood Organization Request Template

[To be used as a template for meeting the requirements of §11.8 (b)(2)(A) of the Qualified Allocation Plan and §12.5 of the Multifamily Housing Revenue Bond Rules as certified in the Certification of Notifications form at Pre-Application and/or §10.203(1), as certified in the Application]

**[Date]**

**[Local Elected Official]**

**[Address]**

**[City, State, Zip]**

Dear **[Local Elected Official]**,

**[Applicant Name]** is considering a possible submission of an application for **[Name all TDHCA Programs this application is for]** through the Texas Department of Housing and Community Affairs (the “Department”). In accordance with the Department’s rules, this letter serves as a request for a list from your records of any neighborhood organizations which are on record with the county or state and whose boundaries include the following area: **[Include a detailed description of the proposed development site and/ or a map with the development site clearly outlined. For the purposes of this request ONLY, if you do not know the exact boundaries of the site that you may propose, you may expand the boundaries to include an entire city. However, all notifications must be made in accordance with §11.8(b)(2)(A) and/or §10.203(1) and/or §12.5 of the Multifamily Housing Revenue Bond Rules].**

If there are no such neighborhood organizations on record with your municipality or county, or if your office does not keep these records and you know the appropriate entity to request this list from, please respond by letter, email or fax stating such. Please respond by **[Insert date of full application submission deadline or prior]**.

Please note that this request is to ensure compliance with §§2306.6704(b)(1) and 2306.6705(9)(A) of Texas Government Code, which requires that we notify “any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development”. This notification must be made prior to submitting an application to the Department. Unfortunately, although this is a statutory requirement that must be met, there is not a specific central agency with the state that keeps a searchable list of these neighborhood organizations and their boundaries.

In general, neighborhood organization lists are kept within local municipalities; therefore, we are required to request a list of these neighborhood organizations from your office no later than **[insert deadline]** to be

eligible for the **[Insert all TDHCA Programs this application is for]**. Should we decide to submit an application, we are required to use any list you provide to identify all neighborhood organizations on record with the state or county whose boundaries include the proposed development site. We will notify all of those neighborhood organizations prior to submitting an application to the Department.

It should also be noted that if we choose to submit an application, we are required to notify you under separate letter prior to submitting the proposed application. That notification will provide details of all relevant information to the proposed application. If you do not receive this notification, it is because we have decided not to submit an application to the Department.

I thank you in advance for any assistance in meeting these statutory requirements.

Sincerely,

**[Representative of the Applicant Name]**

**[Title]**

**[Name, Address, email, fax and telephone number if not on letterhead]**

## Public Notifications Template

[To be used as a template for meeting the requirements of §11.8(b)(2)(B) of the Qualified Allocation Plan, §12.5 of the Multifamily Housing Revenue Bond Rules as certified the Certification of Notifications at Pre-Application and §10.203(2), as certified in the Certification of Notifications at Application.]

**[Date]**

**[Appropriate Individual/entity pursuant to §§11.8(b)(2)(B)(i) through (viii) and 10.203(2)(A) through (H) of the Multifamily General Rules]**

**[Address]**

**[City, State, Zip]**

Dear [xxxxxx],

**[Applicant Name]** is making an application for [Name all TDHCA Programs the application is for] with the Texas Department of Housing and Community Affairs for the **[Development name, address, city, and county]**. This **[New Construction/Reconstruction/Adaptive Reuse or Rehabilitation]** is an **[apartment, single family, townhome, high rise, duplex, scattered site, etc.]** community comprised of approximately **[#]** units of which **[% of total]** will be for low-income tenants.

There will be a public hearing to receive public comment on the proposed development. Information regarding the date, time, and location of that hearing will be disseminated at least 30 days prior to the hearing date on the Department's website.

Sincerely,

**[Representative of the Applicant Name]**

**[Title]**

**[Name, Address, email, fax and telephone number if not on letterhead]**



**CERTIFICATION OF NOTIFICATIONS**

**Development Name:** \_\_\_\_\_

**Development City:** \_\_\_\_\_

**Pursuant to §10.203 of the Uniform Multifamily Rules and/or other applicable Rules, evidence of notifications includes this sworn affidavit and the *Public Notifications Information Form*. All Applicants, or a person with signing authority for the Applicant, must complete each Part below, as applicable:**

**Part 1. Must accurately check below if a Pre-Application was submitted:**

I (We), \_\_\_\_\_ certify that:

Evidence of these notifications was submitted with the Pre-Application Threshold for the same Application and satisfied the Department's review of Pre-Application Threshold, and no additional notification was required at Application, or

A Pre-Application was submitted for this same Application and satisfied the Department's review of Pre-Application Threshold, but all required entities were re-notified as required by §10.203 of the Uniform Multifamily Rules and/or other applicable Rules, because I (we) have submitted a change in the Application, whether from Pre-Application to Application or as a result of a deficiency that reflects a total Unit increase of greater than 10% or the change of an elected official. As applicable, all changes in the Application have been made on the *Public Notifications Information Form*. I (we) certify that the notifications are not older than 3 months from the first day of the Application Acceptance Period for Competitive HTC Applications. For Tax Exempt Bonds, no older than three months prior to the date Parts 5 and 6 of the application are submitted, and for all other Applications, three months prior to the date the Application is submitted.

**Part 2. Must accurately check all appropriate boxes below if a Pre-Application was not submitted or if the Pre-Application did not satisfy the Department's review of Pre-Application threshold:**

I (We), \_\_\_\_\_ certify that:

all required requests for Neighborhood Organizations pursuant to §10.203 of the Uniform Multifamily Rules and/or other applicable Rules, were made in the format required in the Neighborhood Organization Request template by January 18, 2013, or for HOME, Housing Trust Fund, Tax Exempt Bond and Rural Rescue Developments no later than 14 calendar days prior to the submission of Parts 5 and 6.

I (We), \_\_\_\_\_ certify that:

No reply letter was received from the local elected officials by February 20, 2013 (or for HOME, Housing Trust Fund, and Tax Exempt Bond Developments by 7 days prior to the submission of the Application), and/or

A response was received from the local elected officials on or before February 20, 2013, (or for HOME, Housing Trust Fund, and Tax Exempt Bond Developments by 7 days prior to submission of the Application) and the response indicated that the local elected officials know of no Neighborhood Organizations, and/or

A response was received from the local elected officials on or before February 20, 2013, (or for HOME, Housing Trust Fund, and Tax Exempt Bond by 7 days prior to submission of the Application) and I have notified those Neighborhood Organizations as required by and §10.203(3)(A-F) and/or other applicable

Rules, and/or

- I have knowledge of other Neighborhood Organizations on record with the city, state or county whose boundaries contain the proposed Development Site and have notified those Neighborhood Organizations as required by §10.203(3)(A-F) and/or other applicable Rules, and/or
- I know of no Neighborhood Organizations within whose boundaries the Development is proposed to be located and/or
- The local elected officials referred to me (us) to another source, and I (we) requested Neighborhood Organizations from that source. If a response was received, those Neighborhood Organizations were notified as required by §10.203(3)(A-F) and/or other applicable rules; and
- All Neighborhood Organizations that were notified are correctly listed on the *Public Notifications Information Form* and all notifications were made in the format provided in the template, *Public Notifications Format (Written)*.

I (We) \_\_\_\_\_ certify that:  
in addition to all of the required Neighborhood Organizations, the following entities were notified in accordance with §10.203(2)(A-H) and/or other applicable rules. The notifications were in the format provided in the template, *Public Notifications Format (Written)*. All of the following entities were notified and are correctly listed on the *Public Notifications Information Form*:

- Neighborhood Organizations, on record with the county or state, whose boundaries include the proposed Development Site;
- Presiding officer of the board of trustees of the school district;
- Mayor of the municipality;
- All elected members of the Governing Body of the municipality;
- Presiding officer of the Governing Body of the county;
- All elected members of the Governing Body of the county;
- State Senator and State Representative.

While not required to be submitted in this Application, I have kept evidence of all notifications made and this evidence may be requested by the Department at any time during the Application review.

I (We) \_\_\_\_\_ certify that:  
the notifications are not older than 3 months from the first day of the Application Acceptance Period for Competitive HTC or not older than 3 months from Part 5 and 6 submissions for HOME, Housing Trust Fund, and Tax-Exempt Bond Developments as required under §10.203, Subchapter C.

**Part 3. Applicant must certify to the following (competitive HTC only):**

I (We) \_\_\_\_\_ certify that:  
no Neighborhood Organizations exist for which this Application would be eligible to receive points under §11.9(d)(1)(A-D) of the QAP.

By: \_\_\_\_\_  
*Signature of Applicant/Development Owner*

\_\_\_\_\_  
*Printed Name of Applicant/Development Owner*

\_\_\_\_\_  
*Date*

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this

\_\_\_\_\_ day \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public Signature*

Notary Public, State of \_\_\_\_\_

County of \_\_\_\_\_

My commission expires: \_\_\_\_\_

**Sample Resolution for Use by a Local Governing Body for Satisfying §11.3(d),  
“Greater than 30% Housing Tax Credit Units per Total Households in Census Tract”**

**ONLY FOR APPLICANTS APPLYING FOR HTC’s, AND/OR PRIVATE ACTIVITY BONDS**

Whereas, **[applicant]** has proposed a development for affordable rental housing at **[address of proposed site]** named **[name of development]** in the **[city/county of x]**; and

Whereas, **[applicant]** intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2013 Housing Tax Credits, Private Activity Bonds or TDHCA HOME funds for **[name of development]**; and

Whereas, pursuant to §11.3(d), Texas Administrative Code, we acknowledge that the proposed New Construction or Adaptive Reuse Development is located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract; therefore

Be it resolved that:

The **[city/county of x]** hereby supports the proposed **[name of development]**, and have voted specifically to approve the construction of the Development and to authorize an allocation of Housing Tax Credits for the Development.

Resolved this date....**[city/county to use its format for resolutions]**.

**NOTE: This sample resolution does not cover any other selection, eligibility or threshold criteria items that may require a local resolution for an application. Presence of a resolution based on this template does not in and of itself qualify the application for points, but is merely a template that can be used by applicants to help them work towards satisfying the requirement relating to a resolution from the local Governing Body for §11.3(d), “Greater than 30% Housing Tax Credit Units per Total Households in the Census Tract”.**

**Sample Resolution for Use by a Local Governing Body for Satisfying §11.3(c),  
“One Mile, Three Year Rule”**

**ONLY FOR APPLICANTS APPLYING FOR HOUSING TAX CREDITS AND/OR PRIVATE ACTIVITY BONDS**

Whereas, **[Applicant]** has proposed a development for affordable rental housing at **[address of proposed site]** named **[name of development]** in the **[city/county of x]**; and

Whereas, **[Applicant]** intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2013 Housing Tax Credits or Private Activity Bonds for **[name of development]**; and

Whereas, pursuant to §11.3(c), Texas Administrative Code, we acknowledge that the proposed New Construction or Adaptive Reuse Development is located one linear mile or less from a Development that serves the same type of household as the proposed Development and has received an allocation of Housing Tax Credits (or private activity bonds) for New Construction since [12/17/09 or the date that is three years prior application submission date for Private Activity Bond developments]; therefore

Be it resolved that:

The **[city/county of x]** hereby supports the proposed **[name of development]**, and have voted specifically to approve the construction of the Development and to authorize an allocation of Housing Tax Credits for the Development.

Resolved this date....**[city/county to use its format for resolutions]**.

**NOTE: This sample resolution does not cover any other selection, eligibility or threshold criteria items that may require a local resolution for an application. Presence of a resolution based on this template does not in and of itself qualify the application for points, but is merely a template that can be used by applicants to help them work towards satisfying the requirement relating to a resolution from the local Governing Body for §11.3(c), “One Mile, Three Year Rule”.**

**Sample Resolution for Use by a Local Governing Body for Satisfying §11.3(b), “Twice the State's Average Per Capita”**

**[ONLY FOR APPLICANTS APPLYING FOR HOUSING TAX CREDITS AND/OR PRIVATE ACTIVITY BONDS]**

Whereas, **[Applicant]** has proposed a development for affordable rental housing at **[address of proposed site]** named **[name of development]** in the **[city/county of x]**; and

Whereas, **[Applicant]** intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2013 Housing Tax Credits or Private Activity Bonds for **[name of development]**; and

Whereas, pursuant to §11.3(b), Texas Administrative Code, we acknowledge that the **[city/county of x]** has more than twice the state average of units per capita supported by Housing Tax Credits or Private Activity Bonds; therefore

Be it resolved that:

The **[city/county of x]** hereby supports the proposed **[name of development]**, and have voted specifically to approve the construction of the Development and to authorize an allocation of Housing Tax Credits for the Development pursuant to §2306.6703(A)(4).

Resolved this date.... **[city/county to use its format for resolutions]**.

**NOTE: This sample resolution does not cover any other selection, eligibility or threshold criteria items that may require a local resolution for an application. Presence of a resolution based on this template does not in and of itself qualify the application for points, but is merely a template that can be used by Applicants to help them work towards satisfying the requirement relating to a resolution from the local Governing Body for §11.3(b), “Twice the State's Average Per Capita”.**

**Architect Certification Form**

*(The Development engineer, an accredited architect or Department-approved Third Party accessibility specialist must complete this form.)*

I (We) certify that the Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C. This certification meets the requirement that the Applicant provide a certification from the Development engineer, an accredited architect or Department-approved third party accessibility specialist, that the Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C and this paragraph.

Developments involving New Construction (not including non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) will provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.

By: \_\_\_\_\_ Date: \_\_\_\_\_

*Signature of Development engineer, accredited architect, or  
Department-approved third party accessibility specialist*

*Printed Name:* \_\_\_\_\_

*Firm Name (if applicable):* \_\_\_\_\_

## **CERTIFICATION OF DEVELOPMENT OWNER**

All defined terms used in this certification and not specifically defined herein have the meanings ascribed to them in Chapter 2306 of the Texas Government Code, §42 of the Internal Revenue Code, and §10.003 of this chapter.

The undersigned, in each and all of the following capacities in which it may serve or exist -- Applicant, Development Owner, Developer, Guarantor of any obligation of the Applicant, and/or Principal of the Applicant and hereafter referred to as "Applicant" or "Development Owner," whether serving in one or more such capacities, is hereby submitting its Application to the Department for consideration of Department funding.

**Applicant hereby represents, warrants, agrees, acknowledges and certifies to the Department and to the State of Texas that:**

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

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

The Application is in compliance with all requirements related to the eligibility of an Applicant, Application and Development as further defined in this chapter.

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

The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))



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

The Development shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C.

New Construction (excluding New Construction of non-residential buildings) Developments where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

The Development Owner will establish a reserve account consistent with §2306.186 of the Texas Government Code and as further described in §10.404 of this chapter (relating to Reserve for Replacement Requirements).

The Development will operate in accordance with the requirements pertaining to rental assistance in Subchapter F of this chapter.

The Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households.

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

The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in §2306.6734.

The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

The Applicant has disclosed, in the Application, any principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, voluntarily or involuntarily, that has terminated or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure identified the person or persons and development involved the identity of each other development and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. If, not later than 30 days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the Executive Director makes an initial determination that the person or persons should not be involved in the Application, that initial determination shall be brought to the Board for a hearing and final determination. If the Executive Director has not made and issued such an initial determination on or before the day 30 days after the date on which

the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the following factors shall be considered:

- 1) The amount of resources in a development and the amount of the benefit received from the development;
- 2) The legal and practical ability to address issues that may have precipitated the termination or propose termination of the relationship;
- 3) The role of the person in causing or materially contributing to any problems with the success of the development; and
- 4) The person's compliance history, including compliance history in other developments; and
- 5) Any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application.

The Applicant certifies that any Development proposing New Construction or Reconstruction and located within the one-hundred (100) year floodplain must develop the Development Site so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. Applicant further certifies that any Development proposing Rehabilitation (excluding Reconstruction) that is not a HUD or TRDO-USDA assisted property will not be permitted in the one-hundred year floodplain unless they already meet the requirements for New Construction or Reconstruction or can provide evidence that the Unit of General Local Government has undertaken mitigation efforts and can establish that the property is no longer within the one-hundred year floodplain.

The Development site will be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) services as described further in §10.101(a)(2) of this chapter.

The Development is not located in an area with undesirable site features as further described in §10.101(a)(3) of this chapter. If such an undesirable site feature is present a waiver request was submitted to the Department at the time the pre-application is submitted (if applicable to the program).

The Development is not located in an area with undesirable area features as further described in §10.101(a)(4) of this chapter. If such an undesirable area feature is present a request for pre-clearance was submitted to the Department at the time the pre-application is submitted (if applicable to the program).

The Development shall have all of the mandatory Development amenities required in §10.101(b)(4) of this chapter at no charge to the tenants.

The Development will satisfy the minimum point threshold for common amenities as further described in §10.101(b)(5)(A) of this chapter.

The Development will satisfy the minimum threshold for size of Units as further described §10.101(b)(6)(A) of this chapter.

The Development (excluding competitive Housing Tax Credit Applications) shall satisfy the minimum point threshold for unit amenities as required in §10.101(b)(6)(B) of this chapter.

The Development (excluding competitive Housing Tax Credit Applications) shall satisfy the minimum point threshold for tenant supportive services as required in §10.101(b)(7) of this chapter at no charge to the tenants.

The Applicant, Developer, or any employee or agent of the Applicant has not or will not work to create opposition to any Application, has not formed a Neighborhood Organization (excluding any allowable technical assistance), has not given money or a gift to cause the Neighborhood Organization to take its position as it relates to §11.9(d)(1) of this title (relating to Qualified Allocation Plan).

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

The individual whose name is subscribed hereto, in his or her individual capacity, on behalf of Applicant, and in all other related capacities described above, as applicable, expressly represents, warrants, and certifies that all information contained in this certification and in the Application, including any and all supplements, additions, clarifications, or other materials or information submitted to the Department in connection therewith as required or deemed necessary by the materials governing the Housing Tax Credit Program are true and correct and the Applicant has undergone sufficient investigation to affirm the validity of the statements made. Further, the Applicant hereby expressly represents, warrants, and certifies that the individual whose name is subscribed hereto has read and understands all the information contained in this form of the Application. By signing this document, the undersigned, in their individual capacity, on behalf of Applicant, and in all other related capacities described above, is affirming under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §§37.01 et seq. (Vernon 2003 & Supp. 2007) and subject to any and all other state or federal laws regarding the making of false statements to governmental bodies or the false statements or the providing of false information in connection with the procurement of allocations or awards that the Application and all materials relating thereto constitute government documents and that the Application and all materials relating thereto are true, correct, and complete in all material respects.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(seal)

\_\_\_\_\_  
Notary Public Signature

Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires \_\_\_\_\_

### **Certification of Principal**

All defined terms used in this certification and not specifically defined herein have the meanings ascribed to them in Chapter 2306 of the Texas Government Code, §42 of the Internal Revenue Code, and §10.003 of this chapter.

The undersigned, in each and all of the following capacities in which it may serve or exist -- Applicant, Development Owner, Developer, Guarantor of any obligation of the Applicant, and/or Principal of the Applicant and hereafter referred to as "Applicant," whether serving in one or more such capacities, is hereby submitting its Application to the Department for consideration of an allocation of Housing Tax Credits.

**Applicant hereby represents, warrants, agrees, acknowledges and certifies to the Department and to the State of Texas that:**

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

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

Applicant has not been or is not 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.

Applicant has not been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application deadline.

Applicant is not subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is not subject to a federal tax lien; or is not the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of: financial misconduct; or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity.

Applicant has not breached a contract with a public agency and failed to cure that breach.

Applicant has not misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency. Applicant has not been identified by the Department as being in Material Noncompliance with or has repeatedly violated the LURA or if such Material Noncompliance or repeated violation is identified during the Application review or the program rules in effect for such property as further described in Subchapter F of this Chapter (relating to Compliance Administration) and remains unresolved (§2306.6721(c)(3)).

Applicant is not delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans.

Applicant has not failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an Application is to be made.

Applicant is not in violation of a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733 of the Texas Government Code, or a provision of Chapter 572 of the Texas Government Code, in making, advancing, or supporting the Application.

Applicant does not have previous Contracts or Commitments that have been partially or fully de-obligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations and the Party is on notice that such de-obligation results in ineligibility under these rules.

Applicant has not provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment as part of a challenge to another application, or any other information provided to the Department for any reason. Such conduct is also a violation of these rules and will subject the Applicant to the assessment of administrative penalties under Chapter 2306 of the Texas Government Code and Chapter 10 of this title.

The Applicant will not violate §2306.1113 of the Texas Government Code relating to Ex Parte Communication and further explained in §10.202(2)(A) of this chapter.

At all times during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is not or has not been: a member of the Board; or the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, employed by the Department or any person exercising such responsibilities regardless of job title; or in violation of §2306.6733 of the Texas Government Code

The Applicant will not propose to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

All the instances in which the Developer or Principal of the Applicant has been the subject of a voluntary or involuntary termination of involvement in a rent or income restricted multifamily development by the lender, equity provider, or any other owners or investors, however designated, or any combination thereof or if any litigation to effectuate such removal is instituted in the past ten years for its failure to perform its obligations under the loan documents or limited partnership agreement have been fully disclosed pursuant to §10.202(1)(L) of this chapter. Applicant understands that if the Department learns at a later date that removal did take place as described and was not disclosed, the Application will be terminated and any Allocation or Award made will be rescinded.

All housing developments with which Applicant, Development Owner, Developer, Guarantor and/or Principal thereof participating, are in compliance with: state and federal fair housing laws, including Chapter 301, Property Code, the Texas Fair Housing Act; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.); and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.).

The making of an allocation or award by the Department does not constitute a finding or determination that the Development is deemed qualified to receive such allocation or award. Applicant agrees that the Department or any of its directors, officers, employees, and agents will not be held responsible or liable for any representations made to the undersigned or its investors relating to the Housing Tax Credit Program; therefore, Applicant assumes the risk of all damages, losses, costs, and expenses related thereto and agrees to indemnify and hold harmless the Department and any of its officers, employees, and agents against any and

all claims, suits, losses, damages, costs, and expenses of any kind and of any nature that the Department may hereinafter suffer, incur, or pay arising out of its decisions and actions concerning this Application for Housing Tax Credits or the use of information concerning the Housing Tax Credit Program.

Applicant, Development Owner, Developer, Guarantor or other Related Party is not subject to any criminal proceedings and if any such proceeding or any other charges which would invalidate the certifications herein occur prior to Carryover, the Applicant will immediately notify the Department. Such notification must be presented to the Board for consideration at the next available Board meeting.

The individual whose name is subscribed hereto, in his or her individual capacity, on behalf of Applicant, and in all other related capacities described above, as applicable, expressly represents, warrants, and certifies that all information contained in this certification and in the Application, including any and all supplements, additions, clarifications, or other materials or information submitted to the Department in connection therewith as required or deemed necessary by the materials governing the Housing Tax Credit Program are true and correct and the Applicant has undergone sufficient investigation to affirm the validity of the statements made. Further, the Applicant hereby expressly represents, warrants, and certifies that the individual whose name is subscribed hereto has read and understands all the information contained in this form of the Application.

By signing this document, the undersigned, in their individual capacity, on behalf of Applicant, and in all other related capacities described above, is affirming under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §§37.01 et seq. (Vernon 2003 & Supp. 2007) and subject to any and all other state or federal laws regarding the making of false statements to governmental bodies or the false statements or the providing of false information in connection with the procurement of allocations or awards that the Application and all materials relating thereto constitute government documents and that the Application and all materials relating thereto are true, correct, and complete in all material respects.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing statement, and who is known to be one in the



same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

*Notary Public Signature*

Notary Public, State of \_\_\_\_\_

County of \_\_\_\_\_

My commission expires: \_\_\_\_\_

## **Attachment 1. Proposed new 10 TAC, Chapter 10, Subchapter G, §§10.901 - 10.904, Fee Schedule, Appeals and Other Provisions**

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

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections will have some implications related to revenues of the state government. The new sections propose two new \$500 fees, one for challenging an application and another for ownership transfer requests. Although it is difficult to forecast the number of fees that will be collected in a given year, Department staff estimates approximately 40 challenges and 80 ownership transfers requests will be received in one year, for a total of \$60,000 in additional fees. These fees will be used to cover administrative costs, including staff time, associated with processing these requests.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be adequate revenue to cover the cost of administering the program and a mechanism for formal communication between the Department and its awardees. There is new direct cost impact as a result of the proposed adoption of the new rule due to additional fees, more particularly those associated with challenges of applications and ownership transfer requests. The amount of change in economic cost to any individual required to comply with the proposed new subchapter is expected to be minimal and would only be incurred if the individual engages in actions that are at their option.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that any new economic impact on small or micro-businesses is expected to be minimal and would only be incurred if the business engages in actions that are at its option. There is no anticipated difference in cost of compliance between small and large businesses

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.**

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

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning Low Income Housing Tax Credit Program..

**NEW RULE: Chapter 10, Subchapter G, Fee Schedule, Appeals and Other Provisions**

*§10.901*

Fee Schedule

*§10.902*

Appeals Process

*§10.903*

Adherence to Obligations

*§10.904*

Alternative Dispute Resolution (ADR) Policy

## Uniform Multifamily Rules

### Subchapter G. Fee Schedule, Appeals, and Other Provisions.

#### §10.901. FEE SCHEDULE.

Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract and ineligible to submit extension requests, ownership transfers and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee.

- (1) *Competitive Housing Tax Credit Pre-Application Fee.* A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated pre-application fee. (§2306.6716(d))
- (2) *Refunds of Pre-application Fees.* (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review and deficiencies submitted and reviewed constitute 20 percent of the review.
- (3) *Application Fee.* Each Application must be accompanied by an Application fee.
  - (A) *Housing Tax Credit Applications.* The fee will be \$30 per Unit based on the total number of Units. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements and for which a pre-application fee was paid, the Application fee will be \$20 per Unit. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))
  - (B) *Direct Loan Applications.* The fee will be \$1,000 per Application. Pursuant to Texas Government Code, §2306.147(b) the Department is required to waive Application fees for

nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department and construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME Program.

- (4) *Refunds of Application Fees.* Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.
- (5) *Third Party Underwriting Fee.* Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission) if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (7) and (8) of this subsection, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.
- (6) *Administrative Deficiency Notice Late Fee.* (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(6) of this chapter shall incur a late fee in the amount of \$500 for each business day the deficiency remains unresolved.
- (7) *Challenge Processing Fee.* For Competitive Housing Tax Credits (HTC) Applications, a fee equal to \$500 for challenges submitted per Application.
- (8) *Housing Tax Credit Commitment Fee.* No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round then a refund of 50 percent of the Commitment Fee may be issued upon request.
- (9) *Tax Exempt Bond Development Determination Notice Fee.* No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

- (10) *Building Inspection Fee.* (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of \$750 must be submitted. Building inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development.
- (11) *Tax-Exempt Bond Credit Increase Request Fee.* Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.
- (12) *Extension Fees.* All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements that are submitted after the applicable deadline must be accompanied by an extension fee of \$2,500. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. An extension fee will not be required for extensions requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve U.S. Department of Agriculture (USDA) as a lender if USDA or the Department is the cause for the Applicant not meeting the deadline.
- (13) *Amendment Fees.* An amendment request to be considered non-material that has not been implemented will not be required to pay an amendment fee. Material or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500. Amendment fees are not required for the Direct Loan programs.
- (14) *Right of First Refusal Fee.* Requests to offer a property for sale under a Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.
- (15) *Qualified Contract Pre-Request Fee.* A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.
- (16) *Qualified Contract Fee.* Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee in an amount equal to the lesser of \$3,000 or one-fourth (1/4) of 1 percent of the Qualified Contract Price determined by the Certified Public Accountant.
- (17) *Ownership Transfer Fee.* Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$500.
- (18) *Unused Credit or Penalty Fee.* Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount)

will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

- (19) *Compliance Monitoring Fee.* (HTC Developments Only.) Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of IRS Form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. For Tax-Exempt Bond Developments with the Department as the issuer, the tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to \$40/Unit beginning two (2) years from the first payment date of the bonds. Compliance fees may be adjusted from time to time by the Department.
- (20) *Public Information Request Fee.* Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.
- (21) *Adjustment of Fees by the Department and Notification of Fees.* (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

**§10.902. APPEALS PROCESS.** (§2306.0321; §2306.6715)

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

- (1) A determination regarding the Application's satisfaction of applicable requirements, pre-application or Application threshold criteria, underwriting criteria;
- (2) The scoring of the Application under the applicable selection criteria;
- (3) A recommendation as to the amount of Department funding to be allocated to the Application;
- (4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;
- (5) Denial of a change to a Commitment or Determination Notice;
- (6) Denial of a change to a loan agreement;
- (7) Denial of a change to a LURA;
- (8) Any Department decision that results in the erroneous termination of an Application unless the termination is based on Material Noncompliance;

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application or filed by or issue related to another Applicant or Development Owner;

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter;

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director make a fully informed decision based on a complete analysis of the circumstances and verification any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor;

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board



meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting;

- (f) Board review of an Application related appeal will be based on the original Application. The Board may not review any information not contained in or filed with the original Application;
- (g) The decision of the Board regarding an appeal is the final decision of the Department; and
- (h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

**§10.903. ADHERENCE TO OBLIGATIONS.** (§2306.6720)

Compliance with representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, selection criteria or otherwise, including the timely submittal and completion of cost certification for housing tax credit allocations (except for Department approved extensions), shall be deemed to be a condition to any Commitment, Determination Notice, Contract, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment, Determination Notice, Contract or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:

- (1) the Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and
- (2) the Board will opt either to terminate the Application and rescind the Commitment, Determination Notice, Contract or Carryover Allocation Agreement as applicable or the Department must:
  - (A) reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to (10 points) for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board;
  - (B) prohibit eligibility to apply for Housing Tax Credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to twenty-four (24) months from the date that the non-

conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department;

(C) in addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to \$1,000 per day for each violation.

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.

#### **§10.904 ALTERNATIVE DISPUTE RESOLUTION (ADR) POLICY.**

In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

## **Attachment 1. Proposed repeal of 10 TAC, Chapter 1, §1.1, 2012 Definitions and Amenities for Housing Program Activities**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 53, Subchapter I §§53.90 – 53.91, concerning 2012 Definitions and Amenities for Housing Program Activities. The purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rule. It is not anticipated that the repeal will result in any new economic cost to any individual required to comply with the repeal.

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

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.**

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

The proposed repeal affects Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§1.1(a). Definitions.

§1.1(b). Common Amenities.

§1.1(c). Unit Amenities.

§1.1(d). Tenant Supportive Services.

## **Attachment 1. Proposed repeal of 10 TAC, Chapter 53, Subchapter A §§53.1 – 53.2, General**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 53, §§53.1 – 53.2, concerning the HOME Program Rule. The purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rule. It is not anticipated that the repeal will result in an economic cost to any individual required to comply with the repeal.

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

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.**

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

The proposed repeal affects Chapter 2306 of the Texas Government Code.

§53.1. Purpose.

§53.2. Definitions.

**Attachment 1. Proposed repeal of 10 TAC, Chapter 53, Subchapter B §§53.20 – 53.28, Availability of Funds, Application Requirements, and Review and Award Procedures**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 53, §§53.20 – 53.28, concerning the HOME Program Rule. The purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rule. It is not anticipated that the repeal will result in an economic cost to any individual required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.

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

The proposed repeal affects Chapter 2306 of the Texas Government Code.

§53.20. Availability of Funds.

§53.21. Application Forms and Materials and Deadlines.

§53.22. Contract Award Application Review Process.

§53.23. Reservation System Participant Review Process.

§53.24. General Threshold and Selection Criteria.

§53.25. Contract Award Limitations.

§53.26. Reservation System Participant (RSP) Agreements.

§53.27. Procurement of Contractor.

§53.28. General Administrative Requirements.

**Attachment 1. Proposed repeal of 10 TAC, Chapter 53, Subchapter H §§53.80 – 53.82, Multifamily (Rental Housing) Development (MFD) Program Activity**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 53, §§53.80 – 53.82, concerning the HOME Program Rule. The purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rule. It is not anticipated that the repeal will result in an economic cost to any individual required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.

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

The proposed repeal affects Chapter 2306 of the Texas Government Code.

§53.80. *Multifamily (Rental Housing) Development (MFD) Threshold and Selection Criteria.*

§53.81. *Multifamily (Rental Housing) Development (MFD) Program Requirements.*

§53.82. *Multifamily (Rental Housing) Development (MFD) Administrative Requirements.*

**Attachment 1. Proposed repeal of 10 TAC, Chapter 53, Subchapter I §§53.90 – 53.91, Community Housing Development Organization (CHDO)**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 53, Subchapter I §§53.90 – 53.91, concerning the HOME Program Rule. The purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rule. It is not anticipated that the repeal will result in an economic cost to any individual required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.

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

The proposed repeal affects Chapter 2306 of the Texas Government Code.

§53.90. *Application Procedures for Certification of Community Housing Development Organization (CHDO).*  
§53.91. *Recertification of Community Housing Development Organization (CHDO).*

7d



**BOARD ACTION REQUEST  
MULTIFAMILY FINANCE DIVISION  
SEPTEMBER 6, 2012**

Presentation, Discussion and Possible Action regarding the proposed repeal of 10 TAC Chapters 49 and 50 concerning 2011 and 2012 Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11, concerning 2013 Housing Tax Credit Program Qualified Allocation Plan for publication and public comment in the *Texas Register*.

**RECOMMENDED ACTION**

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

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

**WHEREAS**, pursuant to Chapter 2306 the Board shall adopt a proposed Qualified Allocation Plan no later than September 30, therefore it is hereby

**RESOLVED**, that the proposed repeal of 10 TAC Chapters 49 and 50 and proposed new 10 TAC Chapter 11, regarding the Qualified Allocation Plan, is hereby approved, together with the preamble presented to this meeting, for publication in the *Texas Register* for public comment;

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

**BACKGROUND**

*General Information:* Attached to this Board Action Request is the 2013 Draft Qualified Allocation Plan (QAP) which reflects staff's recommendations for the Board's consideration. Staff hosted a roundtable discussion on June 15, 2012 to begin discussions with interested stakeholders on proposed changes to the 2013 QAP. Moreover, staff launched an online discussion forum on August 8, 2012, to allow interested registered users of the forum an opportunity to engage with the Department and one another and provide feedback on possible threshold, scoring, and other requirements that may be included in the 2013 draft QAP. The forum was a great avenue for this communication resulting in approximately 290 registered users and approximately 169 replies to topics posted. Staff released a preliminary draft of the 2013 Uniform Multifamily Rules, which included the QAP, on August 23, 2012 and hosted a series of workgroup discussions on August 28, 2012. The purpose of the workgroups was to discuss the overall format of the QAP as well as discussion on each of the scoring items including considerations for developments in rural areas. Staff has addressed some of these items in the draft included herein.

Rule-Making Timeline: Upon Board approval, the draft QAP will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted via mail, email, or facsimile between September 21<sup>st</sup> and October 22<sup>nd</sup>. There will also be a consolidated public hearing during this time to receive public comment. The QAP will be brought before the Board in November for final approval followed by the statutorily mandated submission to the Office of the Governor on November 15. Upon the Governor's approval or approval with modifications, which shall be no later than December 1, the final QAP will be published in the *Texas Register*.

Format of the QAP: The overall layout of the 2013 draft QAP has changed considerably from the prior year. Stemming from the Department's reorganization and consolidation of multifamily activities centralized in a single division, staff expanded the previously named Definitions and Amenities for Housing Program Activities rule to a Uniform Multifamily Rule. Essentially, staff moved eligibility, threshold and other criteria previously in the QAP that would be applicable across all multifamily programs to this Uniform Multifamily Rule. This rule is also on the Board agenda today and more detailed information regarding the overall layout and changes to this rule can be found in that Board Action Request. As a result of the movement, the draft QAP is considerably shorter and generally contains statutory provisions specific to housing tax credit applications and other items specific to the competitive housing tax credit program. Moreover, the chapter number associated with the QAP has been modified (previously Chapter 49; proposed now as Chapter 11) as a result of the reorganization of programmatic activities and all of the Department's rules.

Assessment of Remedial Plan: The 2013 draft QAP as recommended by staff contains several material changes from the 2012 QAP as a result of the Remedial Plan (the "Plan") filed by the Department and subsequent Memorandum Opinion and Order and Judgment entered by the court on August 7, 2012. Inclusion of the Plan requirements into the QAP have been generally incorporated with applicability statewide and not solely limited to the five-county remedial area. However, in several areas modifications were made to certain Plan elements to ensure that their application to rural areas is appropriate, but these modifications are not applicable in Urban Region 3. Staff notes that there are requirements per the Plan that are not identified in this draft QAP due to the reorganization of the multifamily rules; however, the requirements as appropriate have been incorporated into the Uniform Multifamily Rules and explained in the Board Action Request for that agenda item. The specific Plan requirements reflected in the QAP include the following and page numbers have been indicated for ease of reference.

- A modification to the tie breaker factors that will be utilized in the event there are applications that receive the same score. Specifically, the first tie breaker will be those applications eligible for the highest Opportunity Index score under §11.9(c)(4). The second tie breaker will be those applications proposed to be located the greatest distance from the nearest housing tax credit assisted development (*Page 11 of 33*).
- Inclusion of the Opportunity Index, which is meant to incentivize developments in the highest income and lowest poverty areas. Specifically, maximum points may be achieved for general population developments in a census tract with a 15% or less poverty rate (or 25% for developments in regions 11 and 13), a median household income that is in the top quartile of median household income for the county or MSA (as applicable) and an exemplary or recognized elementary school with such 2011 accountability rating from the Texas Education Agency. The point structure is further bifurcated among developments without age restrictions and those without age restrictions in census tracts where the income is in the top two quartiles. The poverty rate will be based on the most recent 5-year American Community Survey as available on November 15. Developments located in rural areas are exempt from meeting the elementary

school and poverty rate factors in the scoring categories under this item but must be located in an area with no unacceptable schools. (*Page 18 of 33*);

- Addition of a scoring item for Educational Excellence. This scoring item allows maximum points for developments located within the attendance zone of an exemplary or recognized elementary, middle and high school; reduced points can be achieved for developments located in such an attendance zone of an exemplary or recognized elementary school and either a middle school or high school. This item clarifies that the applicable school rating will be the 2011 accountability rating as assigned by the Texas Education Agency and that such school ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating (*Page 19 of 33*);
- A modification to the Underserved Area scoring item that allows maximum points for general or supportive housing developments located in a colonia, economically distressed area, a municipality or county (as appropriate) that has never received a competitive or non-competitive housing tax credit allocation; less points will be given to elderly developments that meet the same criteria. For developments in rural areas, points (based on target population as applicable) are also available based on the census tract having never received a competitive or noncompetitive tax credit allocation. (*Page 19 of 33*);
- A modification to the Quantifiable Community Participation (QCP) scoring item that allows a two point incentive for applications where prior on-record opposition by a neighborhood organization has been changed to reflect support or neutrality. This point item adds that there may be challenges to opposition received and such challenges will be reviewed by a fact finder whose determination shall be final and cannot be waived or appealed. Moreover, to be eligible for points the neighborhood organization must be in existence no later than the pre-application submission deadline and staff has incorporated the use of limited technical assistance relating to the creation and/or placing on record of a Neighborhood Organization (*Page 20 of 33*);

*Summary of Other Proposed Changes to the QAP:* This section outlines some of the more significant recommendations by staff outside of the Plan requirements described above. Citation and page references are indicated for ease of reference.

1. **§11.1 – General** (*Page 1 of 33*). The changes made to this section include statements regarding the competitive nature of the housing tax credit program and strongly encourages applicants to adhere to published deadlines and provides guidance regarding applicant responsibilities and due diligence.
2. **§11.2 – Program Calendar** (*Page 2 of 33*). The program calendar has been modified to only reflect deadlines associated with the competitive housing tax credit program. All other applications will utilize the program dates in the Uniform Multifamily Rule. Notable changes to deadlines include those for input from State Representatives and State Senators as well as for challenges to applications.
3. **§11.3 – Housing De-concentration Factors** (*Page 4 of 33*). The additional phase requirements in this section have been modified to allow a proposed additional phase to a development serving the same target population so long as the existing phase has maintained occupancy of at least 90% for

a six month period. The exceptions, allowing for a governing body resolution and replacement units, have been removed.

4. **§11.4 – Tax Credit Request and Award Limits** (*Page 6 of 33*). This section includes the following modifications:
  - The maximum credit request limit has been changed from 150% of what is available in the sub-region, to 100% of what is available in the sub-region or \$1,500,000, whichever is less. For those applications under the At-Risk Set-Aside the maximum amount shall remain \$2,000,000. In lieu of termination, the Department will automatically reduce funding requests that exceed this amount.
  - The increase in eligible basis has been modified to allow the 30% boost only for developments in a QCT with less than 30% housing tax credit (HTC) units per household, developments in rural areas, developments that are entirely supportive housing with no debt and developments that meet the Opportunity Index scoring criteria. Additionally, this section clarifies that for 4% HTC applications, the Department shall underwrite using the boost so long as the QCT designation is in effect the year the certificate of reservation is issued by the Bond Review Board.
5. **§11.6 – Competitive HTC Allocation Process** (*Page 7 of 33*). The changes to this section, specifically pertaining to the regional allocation formula, clarify that in instances where the QAP does not contemplate or address a particular situation staff will formulate a recommendation for the Board’s consideration based on the objectives of regional allocation provided for in Chapter 2306. Such recommendation will not involve broad reductions in the funding request amounts solely to accommodate regional allocation and will not involve rearranging the priority of applications within a particular sub-region or set-aside except as explicitly allowed in the QAP. Moreover, the section regarding the methodology by which awards are made has been streamlined and clarified.
6. **§11.8 – Pre-application Requirements** (*Page 12 of 33*). The major changes to this section include evidence of site control at the time of pre-application, identifying the census tract number, the disclosure of any waivers that may be needed regarding the proposed development and submission of any community revitalization plan the applicant intends to use for points associated with §11.9(d)(6).
7. **§11.9 – Competitive HTC Selection Criteria** (*Page 15 of 33*). The layout of this section groups the scoring items based on thematic and/or policy related categories. The categories include the following: criteria promoting the development of high quality housing, criteria to serve and support Texans most in need, criteria promoting community support and engagement and criteria promoting efficient use of limited resources and applicant accountability. To better illustrate this, there is a scoring matrix at the end of this action request that identifies the specific scoring items within each category as well as the corresponding point values which have all been modified from the prior year. Identified below are the more significant changes to some of the scoring items:
  - *Size and Quality of Units* (*Page 16 of 33*): The square footage of the unit sizes for efficiency, one and two bedroom types has been modified and there is no distinction between general or elderly population developments.

- *Sponsor Characteristics (Page 16 of 33):* This point item has been modified to allow points under one of three options; specific details can be found in the draft QAP:
  - a person with at least 50% ownership interest in the general partner who also owns at least 50% ownership interest in the general partners of at least three (3) existing tax credit developments in Texas;
  - the ownership structure of the development owner includes a joint venture with an inexperienced owner and the experienced owner or developer must own at least 30% interest in the general partner and also own at least 50% interest in the general partner of at least three (3) existing tax credit developments in Texas; or
  - a HUB that has at least 51% ownership interest in the general partner, materially participates in the development and operation of the development throughout the compliance period and will receive at least 20% of the cash flow from operations and at least 10% of the developer fee.
  
- *Income Levels of Tenants (Page 17 of 33):* This item allows points for income and rent restricting a development at 50% of AMGI. The percentage of the units that must be restricted ranges from 40% to 20% in non-rural areas and 20% to 10% in rural areas and includes a corresponding bifurcated point structure.
  
- *Rent Levels of Tenants (Page 17 of 33):* This item allows points for rent and income restricting a development at 30% or less of AMGI and stipulates that such units must be in addition to those committed under the income levels scoring item. Only supportive housing developments qualifying under the nonprofit set-aside can achieve the maximum points provided that at least 20% of the units are at 30% or less of AMGI. The restricted ranges for all other developments, which are at lower point values, include 10% and 5% of all units for developments in urban areas and 7.5% and 5% of all units for development in rural areas. The combination of the restrictions under this point item and those provided for under the Income Levels of Tenants yields similar overall deep rent and income targeting to that of the 2012 QAP.
  
- *Tenant Services (Page 17 of 33):* The changes to this scoring item reflect that only Supportive Housing developments qualifying under the nonprofit set-aside will be able to achieve the maximum of 9 points; all other developments will be eligible to receive 8 points.
  
- *Input other than QCP (Page 22 of 33):* The changes to this scoring item allow applicants to receive points under more than one of the options in order to achieve the maximum points. In addition, the qualifying community or civic organizations must be tax exempt and have specific primary purposes in order for the support letters to count for points.
  
- *Commitment of Funding by a Unit of General Local Government (Page 23 of 33):* The changes to this item indicate that funding must be from the city or county in which the development is proposed to be located. This item further clarifies that funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or more than 60% of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). It also specifically

excludes HOME funds administered by the State of Texas as a qualifying source. Points for this scoring item will be based on the population of the place multiplied by the following factors and maximum points (13 points) may be achieved if a firm commitment for the funds is submitted in the application.

- the lesser of a factor of 0.15 in funding per Low Income Unit and \$15,000 in funding per Low Income Unit (12 points);
- the lesser of a factor of 0.10 in funding per Low Income Unit and \$10,000 in funding per Low Income Unit (11 points);
- the lesser of a factor of 0.05 in funding per Low Income Unit and \$5,000 in funding per Low Income Unit (10 points);
- the lesser of a factor of 0.025 in funding per Low Income Unit and \$1,000 in funding per Low Income Unit (9 points); or
- the lesser of a factor of 0.01 in funding per Low Income Unit and \$500 in funding per Low Income Unit (8 points).

This point structure includes high tiers to encourage significant levels of funding from truly local sources. However, unlike prior years, the tiers are based on the population of a specific city or town to account for capacity and resource differences.

- *Support from State Representative/Senator (Page 24 of 33):* This item is modified to reflect a due date for such letters no later than April 1.
- *Declared Disaster Area (Page 25 of 33):* While an application can receive points for a proposed development that is located in an area declared to be a disaster, maximum points can only be achieved for developments proposed in an area where the disaster declaration does not apply to the entire state. The State of Texas has, for several years, been affected by statewide disasters, such as significant statewide drought. In order to incentivize development in those areas affected disproportionately due to the presence of both statewide and more localized disasters (such as a wildfire, hurricane, tornado, etc.), one additional point is available.
- *Community Revitalization Plan (Page 25 of 33):* While the initially submitted Remedial Plan included a Revitalization Index, the court ruled that such a scoring item was not required. However, in keeping with the §42 requirement, staff is proposing a scoring item for developments located in an area covered by a community revitalization plan provided the plan meets certain criteria. The criteria for the revitalization plan include those as outlined in the Remedial Plan for urban region 3. For purposes of the 2013 application round only, to the extent such a revitalization plan (in urban region 3) does not include the specific factors as stipulated in the Remedial Plan, the Board may waive one or more of such factors. Additional options are outlined in the QAP for the other urban regions and include plans for the administration of HOME and CDBG funds provided such plans further Fair Housing objectives and are compliant with the findings of a recent HUD approved Analysis of Impediments. Moreover, revitalization plans must be in place as of the pre-application submission deadline. For rural areas, staff is introducing a separate concept for areas experiencing expansion of basic infrastructure such as water and wastewater, police and fire, or paved roadways. This section clarifies that the applicant or related party cannot contribute funds or otherwise finance the project or infrastructure. Moreover, the infrastructure must have either been completed no more than 12 months

prior to the beginning of the application acceptance period or completed within 12 months from such date. This is currently the only scoring item that provides for different criteria for Urban Region 3 as opposed to other urban areas of the state.

- *Financial Feasibility (Page 28 of 33)*: This scoring item proposes a distinction between lender review of the Development, which would make the application eligible for 16 points, and lender review of both the Development and the Principals, which would qualify for 18 points.
- *Cost of the Development per Square Foot (Page 29 of 33)*: This scoring item proposes to award points based on the building cost per square foot of the application relative to the mean cost per square foot for all similar development types. Developments will be categorized as either:
  - Qualified Elderly and Elevator Served Development, more than 75% single family design, and Supportive Housing Developments;
  - All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse; or
  - All other Applications proposing Rehabilitation

The point structure for this item reflects the following:

- Within 8% and equal to or less than the mean cost per square foot (10 points);
- Within 5% and greater than the mean cost per square foot (10 points);
- Within 13% and equal to or less than the mean cost per square foot (9 points);
- Within 10% and greater than the mean cost per square foot (8 points);
- Within 18% and equal to or less than the mean cost per square foot (7 points);
- Within 15% and greater than the mean cost per square foot (6 points); or
- Within 20% of the mean cost per square foot (5 points)
- Developments with Building Costs of less than \$80 per square foot shall receive no less than eight (8) points.

The inclusion of an eight point minimum for those applications with Building Costs less than \$80 per square foot was done in response to concerns regarding the high level of points and the relative newness of this concept.

- *Pre-application Participation (Page 30 of 33)*: The modifications to this scoring item include the following compared to prior year requirements: the total number of units does not increase by more than 10% from pre-application to application, the designation of urban/rural remains the same, the target population is the same, no set-asides have been added or dropped, the final score at application does not vary by more than 6 points, all waivers were requested in the pre-application, the development site at application is generally the same site from pre-application, the census tract number identified at pre-application is the same at application and the community revitalization plan the applicant intends to use for the community revitalization plan scoring item is submitted at the time of pre-application.
- *Leveraging of Private, State and Federal Resources (Page 30 of 33)*: This scoring item proposes to award points based on the percentage of the funding request relative to the total development cost. The maximum points are achieved when the requested housing tax

credit amount is less than 7% of the total development cost and the least amount of points are achieved when such requested housing tax credit amount is less than 9% of the total development cost. There is also a distinction for those developments that leverage CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding. This scoring item clarifies that the calculation will be based strictly on the figures listed in the Funding Request and the Development Cost Schedule in the application with the requirement that no more than 50% of the developer fee is deferred.

- *Extended Affordability or Historic Preservation (Page 31 of 33):* This item has been modified to reflect points for development owners that are willing to extend the affordability period to a total of 35 years. This item also awards points to developments that utilize historic tax credits.
  - *Development Size. (Page 31 of 33):* This represents a new scoring item proposing to incentivize developments that are 50 units or less and that reflect a funding request of \$500,000 or less.
  - *Point Deductions (Page 31 of 33):* Staff is proposing a one point penalty off the applicant's final score for those applicants who elect points on their self-score for any given scoring item and are unable to provide sufficient documentation to substantiate the points.
8. **§11.10 – Challenges and Priority Reviews Regarding Competitive HTC Applications** *(Page 32 of 33)*. This section has been modified to identify a process whereby challenges to applications must be received by May 15 and challenges that staff chooses to treat as an administrative deficiency will be treated and handled accordingly and not as a challenge. Challenges relating to financial feasibility and undesirable area features will not be accepted. The length of time an applicant is given for responding to a challenge has been changed from 10 to 15 business days after receipt of such challenge. As reflected in the Uniform Multifamily Rule, staff is proposing a challenge processing fee of \$500 for challenges submitted to the Department.



**2013 Draft Qualified Allocation Plan Selection Criteria**

	<b>Scoring Item</b>	<b>Point Value</b>	<b>Statutory Rank</b>	<b>Statutory/Code Reference</b>	<b>Remedial Plan Requirement (Many requirements will be addressed in threshold criteria or elsewhere)</b>
<b>Criteria Promoting the Development of High Quality Housing</b>	Size and Quality of Units	14 Max	4th	§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)	
	<i>Unit Sizes</i>	7 points			
	<i>Unit Features</i>	7 points			
	Sponsor Characteristics	1 point		§42(m)(1)(C)(iv)	
<b>Criteria to Serve and Support Texans most in Need</b>	Income Levels of Tenants	15 points max	3rd	§2306.111(g)(3)(B) and (E); §2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)	
	Rent Levels of Tenants	11 points max	7th	§2306.6710(b)(1)(G)	
	Tenant Services	9 points max	9th	§2306.6710(b)(1)(I) and §2306.6725(a)(1)	
	Opportunity Index	7 points max			Required under Remedial Plan
	Educational Excellence	3 points max			Required under Remedial Plan
	Underserved Area	2 points max		§2306.6725(b)(2); §2306.127; §42(m)(1)(C)(ii)	Required under Remedial Plan
	Tenant Populations with Special Housing Needs	2 points		§42(m)(1)(C)(v)	
<b>Criteria Promoting Community Support and Engagement</b>	Quantifiable Community Participation (QCP)	16 points max	2nd	§2306.6710(b)(1)(B); §2306.6725(a)(2)	2 point incentive for change from opposition to support or neutrality as required under Remedial Plan
	Community Input other than QCP	4 points			
	Commitment of Funding by UGLG	13 points max	5th	§2306.6710(b)(1)(E)	
	Community Support by State Rep/Senator	12 points	6th	§2306.6710(b)(1)(F); §2306.6725(a)(2)	
	Declared Disaster Area	8 points max	10th	§2306.6710(b)(1)	
	Community Revitalization Plan	6 points max		§42(m)(1)(C)(iii)	
<b>Criteria Promoting Efficient Use of Limited Resources and Applicant Accountability</b>	Financial Feasibility	18 points max	1st	§2306.6710(b)(1)(A)	
	Cost of Development per Square Foot	10 points max	8th	§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)	
	Pre-application Participation	4 points		§2306.6704	
	Leveraging of Private, State and Federal	3 points max		§2306.6725(a)(3)	
	Extended Affordability or Historic Preservation	2 points		§2306.6725(a)(5); §2306.111(g)(3)(C); §2306.185(a)(1) and (c); §2306.6710(e)(2); and §42(m)(1)(B)(ii)(II)	
	Development Size	1 point			
	Right of First Refusal	1 point		§2306.6725(b)(1); §42(m)(1)(C)(viii)	

## **Attachment 1. Proposed new 10 TAC, Chapter 11, §§11.1 - 11.10, 2013 Housing Tax Credit Program Qualified Allocation Plan**

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 11, §§11.1 – 11.10, concerning the 2013 Housing Tax Credit Qualified Allocation Plan. The purpose of the proposed new sections is to replace the current Qualified Allocation Plan with a new QAP applicable to the 2013 cycle.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There will not be any new economic cost to any individuals required to comply with the new sections.

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

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.**

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

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning the Low Income Housing Tax Credit Program.

### **NEW RULE: Chapter 11, 2013 Housing Tax Credit Program Qualified Allocation Plan**

#### **§11.1**

General

#### **§11.2**

Program Calendar for Competitive Housing Tax Credits

#### **§11.3**

Housing De-Concentration Factors

#### **§11.4**

Tax Credit Request and Award Limits

#### **§11.5**

Competitive HTC Set-Asides

*§11.6*

Competitive HTC Allocation Process

*§11.7*

Tie Breaker Factors

*§11.8*

Pre-Application Requirements

*§11.9*

Competitive Selection Criteria

*§11.10*

Challenges of Competitive HTC Applications

## §11.1. GENERAL

- (a) *Authority.* The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits authorized by applicable federal income tax laws and whereby the Department is authorized to make such allocations for the State of Texas pursuant to Texas Government Code, Chapter 2306, Subchapter DD. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) to establish the procedures and requirements relating to an allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or Application in Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein constitute the QAP required by Texas Government Code, §2306.67022.
- (b) *Due Diligence and Applicant Responsibility.* Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application. Notwithstanding the fact that these rules along with other Department resources may not contemplate unforeseen situations that may arise, the Department will apply a reasonableness standard to the evaluation of Applications for Housing Tax Credits.
- (c) *Competitive Nature of Program.* Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all documents are legible, properly organized and tabbed, and that digital media is fully

readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(d) *Definitions.* The capitalized terms or phrases used herein are defined in §10.003 of this title (relating to Uniform Multifamily Rules), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

**§11.2. PROGRAM CALENDAR FOR COMPETITIVE HOUSING TAX CREDITS.**

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided, however, that the Applicant has requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

Figure: 10 TAC 11.2.

Deadline	Documentation Required
12/17/2012	Application Acceptance Period Begins.
12/17/2012	Pre-application Neighborhood Organization Request Date.
01/08/2013	Pre-Application Final Delivery Date.
01/18/2013	Full Application Neighborhood Organization Request Date.
03/01/2013	Full Application Delivery Date.
03/01/2013	Quantifiable Community Participation (QCP) Delivery Date.

<b>Deadline</b>	<b>Documentation Required</b>
03/01/2013	Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable).
04/01/2013	Final Input from State Representative or State Senator Delivery Date.
04/01/2013	Market Analysis and Civil Engineer Feasibility Study Delivery Date.
04/01/2013	Resolutions Delivery Date.
05/15/2013	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered “Competitive.”
06/14/2013	Deadline for public comment to be included in a summary to the Board.
June	Release of Eligible Applications for Consideration for Award in July.
Late July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2013	Carryover Documentation Delivery Date.
07/01/2014	10 percent Test Documentation Delivery Date.
12/31/2015	Placement in Service.
Five (5) business days after the Deficiency Notice date (without incurring point loss)	Administrative Deficiency Response Deadline.

### **§11.3 HOUSING DE-CONCENTRATION FACTORS.**

- (a) **Two Mile Same Year Rule (Competitive HTC Only).** (§2306.6711(f)) Staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application that is awarded in the same calendar year.
  
- (b) **Twice the State Average Per Capita.** (§2306.6703(a)(4)) If the Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, referencing Texas Government Code, §2306.6703(A)(4), and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual.
  
- (c) **One Mile Three Year Rule.** (§2306.6703(a)(3))
  - (1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured by a straight line on a map) from another Development that meets all of the criteria in subparagraphs (A) – (C) of this paragraph shall be considered ineligible.
    - (A) The Development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and
    - (B) The Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and
    - (C) The Development has not been withdrawn or terminated from the Housing Tax Credit Program.

- (2) Subsection (c)(1) of this section does not apply to a Development:
- (A) that is using federal HOPE VI (or successor program) funds received through HUD;
  - (B) that is using locally approved funds received from a public improvement district or a tax increment financing district;
  - (C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);
  - (D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);
  - (E) that is located in a county with a population of less than one million;
  - (F) that is located outside of a metropolitan statistical area; or
  - (G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual.
- (3) Where a specific source of funding is referenced in subsection (c)(2)(A)-(D) of this section, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Resolutions Delivery Date (for Tax Exempt Bond Developments the resolution must be submitted no later than 14 days prior to the Board meeting where the tax credits will be considered.)

(d) **Limitations on Developments in Certain Census Tracts.** An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 30 percent Housing Tax Credit Units per total households as established by the U.S. Census Bureau for the most recent Decennial Census shall be considered ineligible unless:

- (1) The Development is in a Place whose population is less than 100,000; or
- (2) The Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule.

(e) **Additional Phase.** Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a



contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and has maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll.

#### **§11.4. TAX CREDIT REQUEST AND AWARD LIMITS.**

- (a) **Credit Amount (Competitive HTC Only).** (§2306.6711(b)) The Board may not allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an amount greater than \$3 million in a single Application Round. All entities that share a Principal are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:
- (1) raises or provides equity;
  - (2) provides “qualified commercial financing”;
  - (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
  - (4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments) to be paid or \$150,000, whichever is greater.
- (b) **Maximum Request Limit (Competitive HTC Only).** For any given Development, an Applicant, other than an Applicant under the At-Risk Set-Aside, may not request more than 100 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or \$1,500,000, whichever is less. An Applicant under the At-Risk Set-Aside may not request more than \$2,000,000. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant’s request to the maximum allowable under this subsection if exceeded. (§2306.6711(b))
- (c) **Increase in Eligible Basis (30 percent Boost).** Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will not recommend such an increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount

necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

- (1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 30 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 30 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5)(C) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT;
- (2) The Development meets one of the criteria described in subparagraphs (A) - (C) of this paragraph (pursuant to the authority granted by H.R. 3221):
  - (A) the Development is located in a Rural Area;
  - (B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt; or
  - (C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive Selection Criteria).

### **§11.5 COMPETITIVE HTC SET-ASIDES. (§2306.111(d))**

This section identifies the statutorily-mandated set-asides which the Department is required to allocate. An Applicant may elect to compete in as many of the set-asides described in this section for which the proposed Development qualifies.

- (1) **Nonprofit Set-Aside.** (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.* greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the Nonprofit Set-Aside must have the nonprofit

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

- (2) **USDA Set-Aside.** (§2306.111(d)(2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of §2306.111(d)(2);
- (3) **At-Risk Set-Aside.** (§2306.6714; §2306.6702)
  - (A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6(a) of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments funded with USDA.
  - (B) An At-Risk Development must meet all the requirements of §2306.6702(a)(5).
  - (C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702 will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site.
  - (D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments retaining public housing operating subsidies to qualify under the At-Risk Set-Aside, only a portion of the subsidy must be retained for

the proposed Development, but no less than 25 percent of the proposed Units must be public housing units.

- (E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.
- (F) An amendment to an Application seeking to enable the Development to qualify as an At-Risk Development, that is submitted to the Department while the Application is under review will not be accepted.

### **§11.6 Competitive HTC Allocation Process.**

This section identifies the general allocation process and the methodology by which awards are made.

- (1) **Regional Allocation Formula.** The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (“sub-region”) Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board’s consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3,000,000 credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals.
- (2) **Credits Returned and National Pool Allocated After January 1.** For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the “national pool”

after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

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

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

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

(C) *Initial Application Selection in Each Sub-Region (Step 3).* The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made available within each of the sub-regions;

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

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.
  - (E) *Statewide Collapse (Step 5)*. Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one “pool.” The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the following priorities will be used to select the next most underserved sub-region:
    - (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
    - (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.
  - (F) *Contingent Qualified Nonprofit Set-Aside Step (Step 6)*. If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) – (F) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) – (F) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) – (F) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.
- (4) **Waiting List.** The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

## **§11.7 TIE BREAKER FACTORS.**

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

- (1) Applications ranking higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive Selection Criteria) as compared to another Application with the same score.
- (2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development.

### **§11.8 PRE-APPLICATION REQUIREMENTS (COMPETITIVE HTC ONLY).**

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

- (1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this chapter (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.
- (2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy to the Department in the form of a single file and individually bookmarked as presented in the order as required in the Multifamily Programs Procedures Manual.
- (3) Only one pre-application may be submitted by an Applicant for each Development Site.
- (4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes

for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) **Pre-Application Threshold Criteria.** Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be rejected unless they meet the following threshold criteria:

- (1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum the following;
  - (A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation For Application Submission.);
  - (B) Funding request;
  - (C) Target Population;
  - (D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);
  - (E) Total Number of Units proposed;
  - (F) Census tract number in which the Development Site is located;
  - (G) Expected score for each of the scoring items identified in the pre-application materials;
  - (H) All issues requiring waivers necessary for the filing of an eligible Application; and
  - (I) Any community revitalization plan the Applicant anticipates using for points under §11.9(d)(6) of this chapter (relating to Competitive Selection Criteria).
- (2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)
  - (A) *Neighborhood Organization Requests.* The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site:
    - (i) No later than the Pre-application Neighborhood Organization Request Date identified in §11.2 of this chapter, the Applicant must e-mail, fax or mail with registered receipt a completed Neighborhood Organization Request letter as provided in the pre-application to the local elected official, as applicable, based on where the Development is proposed to be located. If the Development is located in an area that has district based locally elected officials, or both at-large and district based locally elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If



the Development is not located within a city or its Extraterritorial Jurisdiction (ETJ), the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

- (ii) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the date of pre-application submission.

(B) *Notification Recipients.* No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph whose jurisdiction or boundaries include the Development Site. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by the recipient for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted.

- (i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;
- (ii) Superintendent of the school district;
- (iii) Presiding officer of the board of trustees of the school district;
- (iv) Mayor of the municipality;
- (v) All elected members of the Governing Body of the municipality;
- (vi) Presiding officer of the Governing Body of the county;
- (vii) All elected members of the Governing Body of the county; and
- (viii) State Senator and State Representative;

(C) *Notice Requirements.* The notification must include, at a minimum, all of the following:

- (i) the Applicant's name, address, an individual contact name and phone number;
- (ii) the Development name, address, city and county;

- (iii) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
  - (iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;
  - (v) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and
  - (vi) the approximate total number of Units and approximate total number of low-income Units.
- (c) **Pre-application Results.** Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a Development on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

### **§11.9 COMPETITIVE HTC SELECTION CRITERIA.**

- (a) **General Information.** This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified below include those items required under of the Texas Government Code, Chapter 2306 §42 of the Code and other criteria established in a manner consistent with Chapter 2306 and §42. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation or fail to submit supporting documentation in good faith will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirement to provide supporting documentation in good faith.
- (b) **Criteria promoting development of high quality housing.**

- (1) *Size and Quality of the Units.* (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fourteen (14) points under subparagraphs (A) and (B) of this paragraph.
- (A) *Unit Sizes* (7 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.
- (i) five-hundred-fifty (550) square feet for an Efficiency Unit;
  - (ii) six-hundred-fifty (650) square feet for a one Bedroom Unit;
  - (iii) eight-hundred-fifty (850) square feet for a two Bedroom Unit;
  - (iv) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and
  - (v) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.
- (B) *Unit Features* (7 points). Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.
- (2) *Sponsor Characteristics.* §42(m)(1)(C)(iv) An Application may qualify to receive up to one (1) point provided the ownership structure meets one of the following requirements:
- (A) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph and each must have a Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection.
- (B) The ownership structure of the Development Owner includes a joint venture between an experienced Developer and an inexperienced owner. In order to qualify for this point, the inexperienced party must be unable to obtain an Experience Certificate under §10.204(5) of this title (relating to Required Documentation for Application Submission). In addition, the experienced Owner must own at least 30 percent interest in the General Partner and also own at least 50 percent interest in the General Partner of at least three (3) existing tax credit developments in Texas, none of which are in Material Non-Compliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this subparagraph and each must have a UPCS score of at least 85 based on their most recent inspection.

(C) A HUB as certified by the Texas Comptroller of Public Accounts has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the Compliance Period, and will receive at least 20 percent of the cash flow from operations and at least 10 percent of the developer fee.

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

(1) *Income Levels of Tenants.* (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to fifteen (15) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this section.

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

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (15 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (13 points); or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (11 points).

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

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (15 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (13 points); or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (11 points).

(2) *Rent Levels of Tenants.* (§2306.6710(b)(1)(G)) An Application may qualify to receive up to eleven (11) points for rent and income restrictions of a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (11 points);

(B) At least 10 percent of all low income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low income Units at 30 percent or less of AMGI (9 points); or

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

(3) *Tenant Services.* (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside may qualify to receive up to nine

(9) points and all other Developments may receive up to eight (8) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) *Opportunity Index*. If the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 25 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in subparagraphs (A) – (E) of this paragraph. The Department will base poverty rate on data from the most recent 5-year American Community Survey as available on November 15. Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, but none of the public schools in which tenants may attend can have a rating below acceptable in order to qualify for points. An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary school are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency’s conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(A) Development targets the general population; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (7 points);

(B) Development targets the general population; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);

(C) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);

(D) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(E) Any Development, regardless of population served is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(5) *Educational Excellence*. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zone of a public school with an academic rating of recognized or exemplary (or comparable rating) by the Texas Education Agency, as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary, middle or high school (as applicable) are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.

(A) Development is within the attendance zone of an elementary school, a middle school and a high school with an academic rating of recognized or exemplary (3 points); or

(B) Development is within the attendance zone of an elementary school and either a middle school or high school with an academic rating of recognized or exemplary (1 point).

(6) *Underserved Area*. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to two (2) points for proposed Developments located in one of the areas in subparagraphs (A) – (D) of this paragraph. Points will be awarded based on the Development's Target Population as identified in subparagraph (E) or (F) of this paragraph.

(A) A colonia;

- (B) An economically distressed area;
  - (C) A municipality, or if outside of the boundaries of any municipality, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation; or
  - (D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation serving the same Target Population.
  - (E) General or Supportive Housing Developments (2 points); or
  - (F) Qualified Elderly Developments (1 point).
- (7) *Tenant Populations with Special Housing Needs.* (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points for Developments in which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

**(d) Criteria promoting community support and engagement.**

- (1) *Quantifiable Community Participation.* (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to sixteen (16) points for written statements from a Neighborhood Organization. The Neighborhood Organization must be on record with the Department or county in which the Development Site is located and whose boundaries contain the Development Site, and which has been in existence no later than the Pre-Application Final Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) *Statement Requirements.*

- (i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) for at least two individual members with authority to sign on behalf of the organization;
- (ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households; and

- (iii) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.
- (B) *Technical Assistance.* For purposes of this section, if there is no Neighborhood Organization already on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization provided that no Neighborhood Organization exists.
- (i) Technical assistance is limited to:
    - (-a-) the use of a facsimile, copy machine/copying, email and accommodations at public meetings; and
    - (-b-) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;
  - (ii) No person required to be listed in accordance with §2306.6707 may participate in any way in the deliberations of a Neighborhood Organization of the Development to which the Application requiring their listing relates. This does not preclude their ability to present information and respond to questions at a duly held meeting where such matter is considered;
  - (iii) For non-Identity of Interest Applications the seller or their agents could be a member of the Neighborhood Organization if the seller will maintain primary residence within the Neighborhood Organizations boundaries.
- (C) *Point Values for Quantifiable Community Participation.* An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulated. Where more than one written statement is received for an Application, the averaged weight of all statements received in accordance with this subparagraph will be assessed and awarded.
- (i) sixteen (16) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement, that qualified as Quantifiable Community Participation, opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;
  - (ii) fourteen (14) points for explicitly stated support from a Neighborhood Organization;
  - (iii) twelve (12) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement, that qualified as Quantifiable Community Participation, opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;



- (iv) ten (10) points for statements of neutrality from a Neighborhood Organization or statements not meeting all the explicit requirements of this section, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality;
  - (v) ten (10) points for areas where no Neighborhood Organization is in existence; or
  - (vi) zero (0) points for statements of opposition meeting the requirements of this subsection.
- (D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the challenger must declare the basis for the challenge. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any support for the accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination. The determination will be final and may not be waived or appealed.
- (2) *Community Input other than Quantifiable Community Participation.* If there is no Neighborhood Organization on record, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B) and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero (0) for this item.
- (A) An Application may receive (2 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management

- Districts), or taxing entities. Should an Applicant elect this option and the Application receives letters in opposition, then two (2) points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this subparagraph.
- (B) An Application may receive (2) points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (1) of this subsection.
  - (C) An Application may receive (2) points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.
  - (D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.
- (3) *Commitment of Development Funding by Unit of General Local Government.* (§2306.6710(b)(1)(E)) An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item. The Applicant must provide

evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (B) of this paragraph).

(A) Applications will qualify for points based on the amount of funds at the following levels. For the purpose of this calculation, the Department will use the population of the Place from which the Development's Rural or Urban Area designation is derived. For developments located outside a census designated place, the Department will use the population of the nearest place.

(i) twelve (12) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit and \$15,000 in funding per Low Income Unit;

(ii) eleven (11) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit and \$10,000 in funding per Low Income Unit;

(iii) ten (10) points for a commitment by a Unit of General Local Government of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit and \$5,000 in funding per Low Income Unit;

(iv) nine (9) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit and \$1,000 in funding per Low Income Unit; or

(v) eight (8) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit and \$500 in funding per Low Income Unit.

(B) One (1) point may be added to the points in subparagraph (A) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Unit of General Local Government in the Application.

(4) *Community Support from State Representative or Senator.* (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to twelve (12) points or have deducted up to twelve (12) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's or State Senator's letterhead, be signed by the State Representative or State Senator, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator and must be submitted no later than the Input from State Senator or Representative Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted earlier than the specified deadline in order to

facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives or Senators to be considered are those in office at the time the letter is submitted and whose district boundaries include the proposed Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. Points under this scoring item will be averaged. If one letter is received in support and one letter is received in opposition the score would be zero (0) points. A letter that does not directly express support but expresses it indirectly by inference, (*e.g.* "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(5) *Declared Disaster Area.* (§2306.6710(b)(1)) An Application may qualify to receive up to eight (8) points for this scoring item. An Application will receive seven (7) points if at the time the complete Application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster under of the Texas Government Code, §418.014. An Application will receive eight (8) points if the disaster declaration, within the two-year period preceding the date of submission, is localized, in other words, if the disaster declaration does not apply to the entire state.

(6) *Community Revitalization Plan.*

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the proposed Development is located in an area covered by a community revitalization plan and that meets the following criteria:

(-a-) The community revitalization plan must have been adopted by the municipality or county in which the Development is proposed to be located.

(-b-) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors to be considered may include:

(-1-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (*e.g.*, not localized to a small number of businesses or other buildings) rodent or vermin infestation

- acknowledged to present health risks requiring a concerted effort; or fire hazards;
  - (-2-) presence of blighted structures;
  - (-3-) presence of inadequate transportation;
  - (-4-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;
  - (-5-) the presence of significant crime;
  - (-6-) the presence, condition, and performance of public education; or
  - (-7-) the presence of local business providing employment opportunities.
- (-c-) A municipality is not required to identify and address all of the factors identified in clause (i) of this subparagraph, but it must set forth in its plan those factors that it has identified and determined it will address.
  - (-d-) The adopting municipality or county must have based its plan on the findings of the foregoing assessment and must have afforded the public an opportunity to provide input and comment on the proposed plan and the factors that it would address. To the extent that issues identified require coordination with other authorities, jurisdictions, or the like, such as school boards or hospitals, the adopting municipality should include coordination with such bodies in its plan and, to the extent feasible, secure their cooperation.
  - (-e-) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the community and address in a substantive and meaningful way the material factors identified. The adopted plan must specifically address how the providing of affordable rental housing fits into the overall plan and is a necessary component thereof.
  - (-f-) The adopted plan must describe the planned sources and uses of funds to accomplish its purposes.
  - (-g-) To be eligible for points under this item, the community revitalization plan must already be in place as of the Pre-Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a certification that:
    - (-1-) the plan was duly adopted with the required public comment processes followed;
    - (-2-) the funding and activity under the plan has already commenced; and

(-3-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on the following:

(-a-) Applications will receive six (6) points if the community revitalization plan has a total budget or projected economic value of \$6,000,000 or greater;

(-b-) Applications will receive four (4) points if the community revitalization plan has a total budget or projected economic value of at least \$4,000,000; or

(-c-) Applications will receive two (2) points if the community revitalization plan has a total budget or projected economic value of at least \$2,000,000.

(iii) At the time of the tax credit award the site and neighborhood of any Development must conform to the Department's rules regarding unacceptable sites.

(iv) It is recognized that municipalities and counties will need to devote time and effort to adopt a concerted revitalization plan that complies with the requirements of this scoring item. Therefore, for purposes of the 2013 Application Round only, the Department's Board may, in a public meeting, determine whether a revitalization plan substantively and meaningfully satisfies a revitalization effort, notwithstanding one or more of the factors in this subparagraph not having been satisfied. Such pre-clearance shall be prompted by a request from the Applicant pursuant to the waiver provisions in §10.207 of this title (relating to Waiver of Rules for Applications).

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for CDBG or HOME Program funds that includes the meets the requirements of items (-a-) - (-e-) of this subclause. In order to qualify for points, the development Site must be located in the target area defined by the plan, and the Application must receive a HUD Site and Neighborhood Clearance with HUD review or approval of such clearance:

(-a-) the plan defines specific target areas for redevelopment of housing that do not encompass the entire jurisdiction.;

(-b-) the plan affirmatively addresses Fair Housing;

(-c-) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years;

(-d-) the plan is in place prior to the Pre-Application Final Delivery Date; and

(-e-) the plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the pre-application.

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to six (6) points if the city, county, or state has approved expansion of any of the following basic infrastructure or projects to the Development Site or improvements to areas within a quarter mile of the Development Site, unless a different distance is otherwise identified. The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure. The project or infrastructure must have been completed no more than 12 months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within 12 months from the beginning of the Application Acceptance Period. An Application is eligible for four (4) points for one of the following items or six (6) points for at least two (2) of the following items:

(-a-) Paved roadways or expansion of paved roadways by at least one lane;

(-b-) Water and/or wastewater service;

(-c-) Construction of a new police or fire station within 1 mile of the Development Site that has a service area that includes the Development Site; and

(-d-) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within 5 miles of the Development Site and ambulance service to and from the hospital is available at the Development Site.

(ii) The Applicant must provide a letter from a government official with specific knowledge of the project. However, the Department staff may rely on other documentation that reasonably documents that the substance of this clause is met, in Department Staff's sole determination. A letter must include:

(-a-) the nature and scope of the project;

(-b-) the date completed or projected completion;

(-c-) source of funding for the project;

(-d-) proximity to the Development Site; and

(-e-) the date of any applicable city or county approvals, if not already completed.

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

(1) *Financial Feasibility.* (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year itemized *pro forma* that includes all projected income, operating expenses and debt service, and underlying growth assumptions, reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The *pro forma* must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by

an authorized representative of a proposed construction or permanent Third Party lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) *Cost of Development per Square Foot.* (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost that is not included in Eligible Basis) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types. Structured parking costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking. The square footage used will be the Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors (Elevator Served Development) the NRA will include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA will include elevator served interior corridors and 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application.

(A) Each Application will be categorized as one of the following:

- (i) Qualified Elderly and Elevator Served Development, more than 75 percent single family design, and Supportive Housing Developments;
- (ii) All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse; or
- (iii) All other Applications proposing Rehabilitation.

(B) Within each category listed in subparagraph (A), points will be awarded as follows:

- (i) Within 8 percent and equal to or less than the mean cost per square foot (10 points);
- (ii) Within 5 percent and greater than the mean cost per square foot (10 points);
- (iii) Within 13 percent and equal to or less than the mean cost per square foot (9 points);
- (iv) Within 10 percent and greater than the mean cost per square foot (8 points);
- (v) Within 18 percent and equal to or less than the mean cost per square foot (7 points);
- (vi) Within 15 percent and greater than the mean cost per square foot (6 points); or
- (vii) Within 20 percent of the mean cost per square foot (5 points)



- (C) Developments with Building Costs of less than \$80 per square foot shall receive no less than eight (8) points. Points under this subparagraph are not in addition to the points achieved under subparagraph (B) of this paragraph.
- (3) *Pre-application Participation.* (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period and meets the following requirements:
- (A) The total number of Units does not increase by more than 10 percent from pre-application to Application;
  - (B) The designation of the proposed Development as Rural or Urban remains the same;
  - (C) The proposed Development serves the same Target Population;
  - (D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);
  - (E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;
  - (F) All necessary waivers and pre-clearance were requested in the pre-application;
  - (G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;
  - (H) The pre-application met all applicable requirements; and
  - (I) The community revitalization plan the Applicant used for points under subsection (d)(6) of this section was submitted at the time of pre-application.
- (4) *Leveraging of Private, State, and Federal Resources.* (§2306.6725(a)(3))
- (A) An Application may qualify to receive up to three (3) points if at least 5 percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the following levels:
    - (i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points); or
    - (ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or
    - (iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or
    - (iv) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (1 point).
  - (B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule and will be rounded to the nearest hundredth. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation

will be performed again and the score adjusted, as necessary. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred.

(5) *Extended Affordability or Historic Preservation.* (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive two (2) points for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive the two (2) points; or

(B) An Application proposing the use of historic (rehabilitation) tax credits and providing documentation that an existing building that will be part of the Development will reasonably be able to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609 may qualify to receive two (2) points.

(6) *Right of First Refusal.* (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive one (1) point for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this chapter (relating to Right of First Refusal) and §10.408 of this chapter (relating to Qualified Contract Requirements).

(7) *Development Size.* An Application may qualify to receive one (1) point if the Development is proposed to be fifty (50) total Units or less and the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of \$500,000 or less.

(f) *Point Deductions.*

(1) Any Applicant that elects points for a scoring item on their self score form and is unable to provide sufficient documentation for Department staff to award those points will receive a one (1) point deduction per scoring item in their final score. This penalty shall not be applied to the following scoring items regardless of points elected: §11.9(d)(1), (4), and (6) and §11.9(e)(2) and (3).

(2) Staff may recommend to the Board a penalty of up to (5 points) for any of the items listed in subparagraphs (A) or (B) of this paragraph, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of penalties by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to

the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant penalties. (§2306.6710(b)(2))

- (A) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).
- (B) If the Developer or Principal of the Applicant violates the Adherence to Obligations.
- (C) No penalty points will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve USDA as a lender if the Applicant is not determined to be at fault for not meeting the deadline.
- (D) Any penalties assessed by the Board for subparagraph (A) or (B) of this paragraph based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

#### **§11.10. CHALLENGES OF COMPETITIVE HTC APPLICATIONS.**

*Challenges.* The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process shall be as stated in paragraphs (1) - (12) of this subsection. A matter, even if raised as a challenge, that staff chooses to treat as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

- (1) The challenge must be received by the Department no later than the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.
- (2) A challenge must be clearly identified as such, using that word in all capital letters at the top of the page, and it must state the specific identity of and contact information for the person making the challenge.
- (3) Challengers must provide, at the time of filing the challenge, any briefing, documentation or other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge.

- (4) Challenges to the financial feasibility of the proposed Development are premature and will not be accepted, as such issues will be addressed during the underwriting phase of the process.
- (5) Challenges relating to undesirable area features as described in §10.101(a)(4) of this chapter (relating to Site and Development Requirements and Restrictions) will not be accepted unless they relate to a failure to disclose substantive issues not already disclosed.
- (6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;
- (7) Once a challenge on an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;
- (8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;
- (9) The Department shall notify the Applicant that a challenge was received within seven (7) business days of the challenge deadline;
- (10) The Applicant must provide a response regarding the challenge within fifteen (15) business days of their receipt of the challenge; and
- (11) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting.
- (12) Staff determinations regarding all challenges will be reported to the Board as report items.

## **Attachment 1. Proposed repeal of 10 TAC, Chapter 49, §§49.1 – 49.17, 2011 Housing Tax Credit Program Qualified Allocation Plan**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 49, §§49.1 – 49.17, concerning the 2011 Housing Tax Credit Program Qualified Allocation Plan. The purpose of the repeal is to replace the sections with a new QAP applicable to the 2013 cycle.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.

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

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§49.1. General Program Information

§49.2. Definitions

§49.3. Program Calendar

§49.4. Ineligible Applicants, Applications and Developments

§49.5. Site and Development Restrictions

§49.6. Allocation Process

§49.7. Application Process

§49.8. Threshold Criteria

§49.9. Selection Criteria

§49.10. Board Decisions

§49.11. Tax-Exempt Bond Developments

§49.12. Post Award Activities

§49.13. Board Reevaluation (§2306.6731(b))

§49.14. Program Related Fees

§49.15. Manner and Place of Filing All Required Documentation

§49.16. Waiver and Amendment of Rules

§49.17. Department Responsibilities

**Attachment 1. Proposed repeal of 10 TAC, Chapter 50, §§50.1 – 50.17, 2012-2013 Housing Tax Credit Program Qualified Allocation Plan**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 50, §§50.1 – 50.17, concerning the 2012-2013 Housing Tax Credit Program Qualified Allocation Plan. The purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no change in economic cost to any individual required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 22, 2012.

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

The repeal is proposed new 10 TAC, Chapter 10, Subchapters A, B, C, and G and Chapter 11 of this chapter (relating to the 2013 Housing Tax Credit Program Qualified Allocation Plan), which are proposed for adoption in this issue of the *Texas Register*.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

**REPEAL: Chapter 50, 2012-2013 Housing Tax Credit Program Qualified Allocation Plan**

§50.1

General Program Information

§50.2

Definitions

§49.3

Program Calendar

§50.4

Ineligible Applicants, Applications and Developments

§50.5

Site and Development Restrictions

§50.6

Allocation Process

*§50.7*

Application Process

*§50.8*

Threshold Criteria

*§50.9*

Selection Criteria

*§50.10*

Board Decisions

*§50.11*

Tax-Exempt Bond Developments

*§50.12*

Post Award Activities

*§50.13*

Board Reevaluation (§2306.6731(b))

*§50.14*

Program Related Fees

*§50.15*

Manner and Place of Filing All Required Documentation

*§50.16*

Waiver and Amendment of Rules

*§50.17*

Department Responsibilities