



Multifamily Finance Production Division

2009 MULTIFAMILY HOUSING REVENUE BOND RULES
TITLE 10, PART 1, CHAPTER 35, TEXAS ADMINISTRATIVE CODE

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TITLE 10. COMMUNITY DEVELOPMENT
PART I. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 35. MULTIFAMILY HOUSING REVENUE BOND RULES
10 TAC §§35.1 - 35.10

§35.1. Introduction

The purpose of this Chapter 35 is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2009 Private Activity Bond Program Year. The rules and provisions contained in Chapter 35, of this title are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan and Rules ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in the chapter. The Department encourages the participation in the Multifamily Bond programs by working directly with Applicants, lenders, trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner. The Department has simplified the process, within the limitation of statute, to affirmatively support and create affordable housing throughout the State of Texas.

§35.2. Authority

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code. All Bonds issued by the Department must conform to the requirements of the Act. Notwithstanding anything herein to the contrary, tax-exempt Bonds which are issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to Chapter 2306 and Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this chapter).

§35.3. Definitions

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

- (1) Administrative Deficiency--As defined in §49.3(2) of this title.
- (2) Applicant--As defined in §49.3(7) of this title.
- (3) Application--As defined in §49.3(8) of this title.
- (4) Board--The Governing Board of the Department.
- (5) Bond--An evidence of indebtedness or other obligation, regardless of the sources of payment, issued by the Department under the Act, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable, or nonnegotiable, in bearer or registered form, in certified or book entry form, in temporary or permanent form, or with or without interest coupons.
- (6) Code--The U.S. 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 by the United States Department of the Treasury or the Internal Revenue Service.
- (7) Development--As defined in §49.3(32) of this title.
- (8) Development Owner--As defined in §49.3(35) of this title.
- (9) Eligible Tenants--
 - (A) individuals and families of Extremely Low, Very Low and Low Income;
 - (B) Families of Moderate Income (in each case in the foregoing subparagraph (A) and (B) of this paragraph as such terms are defined by the Issuer under the Act); and
 - (C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

- (10) Extremely Low Income--The income received by an individual or family whose income does not exceed thirty percent (30%) of the area median income or applicable federal poverty line, as determined by the Act.
- (11) Family of Moderate Income--A family:
- (A) that is determined by the Board to require assistance taking into account:
 - (i) the amount of total income available for the housing needs of the individuals and family;
 - (ii) the size of the family;
 - (iii) the cost and condition of available housing facilities;
 - (iv) the ability of the individuals and family to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and
 - (v) standards established for various federal programs determining eligibility based on income;
 - and
 - (B) that does not qualify as a family of Low Income.
- (12) Ineligible Building Type--As defined in §49.3(56) of this title.
- (13) Institutional Buyer--
- (A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §§230.501(a)(4)-(6)); or
 - (B) A qualified institutional buyer as defined by Rule 144A promulgated under the Securities Act of 1935, as amended (17 CFR §230.144(A)).
- (14) Intergenerational Housing--As defined in §49.3(57) of this title.
- (15) Low Income--The income received by an individual or family whose income does not exceed eighty percent (80%) of the area median income or applicable federal poverty line, as determined by the Act.
- (16) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest that encumbers the Development with respect to the requirements of law, including this title, the Act and Section 42 of the Code.
- (17) New Construction--As defined in §49.3(64) of this title.
- (18) Owner--An Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.
- (19) Persons with Special Needs--Persons who:
- (A) Are considered to be disabled under a state or federal law;
 - (B) Are elderly, meaning 60 years of age or older or of an age specified by an applicable federal program;
 - (C) Are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or
 - (D) Are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph and meet the income guidelines established by the Board.
- (20) Private Activity Bonds--Any Bonds described by §141(a) of the Code.
- (21) Private Activity Bond Program Scoring Criteria--The scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(e) of this title.
- (22) Private Activity Bond Program Threshold Requirements--The threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(d) of this title.
- (23) Program--The Department's Multifamily Housing Revenue Bond Program.
- (24) Proper Site Control--Regarding the legal control of the land to be used for the Development, means the earnest money contract is in the name of the Applicant (principal or member of the General Partner); fully executed by all parties and escrowed by the title company.
- (25) Property--The real estate and all improvements thereon, whether currently existing or proposed to be built thereon in connection with the Development, and including all items of personal property affixed or related thereto.
- (26) Qualified 501(c)(3) Bonds--Any Bonds described by §145(a) of the Code.

(27) Rehabilitation--As defined in §49.3(81) of this title.

(28) 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 Texas Rural Development Office of the United States Department of Agriculture (TRDO-USDA), other than an area that is located in a municipality with a population of more than 50,000.

(29) Rural Development--A Development or proposed Development that is located in a Rural Area, other than rural new construction Developments with more than 80 units.

(30) Tenant Income Certification--A certification as to income and other matters executed by the household members of each tenant in the Development, in such form as reasonably may be required by the Department in satisfaction of the criteria prescribed by the Secretary of Housing and Urban Development under §8(f)(3) of the Housing Act of 1937 ("the Housing Act") (42 U.S.C. 1437f) for purposes of determining whether a family is a lower income family within the meaning of the §8(f)(1) of the Housing Act.

(31) Tenant Services--Social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §601 et seq.), and other similar services.

(32) Tenant Services Program Plan--The plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.

(33) Trustee--A national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

(34) TRDO-USDA -As defined in §49.3(94) of this title.

(35) Unit--As defined in §49.3(95) of this title.

(36) Very Low Income--The income received by an individual or family whose income does not exceed sixty percent (60%) of the area median income or applicable federal poverty line as determined under the Act.

§35.4. Policy Objectives and Eligible Developments.

The Department will issue Bonds to finance the rehabilitation, preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income.

§35.5. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, which approval shall be evidenced by adoption by the Board of a resolution authorizing the issuance of the credit-enhanced Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.

(b) Investment Letters. Bonds rated less than "A," or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investment letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall sign and deliver to the Department an investment letter in a form acceptable to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investment letter in a form acceptable to the Department.

§35.6. Application Procedures, Evaluation and Approval.

(a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in a format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department, the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (d) of this section. The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (c) of this section. After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of a resolution declaring the Department's initial intent to issue Bonds (the "inducement resolution") with respect to the Development. After Board approval of the inducement resolution, the induced Applications will be submitted to the Texas Bond Review Board for its lottery, waiting list or carryforward processing in rank order. The Texas Bond Review Board will draw the number of lottery numbers that equates to the number of eligible Applications submitted by the Department for participation in lottery. The lottery numbers drawn will not equate to a specific Development. The Texas Bond Review Board will thereafter assign the lowest lottery number drawn to the highest ranked Application as previously determined by the Department. The Texas Bond Review Board will issue reservations of allocation for Applications submitted for the waiting list or carryforward in the order provided by the Department based on rank. The criteria by which a Development may be deemed to be eligible or ineligible are explained in subsection (j) of this section, entitled Eligibility Criteria. The Private Activity Bond Program Scoring Criteria will be posted on the Department's website.

(c) Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. The TDHCA Board reviews the Development as a whole for adherence to timelines and notification rules in the Qualified Allocation Plan and Rules, the need for the Development, compliance with local government rules and procedures, financial feasibility and the input of local and state officials and interested community members. These factors and others will be used to make the final determination at the appropriate time. Because each Development is unique, making the final determination is often dependent on the issues presented at the time the Application is presented to the Board.

(d) Pre-Application Threshold Requirements.

(1) As the Department reviews the Application, the Department will use the following assumptions, even if not reflected by the Applicant in the Application. Prequalification Assumptions:

(A) Development Feasibility:

- (i) Debt Coverage Ratio must be greater than or equal to 1.15;
- (ii) Deferred Developer Fees are limited to 80% of Developer's Fees;
- (iii) Contractor Fee, Overhead and General Requirements are limited to 14% of direct costs plus site work cost; and
- (iv) Developer Fees cannot exceed 15% of the project's Total Eligible Basis.

(B) Construction Costs Per Unit Assumption. Costs not to exceed \$85 per square foot for general population developments and \$95 for elderly developments (Acquisition / Rehab developments are exempt from this requirement);

(C) Anticipated Interest Rate and Term. As stated in the Summary of Financing Participants in the pre-application;

(D) Size of Units (Acquisition/Rehab developments are exempt from this requirement):

(i) Efficiency Units must be at least 550 square feet;

(ii) One bedroom Unit must be greater than or equal to 650 square feet for family and 600 square feet for senior Units;

(iii) Two bedroom Unit must be greater than or equal to 900 square feet for family and 700 square feet for senior Units;

(iv) Three bedroom Unit must be greater than or equal to 1,000 square feet; and/or.

(v) Four bedroom Unit must be greater than or equal to 1,200 square feet.

(2) Appropriate Zoning. Evidence of appropriate zoning for the proposed use or evidence of application made and pending decision;

(3) Executed Site Control. Properly executed and escrow receipted site control through the inducement Board meeting at pre-application and 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting at full application. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting;

(4) Current Market Information (must support affordable rents);

(5) Completed current TDHCA Bond Pre-Application;

(6) Completed Multifamily Rental Worksheets;

(7) Certification of Local Elected Official request for neighborhood organization information and Public Notification Information;

(8) Completed 2009 Bond Review Board Residential Rental Attachment;

(9) Signed letter of Responsibility for All Costs Incurred;

(10) Signed Mortgage Revenue Bond Program Certification Letter;

(11) Evidence of Paid Application Fees (\$1,000 to TDHCA, \$2,000 to Vinson and Elkins, as the Department's bond counsel, and \$5,000 to Bond Review Board);

(12) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property;

(13) Local Area map showing the location of the Property and Community Services / Amenities within a three (3) mile radius;

(14) Utility Allowance documented from the Appropriate Local Housing Authority;

(15) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Secretary of State; and

(16) Required Notification. Evidence of notification is required in the form of the "Certification of Notifications" form provided in the pre-application stating that they made all the required notifications prior to the deadlines and a copy of the entire mailing list on the "Public Information Form" (including names and complete addresses) of all the recipients. Proof of delivery of the notification must not be older than three months prior to the date of Application submission date. Notification must be sent to all the following individuals and entities (If the QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed in subparagraphs (A) - (F) of this paragraph, then the QAP and Rules will override the notification process listed in subparagraphs (A) - (F) of this paragraph):

(A) State Senator and Representative that represents the community containing the development;

(B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);

(C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);

(D) School District Superintendent of the school district containing the development;

(E) Presiding Officer of the School Board of Trustees of the school district containing the development; and

(F) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under clause (i) of this subparagraph must be made by the deadlines described in that clause. Evidence of notification must meet the requirements identified in clause (ii) of this subparagraph to all of the individuals and entities identified in clause (iii) of this subparagraph.

(i) The Applicant must request Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(I) No later than fourteen (14) days prior to the date the Application is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the Pre-Application materials 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 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 is located in the Extra Territorial Jurisdiction (ETJ) of a city, 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) If no reply letter is received from the local elected officials by seven (7) days prior to the Application submission, then the Applicant must certify to that fact with the "Pre-Application Notification Certification Form" provided in the Pre-Application materials; and

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries contain the proposed Development Site or that the Applicant has knowledge of as of the Pre-Application Submission in the "Certification of Notification Form" provided in the Pre-Application.

(ii) No later than the date the Pre-Application is submitted, Notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt in the format required in the "Pre-Application Notification Template" provided in the Pre-Application materials. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials; however the county officials are required to be notified. Evidence of Notification is required in the form of a certification in the "Certification of Notification Form" provided in the Pre-Application materials. It is strongly encouraged that Applicants retain proof of delivery of the notifications to the persons or entities prescribed in subclauses (I) - (IX) of this clause in the event the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic 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 contain the proposed Development Site as identified in clause (i)(III) of this subparagraph;

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of any municipality containing the Development;

(V) All elected members of the governing body of any municipality containing the Development;

(VI) Presiding officer of the governing body of the county containing the Development;

(VII) All elected members of the governing body of the county containing the Development;

(VIII) State representative of the district containing the Development; and

(IX) State senator of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, 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 Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Statement of whether the Development proposes New Construction or Rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, Intergenerational Housing, or elderly);

(VI) The approximate total number of Units and approximate total number of low-income Units;

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate; and

(VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur.

(17) All New Construction or Reconstruction units must provide the amenities in subparagraphs (A) - (G) of this paragraph. Rehabilitation (excluding Reconstruction) must provide the amenities in subparagraphs (B) - (G) of this paragraph unless expressly identified as not required (§2306.187).

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

(B) Blinds or window coverings for all windows;

(C) Energy-Star or equivalently rated dishwasher and disposal (not required for TRDO-USDA Developments);

(D) Energy-Star or equivalently rated Refrigerator (not required for SRO Developments);

(E) Oven/Range;

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

(G) Energy-Star or equivalently rated ceiling fans in living areas and bedrooms; and

(H) Energy-Star or equivalently rated lighting in all Units which may include florescent bulbs.

(e) Pre-Application Scoring Criteria.

(1) Income and rent levels of the tenants: Priority 1 applications will receive 10 points, Priority 2 applications will receive 7 points and Priority 3 applications will receive 5 points.

(2) Construction Cost per Unit includes: direct hard costs, site work, contractor profit, overhead, general requirements and contingency. Calculation will be hard costs per square foot of net rentable area. Must be greater than or equal to \$85 per square foot for general population Developments and \$95 per square foot for elderly Developments (1 point) (Acquisition / Rehab will automatically receive (1 point)).

(3) Size of Units. Average size of all Units combined in the development must be greater than or equal to 950 square foot for family and must be greater than or equal to 750 square foot for elderly (5 points). (Acquisition / Rehab developments will automatically receive 5 points).

(4) Period of Guaranteed Affordability for Low Income Tenants. Add 10 years of affordability after the extended use period for a total affordability period of 40 years (1 point).

(5) Quality and Amenities Substitutions in amenities will be allowed as long as the overall score is not affected. Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows: Acquisition/Rehab developments will receive 1.5 points for each item.

(A) Laundry Connections (2 points);

(B) Self-cleaning or continuous cleaning ovens (1 point);

(C) Microwave Ovens (in each Unit) (1 point);

(D) Refrigerator with icemaker (1 point);

(E) Laundry equipment (washer and dryers) for each individual Unit including a front load washer and dryer in required UFAS compliant Units (3 points);

(F) Storage Room of approximately nine (9) square feet or greater (does not include bedroom, entryway or linen closets (does not have to be in the unit but must be on the property site) (1 point);

(G) Covered entries (1 point);

(H) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);

(I) Covered patios or covered balconies (1 point);

(J) Covered Parking (including garages) of at least one covered space per Unit (2 points);

(K) High speed internet service to all Units at no cost to residents (2 points);

(L) Fire sprinklers in all Units (2 points);

(M) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry; excludes EIFS synthetic stucco (3 points). Applicants may not select this item if subparagraph (N) of this paragraph is selected);

(N) Greater than 75% Masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry; excludes EIFS synthetic stucco (1 point). Applicants may not select this item if subparagraph (M) of this paragraph is selected);

(O) Thirty year architectural shingle roofing (1 point);

(P) Use of energy efficient alternative construction materials (structurally insulated panels) with wall insulation at a minimum of R-20 (3 points);

(Q) R-15 Walls / R-30 Ceilings (rating of wall system) (3 points);

(R) 14 SEER HVAC or evaporative coolers in dry climates for new construction, adaptive reuse and reconstruction or radiant barrier in the attic for the rehabilitation (3 points);

(S) One Children's Playscape Equipped for 5 to 12 years olds, or one Tot Lot (1 point);

(T) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);

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

(V) Enclosed sun porch or covered community porch/patio (2 points);

- (W) BBQ Grills and Tables (at least one each per 50 Units) (1 point);
- (X) Accessible walking path/jogging path separate from a sidewalk (1 point);
- (Y) Full Perimeter fencing (2 points);
- (Z) Controlled access gate (1 point);
- (AA) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, and 1 printer for every 3 computers (with a minimum of one printer), and 1 fax machine (2 points);
- (BB) Furnished and staffed children's activity center (3 points);
- (CC) Horseshoe pit, putting green or shuffleboard court (1 point);
- (DD) Furnished Fitness Center equipped with a minimum of two of the following fitness equipment options with at least one per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, stationary weight bench, sauna, stair climber, etc. The maximum number of equipment options required for any Development, regardless of number of Units, shall be five (2 points);
- (EE) Library with an accessible sitting area (separate from the community room) (1 point);
- (FF) Gazebo with sitting area (1 point);
- (GG) Covered Pavilion that includes barbeque grills and tables (2 points);
- (HH) Swimming pool (3 points);
- (II) Community laundry room (with at least one front loading washer) (1 point);
- (JJ) Furnished Community room (1 point);
- (KK) Service coordinator office in addition to leasing offices (1 point);
- (LL) Senior Activity Room (Arts and Crafts, etc.) (2 points);
- (MM) Health Screening Room (1 point);
- (NN) Secured Entry (elevator buildings only)--(1 point);
- (OO) Community Dining Room with full or warming kitchen (3 points);
- (PP) Community Theatre Room equipped with a 52 inch or larger screen with surround sound equipment, DVD player; and theatre seating (3 points).
- (QQ) Green Building amenities (Rehabilitation Developments will receive 1.5 points for each point requested for the green building amenities):
 - (i) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);
 - (ii) passive solar heating/cooling (3 points maximum)
 - (I) Two points if the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls; and the east-west axis of the building is within 15 degrees of due east-west.
 - (II) One point if in addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement the 15 degree building orientation option above); and 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August); and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.
 - (iii) water conserving features (2 points maximum, 1 point for each):
 - (I) Install low-flow toilets using less than or equal to 1.6 gallons per flush, or high efficiency toilets using less than or equal to 1.28 gallons/flush.
 - (II) Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout the development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets.
 - (iv) solar water heaters (Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development.) (2 points);
 - (v) irrigation and landscaping (must implement both of the following) (2 points)
 - (I) collected water (at least 50%) for irrigation purposes;
 - (II) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to allow for shading in the summer and allow for heat gain in the winter
 - (vi) sub-metered utility meters (2 points maximum);
 - (I) Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project (2 points); or

(II) Sub-metered utility meters on new construction project (excluding new construction senior project) (1 point)

(vii) energy efficiency (4 points maximum);

(I) Three points if Energy Elements include Energy-Star qualified windows and glass doors; and Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, domestic hot water heater, or insulation that exceeds Energy Star standards or exceeds the IRC 2006; OR

(I) Four points if the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85.

(viii) thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points);

(ix) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum);

(I) Photovoltaic panels that total 10 kW (1 point);

(II) Photovoltaic panels that total 20 kW (2 points);

(III) Photovoltaic panels that total 30 kW (3 points)

(x) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);

(xi) recycling service provided throughout the compliance period (1 point);

(xii) water permeable walkways (at least 20% of walkways and parking) (1 point).

(xiii) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (50% of flooring on the ground floor of the development must be finished concrete and/or ceramic tile. 50% of the flooring on upper floors must be ceramic tile and/or a flooring material that is Floor Score Certified (developed by the Resilient Floor Covering Institute), applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (2 points);

(6) Tenant Services (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included):

(A) \$10.00 per Unit per month (10 points);

(B) \$7.00 per Unit per month (5 points); or

(C) \$4.00 per Unit per month (3 points).

(7) Zoning appropriate for the proposed use or no zoning required for the intended use must be in place at the time of the Application submission date, which is listed on the Department's website for Applications submitted for waiting list and carryforward, in order to receive points (5 points).

(8) Proper Site Control (as defined in §35.3(24) of this title). Site control must be through the scheduled Board meeting inducement and at full application must be 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting. For Applications submitted for waiting list and carryforward all information must be correct at the time of the Application submission date, listed on the Department's website in order to receive points (5 points).

(9) Development Support / Opposition Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, seven (7) business days prior to the date of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring. The letter must specifically indicate support or opposition otherwise the letter will be considered neutral:

(A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official); and/or

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).

(10) Proximity to Community Services / Amenities Community services / amenities within three (3) miles of the site. A map must be included with the Application showing a three (3) mile radius notating where the services / amenities are located. (Acquisition/Rehab developments will receive 1.5 points for each item in subparagraphs (A) - (O) of this paragraph):

- (A) Full service grocery store or supermarket (1 point);
- (B) Pharmacy (1 point);
- (C) Convenience store / mini-market (1 point);
- (D) Retail Facilities (Target, Wal-Mart, Home Depot, Bookstores, etc.) (1 point);
- (E) Bank / Financial Institution (1 point);
- (F) Restaurant (1 point);
- (G) Indoor public recreation facilities (community center, civic center, YMCA, museum) (1 point);
- (H) Outdoor public recreation facilities (park, golf course, public swimming pool) (1 point);
- (I) Fire / Police Station (1 point);
- (J) Medical Facilities (hospitals, minor emergency, medical offices) (1 point);
- (K) Public Library (1 point);
- (L) Public Transportation (1/2 mile from site) (1 point);
- (M) Public School (only one school required for point and only eligible with general population developments) (1 point);
- (N) Dry Cleaners; and/or
- (O) Family Video Rental (i.e. Blockbuster, Hollywood Video, Movie Gallery) (1 point).

(11) Proximity to Negative Features adjacent to or within 300 feet of any part of the Development site boundaries. A map must be included with the application showing where the feature is located. Developer must provide a letter stating there are none of the negative features listed in subparagraphs (A) - (F) of this paragraph within the stated area if that is correct. (maximum -6 points)

- (A) Junkyards (1 point deducted);
- (B) Active Railways (excluding light rail) (1 point deducted);
- (C) Heavy industrial / manufacturing plants (1 point deducted);
- (D) Solid Waste / Sanitary Landfills (1 point deducted);
- (E) Within the "Fall line" of High Voltage Transmission Power Lines (1 point deducted); and/or
- (F) Accident zones or flight paths for commercial or military airports (1 point deducted).

(12) Acquisition/Rehabilitation Developments will receive thirty (30) points. This will include the demolition of old buildings and new construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).

(13) Preservation Developments will receive ten (10) points. This includes rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past ten years. Evidence must be provided.

(14) Declared Disaster Areas. Applications will receive 7 points, if at the time the complete pre-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 §418.014 of the Texas Government Code. This includes Federal, State and Governor declared disaster areas.

(15) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits. Applications will receive 6 points if the proposed Development is located in a census tract in which there are no other existing developments that were awarded housing tax credits in the last 5 years and 3 points if there are no other existing developments that were awarded housing tax credits in the last 3 years. The applicant must provide evidence of the census tract in which the Development is located. These census tracts are outlined in the 2009 Housing Tax Credit Site Demographic Characteristics Report.

(16) Notary Public Services for Tenants. Applications will receive 1 point for this item (§2306.6710(b)(3)) To receive this point, the Applicant must submit a certification that the Development will provide notary public services to the tenants at no cost to the tenant. This provision will be included in the Land Use Restriction Agreement and Regulatory Agreement.

(f) Multiple Site Applications. For the purposes of scoring, applicants must submit the required information as outlined in the Pre-Application Submission Manual. Each individual property will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(g) Financing Commitments. After approval by the Board of the inducement resolution, and as part of the submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(h) Final Application. An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application, for Priority 1 and 2, prior to receipt of a reservation of allocation from the Texas Bond Review Board. For Priority 3 Applications the Volumes I and II must be submitted within fourteen (14) days of the reservation date from the Texas Bond Review Board. The Volume III of the Application and such supporting material as is required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. If the Applicant is applying for other Department funding then refer to the Rules for that program for Application submission requirements. The final application must adhere to the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in the full application shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board.

(1) A Public Notification Sign shall be installed on the proposed Development site, regardless of Priority, within thirty (30) days of the Department's receipt of Volumes I and II. The applicant must certify to the fact that the sign was installed within (thirty) 30 days of Volume I and II submission and the date, time and location of the TEFRA Public Hearing must be included on the sign at least (thirty) 30 days prior to the hearing date. The sign must be at least four (4) feet by eight (8) feet in size and be located within twenty (20) feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA Board takes final action on the Application for the development. The information and lettering on the sign must meet the minimum requirements identified in the Application. In areas where the Public Notification Sign is prohibited by local ordinance or code, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall mail written notification to all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning ordinance or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the 1,000 foot or local ordinance area showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. The Applicant must mail notice to any public official that changed from the submission of the pre-application to the submission of the final application and any neighborhood organization that is known and was not notified at the time of the pre-application submission. No additional notification is required unless the Applicant submitted a change in the Application that reflects a total Unit increase greater than 10%, an increase greater than 10% for any given AMFI, a decrease in the number of market rate units, or a change in the population being served (elderly, general population or transitional); and

(2) Completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department as posted to the Department's website.

(i) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the email within 24 hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five business days. Failure to resolve all outstanding deficiencies within five business days will result in a penalty fee of \$500 for each day the deficiency remains unresolved. Any Application with unresolved deficiencies after the 10th day from the issuance of the deficiency notice will be terminated. The Applicant will be responsible for the payment of any fees accrued pursuant to this section regardless of any termination pursuant to this section. The time period for responding to a deficiency notice begins at the start of the 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. The Application will not be presented to the Board for consideration until all outstanding fees have been paid.

(j) Eligibility Criteria. The Department will evaluate the Development for eligibility at the time of pre-application, and at the time of final Application. If there are changes to the Application that have an adverse

affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) - (6) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Code.

(2) The proposed Development and the Applicant and its principals must satisfy the Department's Underwriting Rules and Guidelines (§1.32 of this title). The pre-application must include sufficient information for the Department to establish that the Underwriting Guidelines can be satisfied. The final Application will be thoroughly underwritten according to the Underwriting Rules and Guidelines (§1.32 of this title).

(3) The Development must not be located on a site determined to be unacceptable for the intended use by the Department.

(4) Any Development in which the Applicant or principals of the Applicant have an ownership interest must be found not to be in Material Non-Compliance under the compliance Rules in effect at the time of pre-application submission. Any corrective action documentation affecting the Material Non-compliance status score must be submitted to the Department no later than thirty (30) days prior to final application submission.

(5) Neither the Applicant nor any principals of the Applicant is, at the time of Application:

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

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

(C) is subject to enforcement action under state or federal securities law, action by the NASD, subject to a federal tax lien, or the subject of an enforcement proceeding with any governmental entity; or

(D) neither applicant nor any principals of the applicant have a development under their ownership or control with a Material Non-compliance score as set out in the Department's Compliance Monitoring Policies and Procedures (§60 of this title); or

(E) otherwise disqualified or debarred from participation in any of the Department's programs.

(6) Neither the Applicant nor any of its principals may have provided any fraudulent information, knowingly false documentation or other intentional or negligent misrepresentation in the Application or other information submitted to the Department.

(7) An application may include either the rehabilitation or new construction, or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51% or more of the residential units are located:

(A) in a county with a population of less than 75,000; or

(B) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds. The number of sites may be reduced as needed without affecting their status as a project for purposes of the application, provided that the final application for a reservation contains at least two sites (§1372.002)

(k) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(l) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §2306.0661, Texas Government Code and §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development team must be present and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is an acquisition/rehabilitation then the presentation should include the scope of work that will be done to the property. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

(1) The developer market study;

(2) The location;

(3) The compliance history of the developer;

- (4) The financial feasibility;
- (5) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;
- (6) The Development's proximity to other low income Developments;
- (7) The availability of adequate public facilities and services;
- (8) The anticipated impact on local school districts;
- (9) Zoning and other land use considerations;
- (10) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and
- (11) Other good cause as determined by the Board.

(m) Approval of the Bonds.

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and, in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 and §1.8 of this title. The Department's conduit housing transactions will be processed in accordance with the Texas Bond Review Board rules 34 TAC, Part 9, Chapter 181, Subchapter A and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. The Department encourages use of Alternative Dispute Resolution methods as outlined in §1.17 of this title.

(n) Local Permits. Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

(o) Closing. If there are changes to the Application prior to closing that have an adverse effect on the score and ranking order that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Once all approvals have been obtained and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Any outstanding Housing Trust Fund Pre-Development loans for the proposed Development site must be paid in full at the time the bond transaction is closed. All Applicants are subject to §1.20(g) of this title. Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§35.7. Regulatory and Land Use Restrictions

(a) Filing and Term of LURA. A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. For Developments involving new construction, the term of the LURA will be the longer of 30 years, the period of guaranteed affordability or the period for which Bonds are outstanding. For the financing of an existing Development, the term of the LURA will be the longer of the longest period which is economically feasible in accordance with the Act, or the period for which Bonds are outstanding.

(b) Development Occupancy. The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner of the Development. Development occupancy requirements must be met on

or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.

(c) Set Asides.

(1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds must be restricted under one of the following two minimum set-asides:

(A) at least twenty percent (20%) of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed fifty percent (50%) of the area median income, or

(B) at least forty percent (40%) of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed sixty percent (60%) of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that, should a tenant's income, as of the most recent determination thereof, exceed 140% of the then applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant. (Required federal set-aside requirements)

(d) Global Income Requirement. All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds shall be occupied or held vacant (in the case of new construction) and available for occupancy at all times by persons or families whose income does not exceed one hundred and forty percent (140%) of the area median income for a four-person household.

(e) Qualified 501(c)(3) Bonds. Developments which are financed from the proceeds of Qualified 501(c)(3) Bonds are further subject to the restriction that at least seventy-five percent (75%) of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).

(f) Taxable Bonds. The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.

(g) Fair Housing. All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

(h) Tenant Services. The LURA will require that the Development Owner offer a variety of services for residents of the Development through a Tenant Services Program Plan which is subject to annual approval by the Department.

(i) Land Use Restriction Agreement. Requirements as defined in Chapter 60, Subchapter A of this title.

§35.8 Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,000 (payable to Vinson & Elkins, the Department's Bond Counsel) and \$5,000 (payable to the Texas Bond Review Board (BRB)) These fees cover the costs of pre-application review and filing fees to the BRB. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code).

(b) Application and Issuance Fees. At the time of full application the Applicant is required to submit a tax credit application fee of \$30/unit and \$10,000 for the bond application fee (for multiple site Applications \$10,000 or \$30/unit, whichever is greater, for the bond application fee.) At the closing of the bonds the following fees are required: an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a Private Activity Bond compliance fee equal to \$25/unit and a tax credit compliance fee equal to \$40/unit. For refunding Applications the Application fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000.

(c) Annual Administration, Portfolio Management and Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with the program requirements applicable to each Development and asset management applicable requirements. The annual tax credit compliance fee is paid in advance (for the duration of the compliance or affordability period) and is equal to \$40/unit beginning two years from the closing date on the bonds. 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 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. The Private Activity Bond compliance fee is paid in advance at closing (for as long as the bonds are outstanding) and is equal to \$25/unit beginning two years from the closing date on the bonds for payment to be applied to the third year following closing; the asset management fee, if applicable, is paid in advance and is equal to \$25/unit beginning two years from the closing date on the bonds. Compliance fees may be adjusted from time to time by the Department. The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three years from the closing date. These fees are paid for a minimum of thirty (30) years or as long as the bonds are outstanding.

§35.9. Waiver of Rules

Provided all requirements of the Act, the Code, and any other applicable law are met, the Board may waive any one or more of the Rules set forth in §§35.3 - 35.8 of this title relating to the Multifamily Housing Revenue Bond Program in order to further the purposes and the policies of Chapter 2306, Texas Government Code; to encourage the acquisition, construction, reconstruction, or rehabilitation of a Development that would provide decent, safe, and sanitary housing, including, but not limited to, providing such housing in economically depressed or blighted areas, or providing housing designed and equipped for Persons with Special Needs; or for other good cause, as determined by the Board.

§35.10. No Discrimination

The Department and its staff or agents, Applicants, Development Owners, and any participants in the Program shall not discriminate under this Program against any person or family on the basis of race, creed, national origin, age, religion, handicap, family status, or sex, or against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Development Owner from selecting tenants with Special Needs, or to preclude a Development Owner from selecting tenants based on income in renting Units to comply with the set asides under the provisions of this chapter.