

**Note Regarding 2003 Draft QAP:**

**"The 2003 Draft Qualified Allocation Plan and Rules were submitted to the Secretary of State on September 16, 2002 for posting in the Texas Register to run on September 27, 2002. This is a formatted version of that submission."**



## 2003 Draft Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules

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### **§49.1. Purpose, Program Statement, Allocation Goals.**

(a) **Purpose.** The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of low income housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Department was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan (QAP) which is set forth in §§49.1 through 49.24 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of the low income housing tax credit, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

(b) **Program Statement.** The Department shall administer the program to encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the private marketplace; maximize the number of suitable, affordable residential rental units added to the state's housing supply; prevent losses for any reason to the state's supply of suitable, affordable residential rental units by enabling the rehabilitation of rental housing or by providing other preventive financial support; and provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development and operation of affordable housing developments in rural and urban communities.

(c) **Allocation Goals.** It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula, and to promote maximum utilization of the available tax credit amount. The processes and criteria utilized to realize this goal are described in §§49.8 and 49.9 of this title, without in any way limiting the effect or applicability of all other provisions of this title.

### **§49.2. Coordination with Rural Agencies.**

To assure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to achieve increased sharing of information, reduction of processing procedures, and fulfillment of Development compliance requirements in rural areas, the Department has entered into a Memorandum of Understanding (MOU) with the TX-USDA-RHS to coordinate on existing, rehabilitated, and new construction housing Developments financed by TX-USDA-RHS; and will jointly administer the Rural Set-Aside with the Texas Office of Rural Community Affairs (ORCA). ORCA will assist in developing all Threshold, Selection and Underwriting Criteria applied to Applications eligible for the Rural Set-Aside. The Criteria will be approved by that Agency. To ensure that the Rural Set-Aside receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts.

### **§49.3. Definitions.**

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

(1) **Administrative Deficiencies** - The absence of information or documents from the Application which are essential to a review and scoring of the Development. If an Application contains deficiencies which, in the determination of the Department staff, require clarification of information submitted at the time of the Application, the Department staff shall request correction of such Administrative Deficiencies. The Department staff shall provide this in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If such Administrative Deficiencies are not corrected to the satisfaction of the Department within three business days of the deficiency notice date, then five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains uncorrected. If such deficiencies are not corrected within five business days from the deficiency notice date, then the Application shall be terminated. 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.

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

(3) **Agreement and Election Statement** - A document in which the Development Owner elects, irrevocably, to fix the applicable credit percentage with respect to a building or buildings, as that in effect for

the month in which the Department and the Development Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

(4) **Applicable Fraction** - The fraction used to determine the Qualified Basis of the qualified low income building, which is the smaller of the Unit fraction or the floor space fraction, all determined as provided in the Code, §42(c)(1).

(5) **Applicable Percentage** - The percentage used to determine the amount of the low income housing tax credit, as defined more fully in the Code, §42(b). For purposes of the Application, the Applicable Percentage will be projected at 10 basis points above the greater of:

(A) the current applicable percentage, or

(B) the trailing 1-year, 2-year or 3-year average rate in effect during the month in which the Application is submitted to the Department.

(6) **Applicant** - Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a housing tax credit allocation. For purposes hereof, the Applicant is sometimes referred to as the "housing sponsor."

(7) **Application** - An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material.

(8) **Application Acceptance Period** - That period of time during which Applications for either a Housing Credit Allocation from the State Housing Credit Ceiling or a Determination Notice for Tax Exempt Bond Developments may be submitted to the Department as more fully described in §§49.9(a) and 49.22 of this title.

(9) **Application Round** - The period beginning on the date the Department begins accepting applications and continuing until all available credits from the State Housing Credit Ceiling (as stipulated by the Department) are allocated, but not extending past the last day of the calendar year.

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

(11) **Area Median Gross Income (AMGI)** - Area median gross household income, as determined for all purposes under and in accordance with the requirements of the Code, §42.

(12) **At-Risk Development** - a Development that:

(A) receives the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, equity incentive, rental subsidy, Section 8 housing assistance payment, rental supplement payment, or rental assistance payment under the following federal laws, as applicable:

(i) Sections 221(d)(3), (4) and (5), National Housing Act (12 U.S.C. Section 1715l);

(ii) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(v) any project-based assistance authority pursuant to Section 8 of the U.S. Housing Act of 1937;

(vi) Sections 514, 515, 516, and 538 Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and

1486); or

(vii) Section 42 of the Internal Revenue Code of 1986, and

(B) is subject to the following conditions:

(i) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two calendar years); or

(ii) the federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years).

(13) **Bedroom** - A portion of a Unit set aside for sleeping which is no less than 100 square feet; has no width or length less than 8 feet; 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.

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

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

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

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

(B) Any Person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such Person of Beneficial Ownership (as defined herein) of a security or preventing the vesting of such Beneficial Ownership as part of a plan or scheme to evade inclusion within the definitional terms contained herein; and

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

- (i) through the exercise of any option, warrant or right,
- (ii) through the conversion of a security,
- (iii) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or
- (iv) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement.

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

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

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

(17) **Carryover Allocation Document** - A document issued by the Department to a Development Owner pursuant to §49.14 of this title.

(18) **Carryover Allocation Procedures Manual** - The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests.

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

(20) **Colonia** - A geographic area located in a county some part of which is within 150 miles of the international border of this state 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 §17.921, Water Code; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department.

(21) **Commitment Notice** - A notice issued by the Department to a Development Owner pursuant to §49.13 of this title and also referred to as the "commitment."

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

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

(24) **Cost Certification Procedures Manual** - The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing requests for IRS Form(s) 8609 for Developments placed in service under the Low Income Housing Tax Credit Program.

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

(26) **Department** - The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established at Chapter 2306, Texas Government Code.

(27) **Determination Notice** - A notice issued by the Department to the Owner of a Tax Exempt Bond Development which states that the Development may be eligible to claim low income housing tax credits without receiving an allocation of credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the Department will issue the IRS Form(s) 8609 to the Development Owner; and specifies the amount of tax credits necessary for the financial feasibility of the Development and its viability as a qualified low income housing Development throughout the Credit Period.

(28) **Development** - A proposed qualified low income housing Development, for new construction or rehabilitation, for purposes of the Code, §42(g), that consists of one or more buildings containing multiple Units,

and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

- (A) located on a single site or contiguous site; or
- (B) located on scattered sites and contain only rent-restricted units.

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

(30) **Development Owner** - Any Person or Affiliate of a Person who owns or proposes a Development or expects to acquire control of a Development under a purchase contract approved by the Department.

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

(32) **Economically Distressed Area** - Consistent with §17.921 of Texas Water Code, an area in which:

- (A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;
- (B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and
- (C) an established residential subdivision was located on June 1, 1989, as determined by the board.

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

(34) **Executive Award and Review Advisory Committee** ("The Committee") - A Departmental committee that will make funding and commitment recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in Chapter 2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities.

(35) **Extended Low Income Housing Commitment** - An agreement between the Department, the Development Owner and all successors in interest to the Development Owner concerning the extended low income housing use of buildings within the Development throughout the extended use period as provided in the Code, §42(h)(6). The Extended Low Income Housing Commitment with respect to a Development is expressed in the LURA applicable to the Development.

(36) **General Contractor** - One who contracts for the construction, or rehabilitation of an entire building or 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 said subcontractors. This party may also be referred to as the "contractor."

(37) **General Developments** - Any Development which is not a Qualified Nonprofit Development or is not under consideration in the Rural, At-Risk Development or Elderly set-asides as such terms are defined by the Department.

(38) **General Partner** - The partner, or collective of partners, which has general liability for the partnership during the construction and lease-up period. In addition, unless the context shall clearly indicate to the contrary, if the entity in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

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

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

(41) **Historic Development** - A residential Development that has received a historic property designation by a federal, state or local government entity.

(42) **Historically Underutilized Businesses (HUB)** - Any entity defined as an historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.

(43) **Housing Credit Agency** - A Governmental Entity charged with the responsibility of allocating low income housing tax credits pursuant to the Code, §42. For the purposes of this title, the Department is the sole "Housing Credit Agency" of the State of Texas.

(44) **Housing Credit Allocation** - An allocation by the Department to a Development Owner of low income housing tax credit in accordance with §49.17 of this title.

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

(46) **Housing Tax Credit** ("tax credits") - A tax credit allocated, or for which a Development may qualify, under the low income housing tax credit program, pursuant to the Code, §42.

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

(48) **Ineligible Building Types** - Those buildings or facilities which are ineligible, pursuant to this QAP, for funding under the tax credit program as follows:

(A) Hospitals, nursing homes, trailer parks and dormitories (or other buildings that will be predominantly occupied by Students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §§42(i)(3)(B)(iii) and (iv) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for credits if the Development involves the conversion of the building to a non-transient multifamily residential development.

(B) 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.

(C) Any Development with building(s) with four or more stories that does not include an elevator.

(D) Any Development having any Units with four or more bedrooms.

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

(50) **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 this title and the requirements of the Code, §42.

(51) **Material Deficiencies** - Deficiencies that are not eligible to be remedied pursuant to paragraph (1) of this subsection. Deficiencies caused by the omission of Threshold Criteria documentation specifically required by §49.9(e) of this title shall automatically be considered Material Deficiencies and shall be cause for termination.

(52) **Material Non-Compliance** - A property located within the state of Texas will be classified by the Department as being in material non-compliance status if the non-compliance score for such property is equal to or exceeds 30 points in accordance with the provisions of §49.5(b)(6) of this title and under the methodology and point system set forth in §49.19 of this title. A property located outside the state of Texas will be classified by the Department as being in Material Non-compliance status if the non-compliance score for such property is equal to or exceeds 30 points in accordance with the provisions of §49.5(b)(7) of this title and under the methodology and point system set forth in §49.19 of this title.

(53) **Minority Owned Business** - A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin.

(54) **Office of Rural Community Affairs** (ORCA) - The state agency designated by the legislature as primarily responsible for rural area development in the state.

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

(56) **Persons with Disabilities** - A person who:

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

(i) is expected to be of a long, continued and indefinite duration,

(ii) substantially impedes his or her ability to live independently, and

(iii) is of such a nature that the ability could be improved by more suitable housing conditions, or

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

(57) **Pre-Application** - A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in §49.8 of this title.

(58) **Pre-Application Acceptance Period** - That period of time during which Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

(59) **Prison Community** - A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison.

(60) **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.

(61) **Qualified Allocation Plan (QAP)** - A plan adopted by the Board, and approved by the Governor, under this title, and as provided in the Code, § 42(m)(1) (specifically including preference for Developments located in Qualified Census Tracts and the development of which contributes to a concerted community revitalization plan) and as further provided in §§49.1 through 49.24 of this title, that:

(A) provides the threshold and scoring, and underwriting process based on housing priorities of the department that are appropriate to local conditions;

(B) gives preference in housing tax credit allocations to Developments that, as compared to other Developments:

(i) when practicable and feasible based on available funding sources, serve the lowest income tenants; and

(ii) are affordable to qualified tenants for the longest economically feasible period.

(C) provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the Qualified Allocation Plan.

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

(63) **Qualified Census Tract** - Any census tract which is so designated by the Secretary of HUD in accordance with §42(d)(5)(C)(ii).

(64) **Qualified Elderly Development** - A Development which meets the requirements of the federal Fair Housing Act and:

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

(B) is intended and operated for occupancy by at least one person 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one person who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older.

(65) **Qualified Market Analyst** - A real estate appraiser certified or licensed by the Texas Appraiser and Certification Board or a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's experience and educational background will provide the general basis for determining competency as a Market Analyst. Such determination will be at the sole discretion of the Department. The Qualified Market Analyst must be a Third Party.

(66) **Qualified Nonprofit Organization** - An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not Affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in one or more of the set-asides, including, but not limited to, the nonprofit set-aside, the rural developments set-aside, the At-Risk Developments set-aside and the general set-aside.

(67) **Qualified Nonprofit Development** - A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary) holds a controlling interest, materially participates (within the meaning of the Code, §469(h), as may be amended from time to time) in its development and operation throughout the Compliance Period, and otherwise meets the requirements of the Code, §42(h)(5).

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

(69) **Related Party** - As defined,

(A) The following individuals or entities:

(i) the brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573 of the Texas Government Code;

(ii) a person and a corporation, if the person owns more than 50 percent of the outstanding stock of the corporation;

(iii) two or more corporations that are connected through stock ownership with a common parent possessing more than 50 percent of:

(I) the total combined voting power of all classes of stock of each of the corporations that can vote;

(II) the total value of shares of all classes of stock of each of the corporations; or



(III) the total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

- (iv) a grantor and fiduciary of any trust;
- (v) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (vi) a fiduciary of a trust and a beneficiary of the trust;
- (vii) a fiduciary of a trust and a corporation if more than 50 percent of the outstanding stock of the corporation is owned by or for:
  - (I) the trust; or
  - (II) a person who is a grantor of the trust;
- (viii) a person or organization and an organization that is tax-exempt under the Code, §501(a), and that is controlled by that person or the person's family members or by that organization;
- (ix) a corporation and a partnership or joint venture if the same persons own more than:
  - (I) 50 percent of the outstanding stock of the corporation; and
  - (II) 50 percent of the capital interest or the profits' interest in the partnership or joint venture;
- (x) an S corporation and another S corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;
- (xi) an S corporation and a C corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;
- (xii) a partnership and a person or organization owning more than 50 percent of the capital interest or the profits' interest in that partnership; or
- (xiii) two partnerships, if the same person or organization owns more than 50 percent of the capital interests or profits' interests.

(B) As a note to Applicants, 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.

(70) **Rules** - The Department's low income housing tax credit Rules as presented in this title.

(71) **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 20,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for new construction or rehabilitation funding by TX-USDA-RHS.

(72) **Rural Development** - A Development located within a Rural Area and for which the Applicant applies for tax credits under the Rural Set Aside.

(73) **Selection Criteria** - Criteria used to determine housing priorities of the State under the Low Income Housing Tax Credit Program as specifically defined in §49.9(f) of this title.

(74) **Set Aside** - A reservation of a portion of the available Housing Tax Credits to provide financial support for specific types of housing or geographic locations or serve specific types of Applicants on a priority basis as permitted by the Qualified Allocation Plan.

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

(76) **Student Eligibility** - Per the Code, §42(l)(3)(D), "A unit shall not fail to be treated as a low-income unit merely because it is occupied:

(A) by an individual who is:

(i) a student and receiving assistance under title IV of the Social Security Act (42 U.S.C. §§ 601 et seq.), or

(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act (29 USCS §§ 1501 et seq., generally; for full classification, consult USCS Tables volumes) or under other similar Federal, State, or local laws, or

(B) entirely by full-time students if such students are:

(i) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

(ii) married and file a joint return."

(77) **Tax Exempt Bond Development** - A Development 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 the Code, §42(h)(4)(B),

such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(78) **Third Party** - a Person who is not an Affiliate, Related Party or Beneficial Owner of the Applicant, General Partner, developer or Person(s) receiving a portion of the developer fee or contractor fee.

(79) **Threshold Criteria** - Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §49.9(e) of this title.

(80) **Total Housing Development Cost** - The total of all costs incurred or to be incurred by the Development Owner in acquiring, constructing, rehabilitating and financing a Development, as determined by the Department based on the information contained in the Applicant's Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of tax credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment.

(81) **TX-USDA-RHS** - The Rural Housing Services (RHS) of the United States Department of Agriculture (USDA) serving the State of Texas (formerly known as TxFmHA) or its successor.

(82) **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 separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

#### **§49.4. State Housing Credit Ceiling.**

The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C), using such information and guidance as may be made available by the Internal Revenue Service. The Department shall publish each such determination in the Texas Register within 30 days after the receipt of such information as is required for the purpose from the Internal Revenue Service. The aggregate amount of commitments of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. Housing Credit Allocations made to Tax Exempt Bond Developments are not included in the State Housing Credit Ceiling.

#### **§49.5. Ineligibility, Disqualification and Debarment, Applicant Standards, Representation by Former Board Member or Other Person.**

(a) **Ineligibility.** An Application will be ineligible if:

(1) A member of the Development Team 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; or,

(2) A member of the Development Team has been or is convicted of, under indictment for, or on probation for a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses; or,

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

(4) A member of the Development Team with any past due audits has not submitted those past due audits to the Department in a satisfactory format on or before the close of the Application Acceptance Period. A Person is not eligible to receive a commitment of credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of the date the Board meets to review the recommendations of Department staff regarding Applications.

(b) **Disqualification and Debarment.** Additionally, the Department will disqualify, and may disbar, an Application if it is determined by the Department that those issues identified in paragraphs (1) through (10) of this subsection exist. A person debarred by the Department from participation in the program may appeal the person's debarment to the Board. The Department shall debar a person for the longer of, one year from the date of debarment, or until the violation causing the debarment has been remedied.

(1) fraudulent information, knowingly false documentation or other material misrepresentation has been provided in the Application or other information submitted to the Department. The aforementioned policy will apply at any stage of the evaluation or approval process; or,

(2) at the time of application or at any time during the two-year period preceding the date the application round begins, the Applicant or a Related Party is or has been:

(A) a member of the Board; or

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(B) the executive director, a deputy director, the director of housing programs, the director of compliance, the director of underwriting, or the Low Income Housing Tax Credit Program manager employed by the Department.

(3) the Applicant or any Person, General Partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property in the state of Texas who received a commitment of tax credits in the 2001 or 2002 Application Round but did not close the construction loan, or meet the deadlines for the commencement of substantial construction as required under the Carryover Allocation (including any extension period granted by the Board) except for instances where an extension has been approved by the Board.

(4) the Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless:

(A) the applicant proposes to maintain for a period of 30 years or more 100 percent of the Development units supported by low income housing tax credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the area median income, adjusted for family size; and

(B) at least one-third of all the units in the Development are public housing units or Section 8 Development-based units; or,

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

(6) the Applicant or any Person, General Partner, general contractor or their respective principals or Affiliates active in the ownership or control of other low income rental housing property in the state of Texas funded by the Department is in Material Non-Compliance with the LURA (or any other document containing an Extended Low Income Housing Commitment) or the program rules in effect for such property on the date the Application Round closes or upon the date of filing Volume I of the Application for a Tax Exempt Bond Development. Any corrective action documentation affecting the Material Non-Compliance status score for Applicant's competing in the 2003 Application Round must be received by the Department no later than February 1, 2003. The Department may take into consideration the representations of the Applicant regarding compliance violations described in §49.7(e)(7)(C) and (D) of this title; however, the records of the Department are controlling; or,

(7) the Applicant or any Person, General Partner, General Contractor or their respective principals or Affiliates active in the ownership or control of other low income rental housing property outside of the state of Texas has incidence of non-compliance with the LURA or the program rules in effect for such tax credit property as reported on the Uniform Application Previous Participation Certification and/or as determined by the state regulatory authority for such state and such non-compliance is determined to be Material Non-Compliance by the Department using methodology as set forth in §49.19 of this title; or,

(8) the Applicant or any Person, General Partner, General Contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit properties in the state of Texas has failed to pay in full any fees billed by the Department, as further described in §49.21 of this title; or

(9) the Development is located on a site that has been determined to be "unacceptable" by the Department staff; or

(10) the Applicant or a Related Party, or any person who is active in the construction, rehabilitation, ownership, or control of the Development including a General Partner or general contractor and their respective principals or affiliates, or person employed as a lobbyist or in another capacity on behalf of the Development, communicates with any Board member or member of the Committee with respect to the Development during the period of time starting with the time an Application is submitted until the time the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application.

(c) **Certain Applicant and Development Standards.** Notwithstanding any other provision of this section, the Department may not allocate tax credits to a Development proposed by an Applicant if the Department determines that:

(1) the housing development is not necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford;

(2) the housing sponsor undertaking the proposed housing development will not supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income;

- (3) the housing sponsor is not financially responsible;
  - (4) the housing sponsor has, or will enter into a contract for the proposed housing development with, a Person that:
    - (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;
    - (B) breached a contract with a public agency; or
    - (C) 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;
  - (5) the financing of the housing development is not a public purpose and will provide a public benefit;
- and
- (6) the housing development will not be undertaken within the authority granted by this chapter to the housing finance division and the housing sponsor.

**(d) Representation by Former Board Member or Other Person.**

(1) A former board member or a former director, deputy director, director of housing programs, director of compliance, director of underwriting, or Low Income Housing Tax Credit Program Manager previously employed by the Department may not:

(A) for compensation, represent an Applicant for an allocation of tax credits or a Related Party of an Applicant before the second anniversary of the date that the Board member's, director's, or manager's service in office or employment with the Department ceases;

(B) represent any Applicant or a Related Party of an Applicant or receive compensation for services rendered on behalf of any Applicant or Related Party regarding the consideration of an Application in which the former board member, director, or manager participated during the period of service in office or employment with the Department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an Applicant or Related Party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the Department ceases.

(2) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

**§49.6. Site and Development Restrictions: Floodplain, Ineligible Building Types, Scattered Site Limitations, Credit Amount, Limitations on the Size of Developments, Rehabilitation Costs.**

(a) **Floodplain.** No Development may have buildings, driveways or parking lots constructed within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain.

(b) **Ineligible Building Types.** Applications involving Ineligible Building Types as defined in §49.3(48) of this title will not be considered for allocation of tax credits under this QAP and the Rules.

(c) **Scattered Site Limitations.** Consistent with §49.3(28) of this title, a Development must be financed under a common plan, be owned by the same Person for federal tax purposes, and the buildings may be either located on a single site or contiguous site, or be located on scattered sites and contain only rent-restricted units.

(d) **Credit Amount.** The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim such credits. The Department will limit the allocation of tax credits to no more than \$1.2 million per Development. The allocation of tax credits shall also be limited to not more than \$1.6 million per Applicant, Related Party or entity receiving any portion of the developer fee, in a single Application round. Tax Exempt Bond Development Applications are not subject to these credit limitations, and Tax Exempt Bond Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply:

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

(2) to the provision by an entity of "qualified commercial financing" within the meaning of the Code (without regard to the 80% limitation thereof);

- (3) to a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Development by such organization consists only of the provision of loan funds or grants; and
- (4) to a Development Consultant with respect to the provision of consulting services.

**(e) Limitations on the Size of Developments.**

- (1) The minimum Development size will be 16 Units.
- (2) Developments involving new construction, that are not Tax Exempt Bond Developments, will be limited to 250 Units. Tax Exempt Bond Developments will be limited to 280 Units. For the 2004 Application Round, Developments involving new construction, that are not Tax Exempt Bond Developments, will be limited to 200 Units. For Applicants competing in the 2004 Texas Bond Review Board Multifamily Lottery, Tax Exempt Bond Developments will be limited to 250 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum unit restrictions. For those Developments which are a second phase or are otherwise adjacent to an existing tax credit Development unless such proposed Development is being constructed to replace previously existing affordable multifamily units on its site, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and stabilized for at least six months.

**(f) Rehabilitation Costs.** Rehabilitation Developments must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least \$6,000 per unit in direct hard costs.

**§49.7. Regional Allocation Formula, Set-Asides, Redistribution of Credits.**

**(a) Regional Allocation Formula.** As required by §2306.111 of the Texas Government Code, the Department will use a regional distribution formula developed by the Department to distribute credits from the State Housing Credit Ceiling. The formula will be based on the need for housing assistance, and the availability of housing resources, and the Department will use the information contained in the Department's annual state low income housing plan and other appropriate data to develop the formula. This formula will establish targeted tax credit amounts for each of the state service regions. Each region's targeted tax credit amount will be published in the Texas Register and on the Department's web site concurrently with the publication of the QAP.

**(b) Set-Asides.** The regional credit distribution amounts are additionally subject to the factors presented in paragraphs (1) through (5) of this subsection. An Applicant may elect to compete in as many of the following set-asides for which the proposed Development would qualify:

(1) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of the Code, §42(h)(5). Qualified Nonprofit Organizations must have a controlling interest in the Qualified Nonprofit Development applying for this set-aside. If the organization's Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the managing General Partner. If the organization's Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the Managing Member.

(2) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which meet the Rural Development definition or are located in Prison Communities. Of this 15% allocation, 25% will be set-aside for Developments financed through TX-USDA-RHS. Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion. Should there not be sufficient qualified applications submitted for the TX-USDA-RHS set-aside, then the credits would revert to Developments that meet the Rural Development definition or are located in Prison Communities.

(3) At least 15% of the State Housing Credit Ceiling will be allocated to the At-Risk Development Set-Aside. Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of developments designated as At-Risk Developments as defined in §49.3(12) of this title and in both urban and rural communities in approximate proportion to the housing needs of each uniform state service region.

(4) At least 60% of the State Housing Credit Ceiling will be allocated to General Set-Aside.

(5) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Elderly Developments.

**(c) Redistribution of Credits.** If any amount of housing tax credits remain after the initial commitment of housing tax credits among the regions and set-asides, the Department may redistribute the credits amongst the different regions and set asides depending on the quality of Applications submitted as evaluated under the factors described in §49.9(c) of this title and the level of demand exhibited in the regions during the Allocation Round. However as described in paragraph (1) of this subsection, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits

will be transferred from a region which does not have enough qualified applications to meet its regional credit distribution amount, then those credits will be apportioned to the other regions based on the quality of the Applications.

#### **§49.8. Pre-Application: Submission, Evaluation Process, Threshold Criteria and Review, Results.**

(a) **Pre-Application Submission.** Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period along with the required Pre-Application Fee as described in §49.21 of this title. Only one Pre-Application may be submitted by an Applicant for each site under the Credit Ceiling. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application along with the required Pre-Application Fee. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be an Administrative Deficiency. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(b) **Pre-Application Evaluation Process.** Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria, and as requested, evaluated in regards to the Department's concentration policy. Applications that involve financing from TX-USDA-RHS, and Applications for the rehabilitation of TX-USDA-RHS properties that do not have new financing, are exempted from the Pre-Application Evaluation Process and are not eligible to receive points for submission of a Pre-Application. An Application that has not received confirmation from the state office of RHS of its financing from TX-USDA-RHS may qualify for Pre-Application points, but such points shall be withdrawn upon the Development's receipt of TX-USDA-RHS financing.

(c) **Pre-Application Threshold Criteria and Review.** Applicants submitting a Pre-Application will be required to submit information demonstrating their satisfaction of the Pre-Application Threshold Criteria. The Pre-Applications not meeting the Pre-Application Threshold Criteria will be terminated and the Applicant will receive a written notice to the effect that the Pre-Application Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Pre-Application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-Application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. The Pre-Application Threshold Criteria include:

- (1) Submission of a "Pre-Application Submission Form" and "Application Self-Scoring Form," and
- (2) Evidence of site control as evidenced by the documentation required under §49.9(e)(6)(A) of this title.

(d) **Pre-Application Results.** Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (c) of this section, 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. To receive points an Applicant must meet the requirements of §49.9(f)(11) of this title.

#### **§49.9. Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations.**

(a) **Application Submission.** Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §49.21 of this title, to the Department during the Application Acceptance Period. A complete Application may be submitted at any time during the Application Acceptance Period, and is not limited to submission after the close of the Pre-Application Cycle. Only one Application may be submitted for a site during the Application Acceptance Period. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application along with a new required Application fee. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including both threshold and selection criteria documentation. An Applicant may not change or supplement an Application in any manner after the filing deadline, except as it relates to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.3(1) of this title or to the amendment of an application after a commitment or allocation of tax credits as further described in §49.18 of this title.

(b) **Adherence to Obligations.** All 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, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be 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, in accordance with the LURA.

(c) **Evaluation Process.** Applications will be reviewed according to the process outlined in this subsection.

(1) **Threshold Criteria Review.** Applications will be initially evaluated against the Threshold Criteria. Applications not meeting Threshold Criteria will be terminated, unless the Department determines that the failure to meet the Threshold Criteria is the result of correctable deficiencies, in which event the Applicant shall be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria will be rejected and the Applicant will be provided a written notice to the effect that the Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled.

(2) **Selection Criteria Review.** For an Application to be considered under the Selection Criteria, the Applicant must demonstrate that the Development meets all of the Threshold Criteria requirements. Applications that satisfy the Threshold Criteria will then be scored and ranked according to the Selection Criteria listed in subsection (f) of this section. Where a particular scoring criterion involves multiple points, the Department will award points to the degree proportionate, in its determination, to which a proposed Development complied with that criterion. Applications not scored by the Department's staff shall be deemed to have the points allocated through self-scoring by the Applicants until actually scored. This shall apply only for ranking purposes.

(3) **Subsequent Evaluation of Prioritized Applications.** After the Application is scored under the Selection Criteria, the Department will assign, as herein described, Developments for review for financial feasibility by the Department's credit underwriting division. Assignments for financial feasibility will be determined by selecting the Applications with the highest scores in each Set-Aside statewide and then in each region. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and Set Aside categories. To enable the Board to establish a Waiting List, the Department shall underwrite as many additional Applications as the Committee and Board consider necessary to ensure that all available housing tax credits are allocated within the period required by law.

(4) **Underwriting Evaluation and Criteria.** Underwriting of a Development will include a determination by the Department, pursuant to the Code, §42, that the amount of credits recommended for commitment to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified low income housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, 10 TAC §1.32 of this title.

(A) The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate. The expense of any third party underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(B) The Department will reduce the Applicant's estimate of Developer's and/or Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the Contractor is an Affiliate of the Development Owner and both parties are claiming fees, Contractor's overhead, profit, and general requirements, the Department shall be authorized to reduce the total fees estimated to a level that it determines to be reasonable under the circumstances. Further, the Department shall deny or reduce the amount of low income housing tax credits allocated with respect to any portion of costs which it deems excessive or unreasonable. The Department also may require bids or third party estimates in support of the costs proposed by any Applicant.

(5) **Compliance Evaluation.** After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status of all members of the ownership structure by the Department's compliance division, in accordance with §49.19 of this title.

(6) **Site Evaluation.** Site conditions shall be evaluated through a physical site inspection by the Department. Such inspection will evaluate the site based upon the criteria set forth in the Site Evaluation form provided in the Application and the inspector shall provide a written report of such site evaluation. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate

environmental and aesthetic conditions and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's appearance and visibility to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites would include, without limitation of any sort, those containing a non-mitigable environmental factor that might adversely affect the health and safety of the residents. For Developments applying under the TX-USDA-RHS Set-Aside, the Department will rely on the physical site inspection performed by TX-USDA-RHS.

(d) **Required Pre-Certification and Acknowledgement Procedures.** No later than 7 days prior to the close of the Application Acceptance Period, an Applicant must submit the documents required in this subsection to obtain the required pre-certification and acknowledgement.

(1) Experience Certificate. Upon receipt of the evidence required under this paragraph, a certification from the Department will be provided to the Applicant for inclusion in their Application(s). Evidence must show 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 a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel) in the capacity of owner, General Partner, developer or managing member. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least \$6,000 of direct hard cost per unit.

(A) The term "successfully" is defined as acting in a capacity as the owner, General Partner, managing member, or developer of:

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

(ii) at least 36 residential units or comparable commercial property if the Development applying for credits is a rural Development.

(B) One of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other appropriate documentation verifying that the General Partner or their principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

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

(ii) that the names on the forms and agreements tie back to the ownership entity, General Partner and their respective principals as listed in the Application; and

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

(2) Personal Financial and Credit Statement and Authorization to Release Credit Information. Upon receipt of the evidence required under this paragraph, an acknowledgement from the Department will be provided to the Applicant for inclusion in their Application(s). A "Personal Financial and Credit Statement and Authorization to Release Credit Information" must be completed and signed by each Person with a General Partner (or if Applicant is to be a Limited Liability Company, managing member) interest in the Applicant. The statement must not be older than 90 days from the date of submission. If submitting partnership or corporate financials in addition to the statements of individual persons, the certified financial statements, or audited financial statements if available, should be for the most recent fiscal year ended 90 days prior to the day the documentation is submitted. This document is required for an entity even if the entity is wholly-owned by a person who has submitted this document as an individual. Entities that have not yet been formed and entities that have been formed recently but have no assets, liabilities or net worth are not required to submit this documentation, but must submit a statement that this is the case.

(e) **Threshold Criteria.** The following Threshold Criteria listed in paragraphs (1) through (14) of this subsection are mandatory requirements at the time of Application submission:

(1) Completion and submission of the Application provided in the Application Submission Procedures Manual, which includes the entire Uniform Application and any other supplemental forms which may be required by the Department.

(2) Completion and submission of the Site Packet as provided in the Application Submission Procedures Manual.

(3) Set Aside Eligibility. Documentation must be provided that confirms eligibility for all Set-Asides under which the Application is seeking funding, other than the General Set-Aside, as required in the Application Submission Procedures Manual.

(4) Certifications and Design Items. The "Certification Form" provided in the Application Submission Procedures Manual and supporting documents. This exhibit will provide:



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(A) A description of the type of amenities proposed for the development. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use (i.e. covered parking, storage, etc.), then the amenity may not be included among those provided to complete this exhibit. Developments with more than 36 units must provide at least four of the amenities provided in clauses (i) through (viii) of this subparagraph. Developments with 36 Units or less and Developments receiving funding from TX-USDA-RHS must provide at least two of the amenities provided in clauses (i) through (viii) of this subparagraph. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

(i) Full perimeter fencing with controlled gate access;  
(ii) designated playground and equipment;  
(iii) community laundry room and/or laundry hook-ups in Units (no hook-up fees of any kind may be charged to a tenant for use of the hook-ups);  
(iv) furnished community room;  
(v) recreation facilities;  
(vi) public telephone(s) available to tenants 24 hours a day;  
(vii) on-site day care, senior center, or community meals room; or  
(viii) computer facilities including internet access.

(B) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere at a minimum to the International Building Code as it relates to access, lighting and life safety issues.

(C) A certification that the Applicant is 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. 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.)

(D) A certification that 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, and that the Applicant will submit at least once in each 90-day period following the date of the Commitment Notice a report, in a format prescribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses.

(E) A certification 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 includes that for all Developments, a minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for persons with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS), shall be deemed to meet this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for persons with hearing or vision impairments. Additionally, in Developments where all Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type must provide an accessible entry level in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. At the construction loan closing, a certification from an accredited architect will be required stating that the Development was designed in conformance with these standards and that all features have been or will be installed to make the Unit accessible for persons with mobility impairments or persons with hearing or vision impairments. A similar certification will also be required after the Development is completed. This requirement applies to all Developments including new construction and rehabilitation.

(F) A certification that the Development will adhere to the 2000 International Energy Conservation Code (IECC) and the Department's Minimum Standard Energy Saving Devices in the construction of each tax credit Unit. Minimum Standard Energy Saving Measures are identified in clauses (i) through (vi) of this subparagraph. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit prior to the closing of the construction loan and in actual construction upon Cost Certification.

(i) New Construction to have components of the exterior walls that total at least R-15, ceiling insulation at a minimum of R-30, and roof decking to have radiant barriers. Rehabilitation to have ceiling insulation at a minimum of R-30, soffit and ridge vents and storm windows;

(ii) If newly installed, Energy Star or equivalently rated air handler and condenser; or heating and cooling systems with minimum SEER 12 A/C and AFUE 90% furnace if using gas; or in dry climates an evaporative cooling system may replace the Energy Star cooling system;

(iii) All appliances installed to be Energy Star rated and water heaters to have an energy factor greater than .93 for electric or greater than .62 for gas;

(iv) Maximum 2.5 gallon/minute showerheads and maximum 1.5 gallon/minute faucet aerators;

(v) Installation of ceiling fans in living room and each sleeping room; and

(vi) Installation of solar screens or permanently fixed shading devices at sun-exposed windows.

(G) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 11(c) applicable to the Department which requires that the General Contractor hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(H) All of the architectural drawings identified in clauses (i) through (v) of this subparagraph. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving new construction, or conversion of existing buildings not configured in the unit pattern proposed in the Application, must provide all of the items identified in clauses (i) through (v) of this subparagraph. For Developments involving rehabilitation for which the unit configurations are not being altered, only the items identified in clauses (i), (ii) and (iii) of this subparagraph are required:

(i) a site survey or drawing of the entire property that is under the control the prospective ownership entity, which must be a professionally generated (e.g. computer-generated or architectural draft; not a sketch) plat drawn to scale from a metes and bounds description;

(ii) a site plan which:

(I) is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;

(II) identifies all residential, common buildings and amenities; and

(III) clearly delineates the flood plain boundary lines and other easements shown in the site survey;

(iii) floor plans for each type of residential building and each type of common area building;

(iv) floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition;

(v) unit floor plans for each type of Unit showing special accessibility and energy features. The use of each room must be labeled. The net rentable areas these unit floor plans represent should be consistent with those shown in the "Rent Schedule" provided in the application; and

(I) Rehabilitation Developments must submit photographs of the existing signage, typical building elevations and interiors, existing Development amenities, and site work. These photos should clearly document the typical areas and building components which exemplify the need for rehabilitation.

(5) Evidence of the Development's development costs and corresponding credit request and syndication information as described in subparagraphs (A) through (G) of this paragraph.

(A) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, and rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application.

(B) All Developments must submit the "Development Cost Schedule" provided in the Application Submission Procedures Manual. This exhibit must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(C) Provide a letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of housing tax credits requested for allocation to the Applicant, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the eligible basis.

(D) For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD and qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual.

(E) Rehabilitation Developments must also submit the "Proposed Work Write Up for Rehabilitation Developments" provided in the Application Submission Procedures Manual. This form must be prepared and certified by a Third Party registered or licensed architect, engineer or construction inspector.

(F) If offsite costs 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 supplemental form "Off Site Cost Breakdown" must be provided.

(G) If projected site work costs include unusual or extraordinary items or exceed \$7,500 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in eligible basis and which ones may be ineligible.

(6) Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) through (E) of this paragraph:

(A) Evidence of site control in the name of the ownership entity, or entities which comprise the Applicant. 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 individual Persons who are members of the ownership entity of the seller of the proposed Development property must be identified. One of the following items described in clauses (i) through (iii) of this subparagraph must be provided:

(i) a recorded warranty deed; or

(ii) a contract for sale or lease (the minimum term of the lease must be at least 45 years) which is valid for the entire period the Development is under consideration for tax credits or at least 90 days, whichever is greater; or

(iii) an exclusive option to purchase which is valid for the entire period the Development is under consideration for tax credits or at least 90 days, whichever is greater.

(B) Evidence from the appropriate local municipal authority that satisfies one of clauses (i) through (iii) of this subparagraph. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(i) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance;

(ii) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that:

(I) the Development is permitted under the provisions of the ordinance that apply to the location of the Development; or

(II) the Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied, and a time schedule for completion of appropriate zoning. The Applicant must also provide a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. No later than April 1, 2003, the Applicant must submit to the Department evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that they will recommend approval of appropriate zoning to the entity responsible for final approval of zoning decisions (city council or county commission). If this evidence is not provided on or before April 1, 2003, the Application will be terminated. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded.

(iii) In the case of a rehabilitation Development, if the property is currently a non-conforming use as presently zoned, a letter which discuss the items in subclauses (I) through (IV) of this clause:

(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.

(C) This Exhibit is required for New Construction only. Evidence of the availability of all necessary utilities/services to the development site. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the developer. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development property. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(D) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) through (iv) of this subparagraph:

(i) bona fide financing in place as evidenced by a valid and binding loan agreement and a deed(s) of trust in the name of the ownership entity which identifies the mortgagor as the Applicant or entities which comprise the General Partner and/or expressly allows the transfer to the Proposed Development Owner; or,

(ii) bona fide commitment or term sheet issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the ownership entity, or entities which comprise the Applicant and which has been executed by the lender (the term of the loan must be for a minimum of 15 years with at least a 30 year amortization). The commitment must state an expiration date and all the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or,

(iii) any Federal, State or local gap financing, whether of soft or hard debt, must be identified at the time of application. At a minimum, evidence from the lending agency that an application for funding has been made and a term sheet which clearly describes the amount and terms of the funding, and the date by which the funding determination will be made and any commitment issued, must be submitted. While evidence of application for funding from another TDHCA program is not required except as indicated on the Uniform Application, the Applicant must clearly indicate that such an application has been filed as required by the Application Submission Procedures Manual. If the necessary financing has not been committed by the applicable lending agency, the Commitment Notice, Housing Credit Allocation or Determination Notice, as the case may be, will be conditioned upon Applicant obtaining a commitment for the required financing by a date certain, but no later than the date the Carryover Allocation Document is due to the Department; or

(iv) if the Development will be financed through Development Owner contributions, provide a letter from an Third Party CPA verifying the capacity of the Applicant to provide the proposed financing with funds that are not otherwise committed together with a letter from the Applicant's bank or banks confirming that sufficient funds are available to the Applicant. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(E) A copy of the full legal description and either of the documents described in clauses (i) and (ii) of this subparagraph, and satisfying the requirements of clause (iii) of this subparagraph, if applicable:

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

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

(iii) if the title policy or title commitment is more than six months old as of the day the Application Acceptance Period closes, than a letter from the title company indicating that nothing further has transpired on the policy or commitment.

(7) Evidence of all of the notifications described in subparagraphs (A) through (E) of this paragraph. Such notices must be prepared in accordance with "Public Notifications" provided in the Application Submission Procedures Manual.

(A) A copy of the public notice published in the most widely circulated newspaper in the area in which the proposed Development will be located. The newspaper must be intended for the general population and may not be a business newspaper or other specialized publication. Such notice must run at least twice within a thirty day period. Such notice must be published prior to the submission of the Application to the Department and can not be older than three months from the first day of the Application Acceptance Period. In communities located within a Metropolitan Statistical Area the notice should be published in the newspapers of both the Development community and the Metropolitan Statistical Area. Developments that involve rehabilitation and which are already serving low income residents are not required to provide this exhibit.

(B) Evidence of notification of the local chief executive officer(s) (i.e., mayor and county judge), state senator, and state representative of the locality of the Development. Evidence of such notification shall include a letter which at a minimum contains a copy of the public notice sent to the official and proof of delivery in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Proof of notification should not be older than three months from the first day of the Application Acceptance Period.

(C) Evidence of notification to the Texas Department of Transportation district. Evidence of such notification shall include a letter which, at a minimum, contains the location of the proposed Development, the

proposed population being served, a copy of the public notice, and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said office. A return letter from the Texas Department of Transportation is also required which describes the transportation options and availability for the location of the proposed Development. Proof of notification should not be older than six months from the close of the Application Acceptance Period.

(D) If any of the Units in the Development are occupied at the time of application, then the Applicant must post a copy of the public notice in a prominent location at the Development throughout the period of time the Application is under review by the Department. A picture of this posted notice must be provided with this exhibit. When the Department's public hearing schedule for comment on submitted applications becomes available, a copy of the schedule must also be posted until such hearings are completed. Compliance with these requirements shall be confirmed during the Department's site inspection.

(E) Public Housing Waiting List. Evidence that the Development Owner has committed in writing to the local public housing authority (PHA) the availability of Units and that the Development Owner agrees to consider households on the PHA's waiting list as potential tenants and that the Property is available to Section 8 certificate or voucher holders. Evidence of this commitment must include a copy of the Development Owner's letter to the PHA and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said PHA. Proof of notification should not be older than six months from the close of the Application Acceptance Period. If no PHA is within the locality of the Development, the Development Owner must utilize the nearest authority or office responsible for administering Section 8 programs.

(8) Evidence of the Development's proposed ownership structure and the Applicant's previous experience as described in subparagraphs (A) through (E) of this paragraph.

(A) A chart which clearly illustrates the complete organizational structure of the final proposed Development Owner, that provides the names and ownership percentages of Persons with an ownership interest in the Development. The percentage ownership of all Persons in Control of these entities and sub-entities must also be clearly defined. The Applicant, General Partner and their Principals, along with the proposed Limited Partner should be listed.

(B) The Applicant, General Partner (or Managing Member) and all Persons with an ownership interest in the General Partner (or the Managing Member) of these entities and sub-entities must also provide documentation of standing to include the following documentation as applicable under clauses (i) through (iii) of this subparagraph.

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas:

(I) a certificate of reservation of the entity name from the Texas Secretary of State and from the state in which the entity is to be formed if different from Texas; and

(II) an executed letter of intent to organize, statement of partnership or partnership agreement.

(ii) For existing entities whether formed in or outside of the state of Texas:

(I) if the entity has been formed for three months or longer, a copy of the Certificate of Good Standing from the Comptroller showing good standing; if the entity has been formed for less than three months, a certificate of reservation of the entity name from the Texas Secretary of State and from the state in which the entity was formed if different from Texas; entities formed in other states must also submit a certificate of authority to do business in Texas or an application for a certificate of authority,

(II) a copy of the Articles of Incorporation, Organization or Partnership.

(iii) the Applicant must provide evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control of the Applicant, and that those persons constitute all persons required to sign or submit such documents. A cover sheet must be placed before the copy of the Articles of Incorporation, Organization or Partnership, identifying the relevant document(s) where the evidence of authority to sign is to be found and specifying exactly where the applicable information exists within the all relevant documents by page number or by section and subsection if the pages are not numbered.

(C) A copy of the completed and executed "Previous Participation and Background Certification Form," must be submitted listing each Principal and their affiliates for each Person owning an interest in the General Partner (or, if Applicant is to be a limited liability company, the managing member) of the Applicant. If the developer of the Development is receiving more than 10% of the developer fee, he/she will also be required to submit documents for this exhibit. The 2003 versions of these forms, as required in the Uniform Application, must be submitted. Units of local government are also 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 their Affiliates. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(D) If the Applicant or their Affiliates have, or have had, ownership or control of affordable housing, being housing that receives any form of financing and/or assistance from any unit of Federal, state or local government for the purpose of enhancing affordability to persons of low or moderate income, outside the state of Texas, then Evidence that each Person owning an interest in the General Partner (or if Applicant is to be a limited liability company, the managing member) of the Applicant has sent "National Previous Participation and Background Certification Form," to the appropriate Housing Credit Agency for each state in which they have developed or operated affordable housing. This form is only necessary when the Developments involved are outside of the state of Texas. An original form is not required. Evidence of such notification shall be a copy of the form sent to the agency and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said agency.

(E) Evidence that the developer and the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member) or their principals have a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel) in the capacity of developer, owner, General Partner or managing member. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under §49.9(d) of this title. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants should ensure that the individual whose name is on the certification appears in the organizational chart provided in subparagraph (A) of this paragraph.

(9) Evidence of the Development's projected income and operating expenses as described in subparagraphs (A) through (D) of this paragraph:

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties).

(B) 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 must be provided, which at a minimum identifies 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.

(C) Applicant must provide 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. In the event of overlapping jurisdiction between local housing authorities, the utility allowance for the building must be based on where the Development property is located according to the Development's legal description.

(D) Occupied Developments undergoing rehabilitation must also submit the items described in clauses (i) through (iv) of this subparagraph.

(i) Unless the current property owner is unwilling to provide the required documentation, if which even a signed statement as to their unwillingness to do so is required:

(I) historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 45 days prior to the first day of the Application Acceptance Period. In lieu of the monthly operating statements, two annual operating statement summaries may be provided. If 12 months of operating statements or two annual operating summaries cannot be obtained, then the monthly operating statements since the date of acquisition of the Development and any other supporting documentation used to generate projections may be provided; and

(II) a rent roll not more than 6 months old as of the day the Application Acceptance Period closes, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

(ii) a written explanation of the process used to notify and consult with the tenants in preparing the application;

(iii) a relocation plan outlining relocation requirements and a budget with an identified funding source; and

(iv) if applicable, evidence that the relocation plan has been submitted to the appropriate legal agency.

(10) Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.

(A) All Applicants involving a nonprofit General Partner (or Managing Member), regardless of the set-aside applied under, must submit all of the documents described in clauses (i) through (iii) of this subparagraph which confirm that the Applicant is a Qualified Nonprofit Organization pursuant to Code, §42(h)(5)(C):

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

(ii) a copy of the articles of incorporation of the nonprofit organization which specifically states that the fostering of affordable housing is one of the entity's exempt purposes;

(iii) "Nonprofit Participation Exhibit"; and

(B) Additionally, all Applicants applying under the Nonprofit Set-Aside, established under §49.7(b)(1) of this title, must also provide the following information with respect to each Development Owner and each General Partner of a Development Owner, as described in clauses (i) through (vi) of this subparagraph.

(i) evidence that one of the exempt purposes of the nonprofit organization is to provide low income housing;

(ii) evidence 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;

(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, and

(II) that the nonprofit organization is eligible, as further described, for a housing tax credit allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the nonprofit organization controlling a majority of the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, being the managing General Partner (or Managing Member); and otherwise meet the requirements of the Code, §42(h)(5);

(iv) a copy of the nonprofit organization's most recent audited financial statement;

(v) a list of the names and home addresses of members of the board of directors of the nonprofit organization; and

(vi) evidence, in the form of a certification, that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a rural area; or

(II) not more than 90 miles from the Development in the community in which the Development is located, if the Development is not located in a rural area.

(11) Applicants applying for acquisition credits or affiliated with the seller must provide all of the documentation described in subparagraphs (A) through (C) of this paragraph. Applicants applying for acquisition credits must also provide the items described in subparagraph (D) of this paragraph and as provided in the Application Submission Procedures Manual.

(A) an appraisal, not more than 6 months old as of the day the Application Acceptance Period closes, which complies with the Uniform Standards of Professional Appraisal Practice and the Department's Market Analysis and Appraisal Policy. For Developments qualifying in the TX-USDA-RHS set-aside, the appraisal may be more than 6 months old, but not more than 12 months old as of the day the Application Acceptance Period closes. This appraisal of the Property must separately state the as-is, pre-acquisition or transfer value of the land and the improvements where applicable;

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

(C) clear identification of the selling Persons or entities, and details of any relationship between the seller and the Applicant or any Affiliation with the Development Team, Qualified Market Analyst or any other professional or other consultant performing services with respect to the Development. If any such relationship exists, complete disclosure and documentation of the related party's original acquisition and holding and improvement costs since acquisition, and any and all exit taxes, to justify the proposed sales price must also be provided; and

(D) "Acquisition of Existing Buildings Form."

(12) Evidence of an "Acknowledgement of Receipt of Financial Statement and Authorization to Release Credit Information" must be provided for any person with an ownership interest in the General Partner (or Managing Member), interest in the Applicant or receiving a portion of the developer fee, or anticipated to provide guarantees to secure necessary financing, as required under §49.9(d) of this title.

(13) Supplemental Threshold Reports. Documents under subparagraph (A) and (B) of this paragraph must be submitted as further clarified in subparagraph (C) and (D) of this paragraph and in accordance with the Market Analysis Rules and Guidelines and Environmental Site Assessment Rules and Guidelines, 10 TAC §§1.33 and 1.35 of this title.

(A) A Phase I Environmental Site Assessment (ESA) on the subject Property, dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is older than 12 months as of the day the Application Acceptance Period closes, the Development Owner must supply the Department with an update letter from the Person or organization which prepared the initial assessment; provided however, that the Department will not accept any Phase I Environmental Site Assessment which is more than 24 months old as of the day the Application Acceptance Period closes. The ESA must be prepared in accordance with the Department Environmental Site Assessment Rules and Guidelines. Developments whose funds have been obligated by TX-USDA-RHS will not be required to supply this information; however, the Development Owners of such Developments are hereby

notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) A comprehensive Market Study prepared at the developer's expense by a disinterested Qualified Market Analyst in accordance with the Market Analysis Rules and Guidelines. In the event that a Market Study on the Development is older than 6 months as of the day the Application Acceptance Period closes, the Development Owner must supply the Department with an updated Market Study from the Person or organization which prepared the initial report; provided however, that the Department will not accept any Market Study which is more than 12 months old as of the day the Application Acceptance Period closes. The Market Study should be prepared for and addressed to the Department. For Applications in the TX-USDA-RHS Set-Aside, the appraisal, required under paragraph (11)(A) of this subsection, will satisfy the requirement for a Market Study; no additional Market Study is required; however the Department may request additional information as needed.

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

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

(C) Inserted at the front of each of these reports must be a transmission letter from the person preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report.

(D) The requirements for each of the reports identified in subparagraphs (A) and (B) of this paragraph can be satisfied in either of the methods identified in clauses (i) or (ii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety as described in subparagraphs (A) and (B) of this paragraph; or

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than March 31, 2003. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, March 31, 2003. If the entire exhibit is not received by that time, the Application will be terminated for a Material Deficiency and will be removed from consideration.

(14) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form."

(f) **Selection Criteria.** All Applications will be evaluated and ranking points will be assigned according to the Selection Criteria listed in paragraphs (1) through (12) of this subsection.

(1) Development Location Characteristics. Evidence, not more than 6 months old from the date of the close of the Application Acceptance Period, that the subject Property is located within one of the geographical areas described in subparagraphs (A) through (D) of this paragraph. Areas qualifying under any one of the subparagraphs (A) through (D) of this paragraph will receive 5 points. A Development may only receive points under one of the subparagraphs (A) through (D) of this paragraph. A Development may receive points pursuant to subparagraph (E) of this paragraph in addition to any points awarded in subparagraphs (A) through (D) of this paragraph.

(A) A geographical area which is:

(i) a Targeted Texas County (TTC) or Economically Distressed Area; or

(ii) a Colonia.

(B) a designated state or federal empowerment/enterprise zone, urban enterprise community, or urban enhanced enterprise community. Such Developments must submit a letter and a map from a city/county official verifying that the proposed Development is located within such a designated zone. Letter should be no older than 6 months from the close of the Application Acceptance Period; or

(C) a city-sponsored Tax Increment Financing Zone (TIF), Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, specifically encouraged or channeled growth, neighborhood preservation or redevelopment. Significant incentives or benefits must be received from the local government which amount to at least 5% of the Total Development Costs. Such Developments must submit all of the following documentation: a letter from a city/county official verifying that the proposed Development is located within the city sponsored zone or district; a map from the city/county official which clearly delineates the boundaries of the district; and a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, or county commissioners court which documents that the designated area was:

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



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

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

(D) a non-impacted Census Block pursuant to the Young vs. Martinez judgment. Such Developments must submit evidence in the form of a letter from HUD that the Development is located in such an area.

(E) a Development which is located in a city or county with a relatively low ratio of awarded tax credits (in dollars) to its population. If the Development is located in an incorporated city, the city ratio will be used and if the Development is located outside of an incorporated city, then the county ratio will be used. Such ratios shall be calculated by the Department based on its inventory of tax credit developments and the 2000 Census Data. In the event that census data does not have a figure for a specific place, the Department will rely on the Texas State Data Center's place population estimates, or as a final source the Department will rely on the local municipality's most recent population estimate to calculate the ratio. The ratios will be published in the Reference Manual. Geographic area will be eligible for points as described in clauses (i) through (iv) of this subparagraph.

(i) A city or county with no LIHTC developments will receive eight points.

(ii) A city or county with a ratio greater than zero and less than one will receive six points.

(iii) A city or county with a ratio equal to or greater than one, but less than two, will receive two points.

(iv) A city or county with a ratio greater than four, will have four points deducted from its score.

(2) Housing Needs Characteristics. Each Development, dependent on the city or county where it is located, will yield a score based on the Uniform Housing Needs Scoring Component. If a Development is in an incorporated city, the city score will be used. If a Development is outside the boundaries of an incorporated city, then the county score will be used. The Uniform Housing Needs Scoring Component scores for each city and county will be published in the Reference Manual. (20 points maximum).

(3) Support and Consistency with Local Planning. All documents must not be older than 6 months from the close of the Application Acceptance Period. Points may be received under both subparagraph (A) or (B) of this paragraph.

(A) Evidence from the local municipal authority stating that the Development fulfills a need for additional affordable rental housing as evidenced in a local consolidated plan, comprehensive plan, or other local planning document; or a letter from the local municipal authority stating that there is no local plan and that the city supports the Development (6 points).

(B) Community Support. Points will be awarded based on the written statements of support from local and state elected officials representing constituents in areas that include the location of the Development and from neighborhood and/or community civic organizations for areas that encompass the location of the Development. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. This documentation must be provided as part of the Application. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit, nor do letters of support from organizations that are not active in the area that includes the location of the Development. For the purposes of this Exhibit neighborhood and/or community civic organizations do not include governmental entities, taxing entities or educational entities. Letters of support received after the close of the Application Acceptance Period will not be accepted for this Exhibit. Points can be awarded for letters of support as identified in clauses (i) through (iv) of this subparagraph, not to exceed a total of 6 points:

(i) from United States Representative or Senate Member (3 points each, maximum of 6 points)

(ii) from State of Texas Representative or Senate Member (3 points each, maximum of 6 points);

(iii) from the Mayor, County Judge, City Council Member, or County Commissioner indicating support; or a resolution from the local governing entity indicating support of the Development (2 points);

(iv) from neighborhood and/or community civic organizations (1 point each, maximum of 2 points).

(4) Development Characteristics. Developments may receive points under as many of the following subparagraphs as are applicable; however to qualify for points under subparagraphs (B) through (J) of this paragraph, the Development must first meet the minimum requirements identified under subparagraph (A) of this paragraph, unless otherwise provided in the particular subparagraph. This minimum requirement does not apply to Developments involving rehabilitation or Developments receiving funding from TX-USDA-RHS.

(A) Unit Size. The square feet of all of the units in the Development, for each type of unit, must be at minimum:

(i) 500 square feet for an efficiency unit;

(ii) 650 square feet for a non-elderly one bedroom unit; 550 square feet for an elderly one bedroom unit;

(iii) 900 square feet for a two bedroom unit; 750 square feet for an elderly two bedroom unit;

(iv) 1,000 square feet for a three bedroom unit; and

(v) 1,200 square feet for a four bedroom unit.

(B) Development provides Units for housing individuals with children. To qualify for these points, these Units must have at least 2 bathrooms and no fewer than three bedrooms and at least 1000 square feet of net rentable area for three bedroom Units or 1200 square feet of net rentable area for four bedroom Units; these Unit size and bathroom requirements are not required for Developments involving rehabilitation to be eligible for the points below. Unless the building is served by an elevator, 3 or 4 bedroom Units located above the building's second floor will not qualify for these points. If the Development is a mixed-income development, only tax credit Units will be used in computing the percentage of qualified Units for this selection item.

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

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

(C) Cost per Square Foot. For this exhibit hard costs shall be defined as construction costs, including site work, contractor profit, overhead and general requirements, as represented in Exhibit 102B. This calculation does not include indirect construction costs. The calculation will be hard costs per square foot of net rentable area (NRA). The calculations will be based on the hard cost listed in Exhibit 102B and NRA shown in the Rent Schedule of the Application. Developments do not exceed \$60 per square foot. (1 point).

(D) Unit Amenities and Quality. Developments providing 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 clauses (i) through (xii) of this subparagraph, not to exceed 10 points in total. Developments involving rehabilitation will double the points listed for each item, not to exceed 10 points in total.

(i) Covered entries (1 point);

(ii) Computer line/phone jack available in all bedrooms (only one phone line needed) (1 point);

(iii) Mini blinds or window coverings for all windows (1 point);

(iv) Ceramic tile floors in entry, kitchen and bathrooms (2 point);

(v) laundry connections (1 point);

(vi) storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets (1 point);

(vii) Laundry equipment (washers and dryers) in units (3 point);

(viii) Twenty-five year architectural shingle roofing (1 point);

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

(x) Covered parking of at least one covered space per Unit (2 points);

(xi) Garages, which do not also qualify as covered parking (3 points);

(xii) Greater than 75% masonry on exterior, excluding cementitious board products (3 points);

(E) The Development is an existing Residential Development without maximum rent limitations or set-asides for affordable housing for which the proposed rehabilitation is part of a community revitalization plan. If maximum rent limitations had existed previously, then the restrictions must have expired at least one year prior to the date of Application to the Department (4 points).

(F) The proposed Development will support the future quality of the Development by including operating reserves in an amount no less than \$300 per Unit for Developments involving rehabilitation and no less than \$200 per Unit for Developments involving new construction. The operating reserve figure must be reflected in the Development's operating budget and proforma. The Development must not only book the reserves but also have the cash deposits to support the reserves. (6 points).

(G) Evidence that the proposed historic Residential Development has received an historic property designation by a federal, state or local Governmental Entity. Such evidence must be in the form of a letter from the designating entity identifying the Development by name and address and stating that the Development is:

(i) listed in the National Register of Historic Places under the United States Department of the Interior in accordance with the National Historic Preservation Act of 1966;

(ii) located in a registered historic district and certified by the United States Department of the Interior as being of historic significance to that district;

(iii) identified in a city, county, or state historic preservation list; or

(iv) designated as a state landmark (6 points).

(H) The Development consists of not more than 36 Units and is not a part of, or contiguous to, a larger Development (5 points).

(I) Evidence that the proposed Development is partially funded by a HOPE VI, Section 202 or Section 811 grant from HUD. The Development must have already applied for funding from HUD. Evidence shall include a copy of the application to HUD and a letter from HUD indicating that the application was received. (5 points).

(J) The proposed Development involves the rehabilitation of units that are, and will continue to be, owned by a Public Housing Authority or a nonprofit entity controlled by a Public Housing Authority (5 points.)

(5) Sponsor Characteristics. Developments may only receive points for one of the two criteria listed in subparagraphs (A) and (B) of this paragraph. To satisfy the requirements of subparagraphs (A) or (B) of this paragraph, a copy of an agreement between the two partnering entities must be provided which shows that the nonprofit organization or HUB will hold an ownership interest in and materially participate (within the meaning of the Code §469(h)) in the development and operation of the Development throughout the Compliance Period and clearly identifies the ownership percentages of all parties (3 points maximum for subparagraphs (A) and (B) of this paragraph).

(A) Evidence that a HUB, as certified by the Texas Building and Procurement Commission (formerly General Services Commission), has an ownership interest in and materially participates in the development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Building and Procurement Commission (formerly General Services Commission) that the Person is a HUB at the close of the Application Acceptance Period. Evidence will need to be supplemented, either at the time the Application is submitted or at the time a HUB certification renewal is received by the Applicant, confirming that the certification is valid through July 31, 2003 and renewable after that date.

(B) Joint Ventures with Qualified Nonprofit Organizations. Evidence that the Development involves a joint venture between a for profit organization and a Qualified Nonprofit Organization. The Qualified Nonprofit Organization must be materially participating in the Development as one of the General Partners (or Managing Members), but is not required to have Control, to receive these points. However, to also be eligible for the Nonprofit Set-Aside, as further described in §49.6 of this title, the Qualified Nonprofit Organization must have Control.

(6) Development Provides Supportive Services to Tenants. Points may be received under both subparagraphs (A) and (B) of this paragraph.

(A) An Applicant will receive points for coordinating their tenant services with those services provided through state workforce development and welfare programs as evidenced by execution of a Tenant Supportive Services Certification (2 points).

(B) The Development Owner must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. Services must be provided on-site or transportation to off-site services must be provided (maximum of 6 points).

(i) Applicants will be awarded points for selecting services listed in clause (ii) of this subparagraph based on the following scoring range:

- (I) Two points will be awarded for providing one of the services; or
- (II) Four points will be awarded for providing two of the services; or
- (III) Six points will be awarded for providing three of the services.

(ii) Service options include child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; youth programs; scholastic tutoring; social events and activities; community gardens or computer facilities; any other program 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 out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

(7) Tenant Characteristics - Populations with Special Needs. Evidence that the Development is designed solely for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist tenants in locating and retaining permanent housing. For the purpose of this exhibit, homeless persons are individuals or families that lack a fixed, regular, and adequate nighttime residence as more fully defined in 24 Code of Federal Regulations, §91.5, and as may be amended from time to time. All of the items described in subparagraphs (A) through (E) of this paragraph must be submitted:

- (A) a detailed narrative describing the type of proposed housing;
- (B) a referral agreement, not more than 12 months old from the first day of the Application Acceptance Period, with an established organization which provides services to the homeless;
- (C) a marketing plan designed to attract qualified tenants and housing providers;

(D) a list of supportive services; and

(E) adequate additional income source and executed guarantee to supplement any anticipated operating and funding gaps (15 points).

(8) Serving Low Income Tenants. Applicants may receive points for serving low income tenants under both sub-paragraphs (A) and (B) of this paragraph.

(A) Applicants will be eligible for points for serving tenants with rents below the maximum tax credit rents for only one of the clauses listed in this subparagraph. The calculation for these points will be made based on the figures provided in the Rent Schedule submitted with the Application. All representations and commitments made will be reflected in the LURA. For purposes of compliance with these representations, Units rented to Section 8 voucher holders are excluded, unless the actual rent charged for such Units, as opposed to the tenant contribution, meets the requirement:

(i) All low income rents are 5% less than the maximum tax credit rents (4 points); or

(ii) All low income rents are 10% less than the maximum tax credit rents (8 points); or

(iii) All low income rents are 15% less than the maximum tax credit rents (12 points).

(B) Low Income Targeting Points. An Applicant may qualify for points under clause (iv) of this subparagraph. To qualify for these points, the rents for the rent-restricted Units must not be higher than the allowable tax credit rents at the rent-restricted AMGI level. For Section 8 residents, or other rental assistance tenants, the tenant paid rent plus the utility allowance is compared to the rent limit to determine compliance. The Development Owner, upon making selections for this exhibit will set aside Units at the rent-restricted levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA.

(i) To qualify for points for Units set aside for tenants at or below 30% of AMGI, an Applicant must provide evidence of a subsidy as documented by a commitment letter or in the case of local, state or federal subsidy, a copy of the application and evidence that the awarding entity has received the application. Commitments of funds must specify the amount of funds committed, the terms of the commitment and the number of Units targeted at the AMGI level. Evidence of subsidy should be submitted in accordance with (e)(6)(D)(iii) of this section. The commitment of funds can not be provided by any Person with an ownership interest in the Applicant or General Partner(s), the equity provider, the lender, a Related Party, any member of the Development Team, or any entity receiving any portion of the developer fee. Tenant based Section 8 contracts do not constitute evidence of a commitment of subsidy for the Development. If project-based Section 8 is utilized, a letter from the public housing authority indicating that they are committing Section 8 to the Development and that they are permitted by HUD to commit Units to a specific Development. If the project-based Section 8 assistance is not allocated by a public housing authority, appropriate evidence of the Section 8 contract(s) must be provided.

(ii) No more than 50% of the total number of low income units will be counted as designated for tenants at or below 40% of the AMGI for purposes of determining the points in the 40% and 30% AMGI categories. For Developments located in a Qualified Census Tract no more than 30% of the total number of low income units will be counted as designated for tenants at or below 40% of the AMGI for purposes of determining the points in the 40% and 30% of AMGI categories.

(iii) For purposes of calculating points no Unit may be counted twice in determining point eligibility.

(iv) Developments should be scored based on the structure in the table below. Only Developments located in cities (or counties for Developments not located within a city) whose AMGI is below the statewide AMGI, may use Weight Factor B. All other Applicants are required to use Weight Factor A.

% of AMGI	# of Rent Restricted Units (a)	Portion of Rent Restricted Units (a/b)	Weight A	OR	Weight B*	Points
50%	(a)	(c)	X 10		15	
40%	(a)	(c)	X 25		30	
30%	(a)	(c)	X 50		60	
TOTAL LI UNITS	(b)				TOTAL POINTS =	

(9) Length of Affordability Period. The initial compliance period for a development is fifteen years. In accordance with Code, developments are required to adhere to an extended low income use period for an additional 15 years. To receive points the Development Owner elects, in the Application, to extend the affordability period beyond the extended low income use period. The period commences with the first year of the Credit Period.

(A) Extend the affordability period for an additional 10 years, with an Extended Use Period of 40 years (8 points);

(B) Extend the affordability period for an additional 15 years, with an Extended Use Period of 45 years (10 points);

(C) Extend the affordability period for an additional 20 years, with an Extended Use Period of 50 years (12 points); or

(D) Extend the affordability period for an additional 25 years, with an Extended Use Period of 55 years (14 points);

(10) Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms (5 points).

(A) Upon the earlier to occur of:

(i) the Development Owner's determination to sell the Development, or

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

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

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

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

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

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i), (ii), and (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i), (ii), and (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After the later to occur of:

(i) the end of the Compliance Period; or

(ii) two years from delivery of a Notice of Intent,

the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred,

provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

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

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(11) **Pre-Application Points.** Developments which submit a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph shall receive 7 points. To be eligible for these points, the proposed Development in the Application must:

(A) be for the identical site as the proposed Development in the Pre-Application;

(B) have met the Pre-Application Threshold Criteria;

(C) be serving the same target population (family or elderly) in the Pre-Application in the same set-asides; and

(D) achieve an Application score that is not more than 5% greater or less than the number of points requested at Pre-Application.

(12) **Point Reductions.** Penalties will be imposed on Applicants or Affiliates who have requested extensions of Department deadlines, and did not meet the original submission deadlines, relating to developments receiving a housing tax credit commitment made in the application round preceding the current round. Extensions that will receive penalties include all types of extensions identified in §49.21 of this title, received on or before the close of Application Acceptance Period, including Developments whose extensions were authorized by the Board. For each extension request made, the Applicant will be required to pay a \$2,500 extension fee as provided in §49.21(j) of this title and receive a 2 point deduction.

(g) **Evaluation Factors.** In the event that two or more Applications receive the same number of points in any given set-aside category and region, and are both practicable and economically feasible, the Department will utilize the factors in paragraphs (1) through (8) of this subsection, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment. In addition, the Committee and Board may also choose to evaluate Applications and proposed Developments, including Tax Exempt Bond Developments, on the basis of factors other than (or in addition to) scoring, for one or more of the following reasons:

(1) to serve a greater number of lower income families for fewer credits;

(2) to serve a greater number of lower income families for a longer period of time in the form of a longer affordability period;

(3) to ensure the Development's consistency with local needs or its impact as part of a revitalization or preservation plan;

(4) to ensure the allocation of credits among as many different entities as practicable without diminishing the quality of the housing that is built as required under the Texas General Appropriations Act applicable to the Department;

(5) to give preference to a Development which is located in a QCT or a Difficult Development Area as specifically designated by the Secretary of HUD, and which also contributes to a concerted community revitalization plan;

(6) to ensure geographic dispersion within each state service region;

(7) to provide the greatest number of quality residential Units; and

(8) to provide integrated, affordable accessible housing for individuals and families with different levels of income.

(h) **Staff Recommendations.** After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. This Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be

discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all evaluation factors provided in §49.9(g) of this title that were used in making this determination.

#### **§49.10 Board Decisions; Waiting List; Forward Commitments**

(a) **Board Decisions.** The Board's decisions shall be based upon its evaluation of proposed Developments' consistency with the criteria and requirements set forth in the QAP and the Rules.

(1) In making a determination to allocate tax credits, the Board shall be authorized not to rely solely on the number of points scored by an Applicant. It shall in addition, be entitled to take into account, as appropriate, the factors described in §49.9(g) of this title. If the Board disapproves or fails to act upon the Application, the Department shall issue to the Development Owner a written notice stating the reason(s) for the Board's disapproval or failure to act.

(2) Before the Board approves any Development Application, the Department shall assess the compliance history of the Applicant and any Affiliate of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development. The Committee shall provide to the Board a written report regarding the results of the assessments. The written report will be included in the appropriate Development file for Board and Department review. The Board shall fully document and disclose any instances in which the Board approves a Development Application despite any noncompliance associated with the Development, Applicant or Affiliate.

(3) On awarding tax credit commitment, the Board shall document the reasons for each Development's selection, including an explanation of all discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff.

(b) **Waiting List.** If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate a waiting list of additional Applications ranked by score in descending order of priority based on Set Aside categories and regional allocation goals. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set Aside categories, including the 10% Nonprofit Set-Aside allocation required under the Code, §42(h)(5). At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) **Forward Commitments.** The Board may determine to issue commitments of tax credit authority with respect to Developments from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment"). The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments in meeting compelling housing needs. The Board may utilize the forward commitment authority to allocate credits to TX-USDA-RHS Developments which are experiencing foreclosure or loan acceleration at any time during the 2003 calendar year.

(1) Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the anticipated commitment rather than in the calendar year of the forward commitment.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

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

#### **§49.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.**

(a) **Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants.**

(1) Within approximately seven business days after the close of the Pre-Application Acceptance Period, the Department shall publish a Pre-Application Submission Log on its web site. Such log shall contain the Development name, address, set-aside, number of units, requested credits, owner contact name and phone number.

(2) Approximately 30 days before the close of the Application Acceptance Period, the Department will release the evaluation and assessment of the Pre-Applications on its web site.

(3) Within approximately 15 business days after the close of the Application Acceptance Period, the Department shall:

(A) publish an Application submission log, as further described in §49.12(b) of this title, on its web site.

(B) give notice of a proposed Development in writing to the:

(i) mayor or other equivalent chief executive officer of the municipality, if the Development or a part thereof is located in a municipality; otherwise the Department shall notify the chief executive officer of the county in which the Development or a part thereof is located, to advise such individual that the Development or a part thereof will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development. If the local municipal authority expresses opposition to the Development, the Department will give consideration to the objections raised and will visit the proposed site or Development within 30 days of notification to conduct a physical inspection of the Development site and consult with the mayor or county judge before the Application is scored, if opposition is received prior to scoring being completed; and

(ii) state representative and state senator representing the area where a Development would be located. The state representative or senator may hold a community meeting at which the Department shall provide appropriate representation.

(C) The elected officials identified in clauses (i) and (ii) of subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process.

(4) The Department shall hold at least three public hearings in different regions of the state to receive comment on the submitted Applications and on other issues relating to the Low Income Housing Tax Credit Program.

(5) The Department shall provide notice of and information regarding public hearings, board meetings and application opening and closing dates relative to housing tax credits to local housing departments, to appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, to nonprofit organizations, to on-site property managers of occupied developments that are the subject of Applications for posting in prominent locations at those Developments, and to any other interested persons including community groups, who request the information and shall post all such information to its web site.

(6) Approximately forty days prior to the date of the July Board Meeting at which the issuance of Commitment Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her Development at that time.

(7) Not later than the third working day after the date of the relevant determinations, the results of each stage of the Application process, including the results of the application scoring and underwriting phases and the commitment phase, will be posted to the Department's web site.

(8) At least thirty days prior to the date of the July Board meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed, the Department will:

(A) provide the application scores to the Board;

(B) if feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application.

(9) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if it is received 30 business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. Comments received after this deadline will not be part of the documentation submitted to the Board. However, a public comment period will be available prior to the Board's decision, at the Board meeting where tax credit commitment decisions will be made.

(10) Not later than the 120<sup>th</sup> day after the date of the initial issuance of Commitment Notices for housing tax credits, the Department shall provide an Applicant who did not receive a commitment for housing tax credits with an opportunity to meet and discuss with the Department the Application's deficiencies, scoring and underwriting.

(b) **Viewing of Pre-Applications and Applications.** Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods



close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Personal Financial Statements and Social Security numbers, will be made available for public disclosure after the Pre-Application and Application periods close, respectively. The content of Personal Financial Statements may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

(c) **Confidential Information.** The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the Government Code.

#### **§49.12. Tax Exempt Bond Financed Developments: Filing of Applications, Applicability of Rules, Supportive Services, Financial Feasibility Evaluation, Satisfaction of Requirements.**

(a) **Filing of Applications for Tax Exempt Bond Financed Developments.** Applications for a Tax Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (3) of this subsection:

(1) Applicants which receive notice of a Program Year 2003 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap, and for which the issuer of the bonds is the Department, must file a complete Application no later than 10 days after the date of the issuance of the bond reservation. Such filing must be accompanied by the Application fee described in §49.21 of this title.

(2) Applicants which receive advance notice of a Program Year 2003 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap, and for which the issuer of the bonds is an entity other than the Department, must file a complete Application not later than 60 days after the date of the TBRB lottery. Such filing must be accompanied by the Application fee described in §49.21 of this title.

(3) Applicants which receive advance notice of a Program Year 2003 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap, and for which the issuer of the bonds is an entity other than the Department, must submit Volume 1 of the Application and the Application fee described in §49.21 of this title prior to the Applicant's bond reservation date as assigned by the TBRB. Any outstanding documentation required under this section must be submitted to the Department at least 45 days prior to the Board meeting at which the decision to issue a Determination Notice would be made.

(b) **Applicability of Rules for Tax Exempt Bond Financed Developments.** Tax Exempt Bond Financed Development Applications are subject to all rules in this title, with the only exception being to the following sections: §49.4, §49.7, §49.8, §49.9(c)(2) and (3), §49.9(f), §49.10(b) and (c), §49.11(a) and §49.14 of this title. Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §49.9(e) of this title. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. At the time of Application, Developments must demonstrate the Development's consistency with the bond issuer's consolidated plan or other similar planning document. Consistency with the local municipality's consolidated plan or similar planning document must also be demonstrated in those instances where the city or county has a consolidated plan.

(c) **Supportive Services for Tax Exempt Bond Financed Developments.** Tax Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of these services will be included in the LURA. Acceptable services as described in paragraphs (1) through (3) of this paragraph include:

(1) the services must be in one of the following categories: child care, transportation, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities; or

(2) any other program 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 out-of-wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(3) any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state

workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(d) **Financial Feasibility Evaluation for Tax Exempt Bond Financed Developments.** Code §42(m)(2)(D) required the bond issuer (if other than the Department) to make sure that a Tax Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Underwriting Rules and Guidelines, 10 TAC §1.32 of this title or request that the Department perform the function. If the issuer underwrites the Development, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this paragraph, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits at the time of each building's placement in service will only be permitted if it is deemed that causes for the increased credits were beyond the control of the Development Owner, were not foreseeable by the Development Owner at the time of Application and were not preventable during the construction of the Development, as determined by the Board.

(e) **Satisfaction of Requirements for Tax Exempt Bond Financed Developments.** If the Department staff determines that all requirements of subsection (i) of this section have been met, the Board, shall authorize the Department to issue a Determination Notice to the Applicant that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

#### **§49.13 Commitment and Determination Notices; Agreement and Election Statement.**

(a) **Commitment and Determination Notices.** If the Board approves an Application, the Department will:

(1) if the Application is for a commitment from the State Housing Credit Ceiling, issue a Commitment Notice to the Development Owner which shall:

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

(B) state the Department's commitment to make a Housing Credit Allocation to the Applicant in a specified amount, subject to the feasibility determination described at §49.17 of this title, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee specified in §49.21 of this title, and satisfies any other conditions set forth therein by the Department. A Development Owner may request an extension of the Commitment Notice expiration date by submitting extension request and associated extension fee as described in §49.21 of this title. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(2) if the Application is with respect to a Tax Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) confirm the Board's determination that the Development satisfies the requirements of this QAP; and

(B) state the Department's commitment to issue IRS Form(s) 8609 to the Applicant in a specified amount, subject to the requirements set forth at §49.12 of this title and compliance by the Development Owner with all applicable requirements of this title and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §49.21 of this title. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department within the applicable time period.

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

(4) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Program as expressed in

this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(5) A Commitment or Determination Notice shall not be issued with respect to any Development in violation of the Concentration Policy, unless the Committee makes a recommendation to the Board based on the need to fulfill the goals of the Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(6) A Commitment or Determination Notice shall not be issued with respect to any Applicant or any Person, General Partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing property in the state of Texas funded by the Department, or outside the state of Texas, that is in Material Non-Compliance with the LURA (or any other document containing an Extended Low Income Housing Commitment) or the program rules in effect for such property as of June 30, 2003. Any corrective action documentation affecting the Material Non-Compliance status score for Applicants must be received by the Department no later than May 15, 2003.

(b) **Agreement and Election Statement.** Together with or following the Development Owner's acceptance of the commitment or determination, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the applicable credit percentage for the Development as that for the month in which the Commitment was accepted (or the month the bonds were issued for Tax Exempt Bond Developments), as provided in the Code, §42(b)(2). Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the applicable credit percentage for a Development, the Carryover Allocation Document must be executed by the Department and the Development Owner in the same month. The Department staff will cooperate with a Development Owner, as needed, to assure that the Commitment Notice can be so executed.

#### **§49.14. Carryover, 10% Test.**

(a) **Carryover.** All Developments which received a Commitment Notice, and will not be placed in service and receive IRS Form 8609 in the year the Commitment Notice was issued, must submit the Carryover documentation to the Department no later than November 1 of the year in which the Commitment Notice is issued. Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, or an extension approved by the Board. In the event that a Development Owner intends to submit the Carryover documentation in October of the year in which the Commitment Notice is issued, in order to fix the applicable credit percentage for the Development in October, it must be submitted no later than the first Friday in October. The Carryover Allocation format must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual. All Carryover Allocations will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment Notice:

(1) A current original plat of survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(2) A review of information provided by the IRS as permitted pursuant to IRS Form 8821, Tax Information Authorization, for the release of tax information relating to non-disclosure or recapture issues. Each Applicant must execute and provide to the Department Form 8821 within ten business days of the issuance of a Commitment Notice or Determination Notice. The form must be signed and executed on behalf of the Development Owner. Any information provided by the IRS will be evaluated by the Department in accordance with §49.2(52) of this title and may be utilized by the Board to determine if a Carryover Allocation will be made.

(3) Attendance of the Development Owner and Development architect at eight hours of Fair Housing training on or before the closing of the construction loan.

(b) **10% Test.** No later than six months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis has to have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code and Treasury Regulations, § 1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than June 30 in a format proscribed by the Department.

#### **§49.15. Closing of the Construction Loan, Commencement of Substantial Construction.**

(a) **Closing of the Construction Loan.** The Development Owner must submit evidence of having closed the construction loan no later than the second Friday in June of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §49.21 of this title. At the time of submission of the documentation, the Development Owner must also submit a Management Plan and an

Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. The Carryover Allocation will automatically be terminated if the Development Owner fails to meet the aforementioned closing deadline (taking into account any extensions), and has not had an extension approved, and all credits previously allocated to that Development will be recovered and become a part of the State Housing Credit Ceiling for the applicable year.

(b) **Commencement of Substantial Construction.** The Development Owner must commence and continue substantial construction activities not later than the last Friday in August of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §49.21 of this title. The minimum activity necessary to meet the requirement of substantial construction for new Developments will be defined as having poured foundations for at least 50% of all of the buildings in the Development. Evidence of such activity shall be provided in a format prescribed by the Department.

#### **§49.16. Cost Certification, LURA.**

(a) **Cost Certification.** Developments that will be placed in service and request IRS Forms 8609 in the year the Commitment Notice was issued must submit the required Cost Certification documentation and the compliance and monitoring fee to the Department by the second Friday in November of that same year. The Department will issue IRS Forms 8609 no later than 90 days from the date of receipt of the Cost Certification documentation, so long as all subsequent documentation requested by the Department related to the processing of the Cost Certification documentation has been provided on or before the seventy-fifth day from the date of receipt of the original Cost Certification documentation. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator.

(b) **Land Use Restriction Agreement (LURA).** Prior to the Department's issuance of the IRS Form(s) 8609 for building(s) in a Development, the Development Owner must date, sign and acknowledge before a notary public a LURA and send the original to the Department for execution. The Development Owner shall then record said LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department shall physically inspect the Development for compliance with the Application and the representatives, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. If an Owner intends for the Department to execute a LURA by the end of a calendar year, then the proposed LURA, executed by the Owner and lienholder, if necessary, must be submitted to the Department for execution no later than December 1 of that calendar year.

#### **§49.17. Housing Credit Allocations.**

(a) In making a commitment of a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Applicant's Application to determine whether a building is eligible for the credit under the Code, §42. The Applicant shall bear full responsibility for claiming the credit and assuring that the Development complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that an Applicant who receives a housing credit allocation from the Department will qualify for the housing credit.

(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Development throughout the Compliance Period. Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and as of the date each building in a Development is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department based upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the department in no way or manner

represents or warrants to any applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.

(c) The General Contractor hired by the Applicant must meet specific criteria as defined by the Seventy-fifth Legislature. A general contractor hired by an applicant or an applicant, if the applicant serves as general contractor must demonstrate a history of constructing similar types of housings without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §49.9(e)(4)(G) of this title, which sufficiently documents that the general contractor has constructed some housing without the use of low income housing credits. This documentation will be required as a condition of the commitment notice or carryover agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) An allocation will be made in the name of the Applicant identified in the related Commitment Notice or Determination Notice. If an allocation is made in the name of the party expected to be the General Partner or Managing Member in an eventual owner partnership or limited liability company, the Department may, upon request, approve a transfer of allocation to such owner partnership or limited liability company in which such party is the sole General Partner or Managing Member. Any other transfer of an allocation will be subject to review and approval by the Department. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete documentation regarding the new owner including all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(e) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.21 of this title have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third-Party accredited accessibility inspector to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for low income housing tax credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate housing credit allocation shall be made with respect to each building within a Development which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings.

(f) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum applicable percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The housing credit allocation made by the Department shall not exceed the amount necessary to support the extended low income housing commitment as required by the Code, §42(h)(6)(C)(i).

(g) Development inspections shall be required to show that the Development is built or rehabilitated according to required plans and specifications. At a minimum, all Development inspections must include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent, third party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §49.21 of this title.

(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document, the Development Owner shall be responsible for furnishing the Department with

documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. For purposes of this title, a newly constructed or rehabilitated building is not placed in service until all units in such building have been completed and certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development; therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the new construction or rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Applicant does not fulfill all representations and commitments made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609, may withhold issuance of the IRS Form 8609s until these representations and commitments are met, and/or may terminate the allocation, if appropriate corrective action is not taken by the Development Owner.

(i) The Board in its sole discretion may allocate credits to a Development Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Development's financial viability as a qualified low income Development.

(j) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity. The Department may also consider an amendment to a Commitment Notice or Carryover Allocation or other requirement with respect to a Development if the revisions:

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

#### **§49.18 Board Reevaluation, Appeals; Amendments, Housing Tax Credit and Ownership Transfers, Withdrawals, Cancellations.**

(a) **Board Reevaluation.** Regardless of project stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be those items identified in subsection (c)(3) of this section. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) **Appeals Process.** An Applicant may appeal decisions made by the Department.

- (1) The decisions that may be appealed are identified in subparagraphs (A) through (C) of this paragraph.
  - (A) a determination regarding the Applicant's satisfaction of:
    - (i) Pre-Application or Application Threshold Criteria;
    - (ii) Underwriting Criteria;
  - (B) the scoring of the Application under the Application Selection Criteria; and
  - (C) a recommendation as to the amount of housing tax credits to be allocated to the Application.
- (2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.
- (3) An Applicant must file its appeal in writing with the Department not later than the seventh day after the date the Department publishes the results of the Application evaluation process identified in §49.9 of this title. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of housing tax credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

- (A) the seventh day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) the third day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph.

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final.

(6) The Department will post to its web site an appeal filed with the Department or Board and any other document relating to the processing of the appeal.

**(c) Amendment of Application Subsequent to Allocation by Board.**

(1) If a proposed modification would materially alter a Development approved for an allocation of a housing tax credit, the Department shall require the Applicant to file a formal, written request for an amendment to the Application.

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with §49.19 of this title shall also provide to the Board an analysis and written recommendation regarding the amendment.

(3) For Applications approved by the Board prior to September 1, 2001, the Executive Director will approve or deny the amendment request. For Applications approved by the Board after September 1, 2001, the Board must vote on whether to approve the amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of housing tax credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

- (A) would materially alter the Development in a negative manner; or
- (B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

- (A) a significant modification of the site plan;
- (B) a modification of the number of units or bedroom mix of units;
- (C) a substantive modification of the scope of tenant services;
- (D) a reduction of three percent or more in the square footage of the units or common areas;
- (E) a significant modification of the architectural design of the Development;
- (F) a modification of the residential density of the Development of at least five percent; and
- (G) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

- (A) reasonably foreseeable by the Applicant at the time the Application was submitted; or
- (B) preventable by the Applicant.

(6) This section shall be administered in a manner that is consistent with the Code, §42.

(7) Before the 15<sup>th</sup> day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

**(d) Housing Tax Credit and Ownership Transfers.** An Applicant may not transfer an allocation of housing tax credits or ownership of a Development supported with an allocation of housing tax credits to any person other than an Affiliate unless the Applicant obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer. An Applicant seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department. An Applicant seeking Executive Director approval of a transfer must provide to the Department a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the low income housing tax credit program, LURAs; and the sufficiency of the transferee's experience with Developments supported with housing tax credit allocations.

**(e) Withdrawals.** An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment

Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(f) **Cancellations.** The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(1) the Development Owner or any member of the Development Team, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the applications process for the Development;

(2) any statement or representation made by the Development Owner or made with respect to the Development Owner, the Development Team or the Development is untrue or misleading;

(3) an event occurs with respect to any member of the Development Team which would have made the Development's Application ineligible for funding pursuant to §49.5 of this title if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) the Development Owner, any member of the Development Team, or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

#### **§49.19. Compliance Monitoring and Material Non-Compliance.**

(a) The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for noncompliance with the provisions of the Code, §42 and in notifying the IRS of such noncompliance of which the Department becomes aware. Such procedure is set out in this QAP and in the Owner's Compliance Manual prepared by the Department's Compliance Division, as amended from time to time. Such procedure only addresses forms and records that may be required by the Department to enable the Department to monitor a Development for violations of the Code and the LURA and to notify the IRS of any such non-compliance. This procedure does not address forms and other records that may be required of Development Owners by the IRS more generally, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS audit.

(b) The Department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements the entire construction phase associated with any Development under this title. The Department will monitor under this requirement by requiring a copy of all construction inspections performed for the lender and/or syndicator for the Development. If necessary, the Department may obtain a Third-Party inspection report for purposes of monitoring. The Applicant must provide the Department with copies of all inspections made throughout the construction of the Development within fifteen days of the date the inspection occurred. The Department, or any third-party inspector hired by the Department, shall be provided, upon request, any construction documents, plans or specifications for the Development to perform these inspections. The monitoring level for each Development must be based on the amount of risk associated with the Development. The Department shall use the division responsible for credit underwriting matters and the division responsible for compliance matters to determine the amount of risk associated with each Development. After completion of a Development's construction phase, the Department shall periodically review the performance of the Development to confirm the accuracy of the Department's initial compliance evaluation during the construction phase. Developments having financing from TX-USDA-RHS will be exempt from these inspections, provided that the Applicant provides the Department with copies of all inspections made by TX-USDA-RHS throughout the construction of the Development within fifteen days of the date the inspection occurred.

(c) The Department will monitor compliance with all covenants made by the Development Owner in the Application and in the LURA, whether required by the Code, Treasury Regulations or other rulings of the IRS, or undertaken by the Development Owner in response to Department requirements or criteria.

(d) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the allocation of housing tax credits to the Development and appropriate state and federal laws, as required by other state law or by the Board. The Department may assign Department staff other than housing tax credit division staff to perform the relevant monitoring functions required by this section in the construction or rehabilitation phase of a Development.

(e) The Department shall create an easily accessible database that contains all Development compliance information developed under this section.



(f) The Development Owner must keep records for each qualified low income building in the Development, showing on a monthly basis (with respect to the first year of a building's Credit Period and on an annual basis, thereafter):

- (1) the total number of residential rental Units in the building (including the number of bedrooms and the size in square feet of each residential rental Unit);
- (2) the percentage of residential rental Units in the building that are low income Units;
- (3) the rent charged for each residential rental Unit in the building including, with respect to low income Units, documentation to support the utility allowance applicable to such Unit;
- (4) the number of occupants in each low income Unit;
- (5) the low income Unit vacancies in the building and information that shows when, and to whom, all available Units were rented;
- (6) the annual income certification of each tenant of a low income Unit, in the form designated by the Department in the Compliance Manual, as may be modified from time to time;
- (7) documentation to support each low income tenant's income certification, consistent with the determination of annual income and verification procedures under Section 8 of the United States Housing Act of 1937 ("Section 8"), notwithstanding any rules to the contrary for the determination of gross income for federal income tax purposes. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the Development Owner declaring that the tenant's income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Manual;
- (8) the Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period;
- (9) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under the Code, §42(d), (e.g. whether tenant facilities are available on a comparable basis to all tenants; whether any fee is charged for use of the facilities; whether facilities are reasonably required by the Development); and
- (10) any additional information as required by the Department.

(g) The Development Owner will deliver to the Department no later than March 1 each year, the current audited financial statements, in form and content satisfactory to the Department, itemizing the income and expenses of the Development for the prior year.

(h) Specifically, to evidence compliance with the requirements of the Code, §42(h)(6)(B)(iv) which requires that the LURA prohibit Development Owners of all tax credit Developments placed in service after August 10, 1993 from refusing to lease to persons holding Section 8 vouchers or certificates because of their status as holders of such Section 8 voucher or certificate. Development Owners must comply with Department rules under 10 TAC §1.14 of this title. A housing development funded or administered by the Department is prohibited from:

- (1) 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 (42 U.S.C. Section 143F); and
- (2) 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 2.5 times the individual or family's share of the total monthly rent payable to the Development. A Development Owner must maintain a written management plan that is available for review upon request. Such management plan must clearly state the following objectives:
  - (A) prospective applicants who hold Section 8 vouchers or certificates are welcome to apply and will be provided the same consideration for occupancy as any other applicant;
  - (B) any minimum income requirements for Section 8 voucher and certificate holders will only be applied to the portion of the rent the prospective tenant would pay, provided, however, that if Section 8 pays 100% of the rent for the Unit, the Development Owner may establish other reasonable minimum income requirements to ensure that the tenant has the financial resources to meet daily living expenses. Minimum income requirements for Section 8 voucher and certificate holders will not exceed 2.5 times the portion of rent the tenant pays; and
  - (C) all other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) must be applied to applicants uniformly and in a manner consistent with the Texas and federal Fair Housing Acts and with Department and Code requirements;
- (3) post Fair Housing logos and the Fair Housing poster in the leasing office;
- (4) approve and distribute a written Affirmative Marketing Plan to the property management and on-site staff; and

(5) communicate annually during the first quarter of each year in writing with the administrator of each Section 8 program which has jurisdiction within the geographic area where the Development is located. Such communication will include information on the unit characteristics and rents and will advise the administering agency that the property accepts Section 8 vouchers and certificates and will treat referrals in a fair and equal manner. Copies of such correspondence must be available during on-site reviews conducted by the Department. A prospective tenant participating in the voucher program shall have the right to report to the administrator of the Section 8 program that provided the certificate or voucher an exclusion from admission to a housing development based on a financial or minimum income standard requiring the tenant to have a monthly income of more than 2.5 times the tenant or tenant's family share of the total monthly rent payable to the Development Owner. The administrator shall promptly report such exclusion to the Department. A Housing Sponsor that fails to comply with the requirements and procedures of this §49.19(h) of this title is subject to the following sanctions:

(A) Failure to lease to a prospective tenant due to the applicant's status as a recipient of a federal rental assistance voucher or certificate will result in a material non-compliance score.

(B) A complaint of exclusion from admittance as described in subsection (h)(5) of this section that has been verified by the Department shall result in a non-compliance score for a period of one year from the date of the Department's verification of the complaint.

(i) Record retention provision. The Development Owner is required to retain the records described in subsection (f) of this section for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

(j) Certification and Review.

(1) On or before February 1st of each year, the Department will send each Development Owner of a completed Development an Owner's Certification of Program Compliance (form provided by the Department) to be completed by the Owner and returned to the Department on or before the first day of March of each year in the Compliance Period. Any Development for which the certification is not received by the Department, is received past due, or is incomplete, improperly completed or not signed by the Development Owner, will be considered not in compliance with the provisions of §42 of the Code and reported to the IRS on Form 8823, Low Income Housing Credit Agencies Report of Non Compliance. The Owner Certification of Program Compliance shall cover the proceeding calendar year and shall include at a minimum the following statements of the Development Owner:

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

(B) there was no change in the Applicable Fraction of any building in the Development, or if there was such a change, the applicable fraction to be reported to the IRS for each building in the Development for the certification year;

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

(D) each low income Unit in the Development was rent-restricted under the Code, §42(g)(2);;

(E) all low income Units in the Development are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under the Code, §42(l)(3)(B)(iii));

(F) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this Development. A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

(G) each building in the Development is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income Unit in the Development. If a violation report or notice was issued by the governmental unit, the Development Owner must attach a copy of the violation report or notice. In addition, the Development Owner must state whether the violation has been corrected;

(H) either there was no change in the Eligible Basis (as defined in the Code, §42(d)) of any building in the Development, or that there has been a change, and the nature of the change (e.g., a common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, or the Development Owner has received federal subsidies with respect to the Development which had not been previously received or disclosed to the Department in writing);

(I) all tenant facilities included in the Eligible Basis under the Code, §42(d), of any building in the Development, such as swimming pools, other recreational facilities, washer/dryer hook ups, appliances and parking areas, were provided on a comparable basis without charge to all tenants in the building;

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

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

(L) a LURA including an Extended Low Income Housing Commitment as described in the Code, §42(h)(6), was in effect for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308-2311, including the requirement under the Code, §42(h)(6)(B)(iv) that a Development Owner cannot refuse to lease a Unit in the Development to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to section 1314c(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439;

(M) All low income Units in the Development were used on a nontransient basis (except for transitional housing for the homeless provided under the Code, §42(i)(3)(B)(iv);

(N) no change in the ownership of a Development has occurred during the reporting period;

(O) the Development Owner has not been notified by IRS that the Development is no longer "a qualified low income housing Development" within the meaning of the Code, §42;

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

(Q) if the Development Owner received its Housing Credit Allocation from the portion of the state ceiling set-aside for Developments involving Qualified Nonprofit Organizations under the Code, §42(h)(5), a Qualified Nonprofit Organization owned an interest in and materially participated in the operation of the Development within the meaning of the Code, §469(h); and

(R) no low income Units in the Development were occupied by households in which all members were Students.

(2) Review.

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

(B) The Department will perform on-site inspections of all buildings in each low income housing Development by the end of the second calendar year following the year the last building in the Development is placed in service and, for at least 20% of the low income Units in each Development, inspect the Units and review the low income certifications, the documentation the Development Owner has received to support the certifications, the rent records for each low income tenant in those Units, and any additional information that the Department deems necessary.

(C) At least once every three years, the Department will conduct on-site inspections of all buildings in the Development, and for at least 20% of the Development's low income Units, inspect the Units and review the low income certifications, the documentation supporting the certifications, and the rent records for the tenants in those Units; and

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

(E) The Department will randomly select which low income Units and tenant records are to be inspected and reviewed by the Department. The review of the tenant records may be undertaken wherever the Development Owner maintains or stores the records. Units and tenant records to be inspected and reviewed will be selected in a manner that will not give Development Owners advance notice that a particular Unit and tenant records for a particular year will or will not be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an on-site inspection or a tenant record review will occur, so that the Development Owner may notify tenants of the inspection or assemble tenant records for review.

(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the TX-USDA-RHS, whereby the TX-USDA-RHS agrees to provide to the Department information concerning the

income and rent of the tenants in buildings financed by the TX-USDA-RHS under its §515 program. Owners of such buildings may be excepted from the review procedures of subparagraph (B) or (C) of this paragraph or both; however, if the information provided by TX-USDA-RHS is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the Development Owner must provide the Department with additional information. TX-USDA-RHS Developments satisfy the definition of Qualified Elderly Development if they meet the definition for elderly used by TX-USDA-RHS, which includes persons with disabilities.

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

(l) Inspection Standard. For the on-site inspections of buildings and low income Units, the Department shall review any local health, safety, or building code violations reported to, or notices of such violations retained by, the Development Owner, under subsection (j)(1)(G) of this section, and determine whether the Units satisfy local health, safety, and building codes or the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety and building codes. Developments must continue to satisfy these codes and if the Department becomes aware of any violation of these codes, the violations must be reported to the IRS.

(m) The Department retains the right to require the Owner to submit tenant data in the electronic format as developed by the Department. The Department will provide general instruction regarding the electronic transfer of data.

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

(o) Notice to the IRS.

(1) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department), but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance or failure to certify.

(2) If a particular instance of non-compliance is not corrected within three years after the end of the permitted correction period, the Department is not required to report any subsequent correction to the IRS.

(3) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain the certification and records described in §49.19 of this title for three years from the end of the calendar year the Department receives the certifications and records.

(p) Notices to the Department. A Development Owner must notify the division responsible for compliance within the Department in writing of the events listed in paragraphs (1) through (3) of this subsection.

(1) prior to any sale, transfer, exchange, or renaming of the Development or any portion of the Development. For Rural Developments that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any portion of the Development;

(2) any change of address to which subsequent notices or communications shall be sent; or

(3) within thirty days of the placement in service of each building, the Department must be provided the in service date of each building.

(q) Liability. Compliance with the requirements of the Code, §42 is the sole responsibility of the Development Owner of the building for which the credit is allowable. By monitoring for compliance, the

Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner including the Development Owner's noncompliance with the Code, §42.

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

(s) Material Non-Compliance. In accordance with §49.5(b)(6) and (7) of this title, the Department will disqualify an Application for funding if the Applicant or other Persons, General Partner, General Contractor, and their respective principals or Affiliates active in the ownership or control of low income housing located in or outside the State of Texas is determined by the Department to be in Material Non-Compliance on the date the Application Round closes. The Department will classify a property as being in Material Non-Compliance when such property has a Non-Compliance score that is equal to or exceeds 30 points in accordance with the methodology and point system set forth in this subsection, or if in accordance with §49.5(b)(7) of this title, the Department makes a determination that the non-compliance reported would equal or exceed a non-compliance score of 30 points if measured in accordance with the methodology and point system set forth in this subsection.

(1) Each property that has received an allocation from the Department will be scored according to the type and number of non-compliance events as it relates to the tax credit program or other Department programs. All Developments regardless of status that have received an allocation are scored even if the project no longer actively participates in the program.

(2) Uncorrected non-compliance will carry the maximum number of points until the non-compliance event has been reported corrected by the Department. Once reported corrected by the Department the score will reduce to the "corrected value" in paragraph (4) of this subsection. Corrected non-compliance will no longer be included in the Development score three years after the date the non-compliance was reported corrected by the Department. Non-compliance events that occurred and were identified by the Department through the issuance of the IRS form 8823 prior to January 1, 1998 are assigned corrected point values to each non-compliance event. The score for these events will no longer be included in the Development's score three years after the date the form 8823 was executed. For Applicants under this QAP, a non-compliance report will be run by the Department's Compliance Division on the date the Application Round closes. Any corrective action documentation affecting this compliance status score must be received by the Department no later than February 1, 2003.

(3) Events of non-compliance are categorized as either "development events" or "unit/building events". Development events of non-compliance affect all the buildings in the property. However, the property will receive only one score for the event rather than a score for each building. Other types of non-compliance are identified individually by unit. This type of non-compliance will receive the appropriate score for each building cited with an event. The building scores accumulate towards the total score of the Development.

(4) Each type of non-compliance is assigned a point value. The point value for non-compliance is reduced upon correction of the non-compliance. The scoring point system and values are as described in subparagraphs (A) and (B) of this paragraph. The point system weighs certain types of non-compliance more heavily than others; therefore certain non-compliance events carry a sufficient number of points to automatically place the property in Material Non-Compliance. However other types of non-compliance by themselves do not warrant the classification of Material Non-Compliance. Multiple occurrences of these types of non-compliance events may produce enough points to cause the property to be in Material Non-Compliance. For purposes of these scores, the terms "uncorrected" and "corrected" refer to actions taken subsequent to notification of non-compliance by the Department. Scores identified below become effective April 1, 2003.

(A) Development Non-Compliance items are identified in clauses (i) through (xxi) of this subparagraph.

(i) Major property condition violations. As determined by the Department the project displays major violations of health, safety and building code or the property does not satisfy the uniform physical condition standards. Uncorrected is 30 points. Corrected is 20 points.

(ii) Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder. Uncorrected is 30 points. Corrected is 10 points.

(iii) Development not available to general public. Determination of violation under the Fair Housing Act. Uncorrected is 30 points. Corrected is 10 points.

(iv) Development is out of compliance and never expected to comply. Uncorrected is 30 points.

(v) Failure to meet minimum low-income occupancy levels. Development failed to meet required minimum low-income occupancy levels of 20/50 (20% of the units occupied by tenants with household incomes of

less than or equal to 50% of area median gross income) or 40/60. Uncorrected is 20 points. Corrected is 10 points.

(vi) No evidence or failure to certify to non-profit material participation. Uncorrected is 10 points. Corrected is 3 points.

(vii) Failure to meet additional State required rent and occupancy restrictions. Development has failed to meet state restrictions that exist in addition to the federal requirements. Uncorrected is 10 points. Corrected is 3 points.

(viii) Failure to provide required supportive services as promised at application. Uncorrected is 10 points. Corrected is 3 points.

(ix) Failure to provide housing to the elderly as promised at application. Uncorrected is 10 points. Corrected is 3 points.

(x) Failure to provide special needs housing. Development has failed to provide housing for tenants with special needs as promised at application. Uncorrected is 10 points. Corrected is 3 points.

(xi) Owner failed to provide required annual notification to local administering agency for the Section 8 program. Uncorrected is 5 points. Corrected is 2 point.

(xii) Changes in eligible basis. Changes occur when common areas become commercial; fees are charged for facilities, etc. Uncorrected is 10 points. Corrected is 3 point.

(xiii) Owner failed to post Fair Housing Logo and/or poster in leasing offices. Uncorrected is 3 points. Corrected is 1 point.

(xiv) LURA not in effect. The LURA was not executed within the required time period. Uncorrected is 10 points. Corrected is 3 point.

(xv) Owner failed to pay fees or allow on-site monitoring review. Uncorrected is 3 points. Corrected is 1 point.

(xvi) Failure to submit annual Owner Certification of Program Compliance or other annual, monthly, or quarterly reports. Uncorrected is 10 points. Corrected is 3 point.

(xviii) Owner failed to make available or maintain management plan with required language. Uncorrected is 3 points. Corrected is 1 point.

(xix) Owner failed to approve and distribute Affirmative Marketing Plan. Uncorrected is 3 points. Corrected is 1 points.

(xx) Pattern of minor property condition violations. Development displays a pattern of property violations. However those violations do not impair essential services and safeguards for tenants. Uncorrected is 5 points. Corrected is 2 point.

(xxi) Failure to comply with requirements limiting minimum income standards for Section 8 residents. Complaints verified by the Department regarding violations of the income standard which cause exclusion from admission of section 8 resident(s) results in a violation. Uncorrected score 10 points. Corrected 3 point.

(B) Unit Non-Compliance items are identified in clauses (i) through (x) of this subparagraph.

(i) Unit not leased to Low Income Household. Development has units that are leased to households whose income was above the income limit upon initial occupancy. Uncorrected is 3 points. Corrected is 1 point.

(ii) Low-income units occupied by nonqualified full-time students. Uncorrected is 3 points. Corrected is 1 point.

(iii) Low income units used on transient basis. Uncorrected is 3 points. Corrected is 1 point.

(iv) Household Income increased above the re-certification limit and available unit was rented to market tenant. Uncorrected is 3 points. Corrected is 1 point.

(v) Gross rent exceeds tax credit rent limits. Uncorrected is 3 points. Corrected is 1 point.

(vi) Utility allowance not calculated properly. Uncorrected is 3 points. Corrected is 1 point.

(vii) Failure to maintain or provide tenant income certification and documentation. Uncorrected is 3 points. Corrected is 1 point.

(viii) Casualty loss. Units not available for occupancy due to natural disaster or hazard due to no fault of the Owner. This carries no point value.

(ix) When a low income unit became vacant, owner failed to lease to a low income household before any units were rented to tenants not having a qualifying income. Uncorrected 3 points. Corrected 1 point.

(x) Unit not available for rent. Unit is used for non-residential purposes. Uncorrected is 3 points. Corrected is 1 point.

(t) Utility Allowances utilized during Affordability Period. The Department will monitor to determine whether rents comply with the published tax credit rent limits using the utility allowances established by the local housing authority. When there are overlapping jurisdictions between local housing authorities, the utility

allowance for the building will be utilized based on where the property is located according to the Development's legal description.

**§49.20. Department Records, Application Log, IRS Filings.**

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

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

(b) **Application Log.** The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) through (9) of this subsection.

- (1) the names of the Applicant and Related Parties, the owner contact name and phone number, and full contact information for all members of the Development Team;
- (2) the name, physical location, and address of the Development, including the relevant region of the state;
- (3) the number of Units and the amount of housing tax credits requested for allocation by the Department to the Applicant;
- (4) any set-aside category under which the Application is filed;
- (5) the requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;
- (6) any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate housing tax credits to the Development;
- (7) the names of persons making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;
- (8) the amount of housing tax credits allocated to the Development; and
- (9) a dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.

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

**§49.21. Program Fees, Refunds, Public Information Requests, Amendments of Fees and Notification of Fees, Extensions.**

(a) **Timely Payment of Fees.** All fees must be paid as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and application amendments. Payments made by check, for which insufficient funds are available, will cause the Application, commitment or allocation to be terminated.

(b) **Pre-Application Fee.** Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of \$5 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Community Housing Development Organizations (CHDOs) and Qualified Nonprofit Organizations will receive a discount of 10% off the calculated Pre-Application fee.

(c) **Application Fee.** Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be \$15 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be \$20 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Community Housing Development Organizations and Qualified Nonprofit Organizations will receive a discount of 10% off the calculated Application fee.

(d) **Refunds of Pre-Application or Application Fees.** The Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 30% of the review, the site visit will constitute 45% of the review, and Threshold and Selection review will constitute 25% of the review. The Department must provide the refund to the Applicant not later than the 30<sup>th</sup> day after the date the last official action is taken with respect to the Application.

(e) **Third Party Underwriting Fee.** Applicants will be notified in writing prior to the evaluation of a Development by an independent third party underwriter in accordance with §49.7(b)(3) of this title 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 third party underwriting will be credited against the commitment fee established in subsection (e) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

(f) **Commitment or Determination Notice Fee.** Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the commitment notice, a non-refundable commitment fee equal to 4% of the annual housing credit allocation amount. The commitment fee shall be paid by check.

(g) **Compliance Monitoring Fee.** Upon the Development being placed in service, the Development Owner will pay a compliance monitoring fee in the form of a check equal to \$25 per tax credit Unit per year or \$100, whichever is greater. Payment of the first year's compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the Development. Subsequent anniversary dates on which compliance monitoring fee payments are due shall be determined by the date the Development was placed in service.

(h) **Building Inspection Fee.** The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is \$500.

(i) **Public Information Requests.** Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Texas Building and Procurement Commission (formerly General Services Commission) determines the cost of copying, and other costs of production.

(j) **Periodic Adjustment of Fees by the Department and Notification of Fees.** 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. The Department shall publish not later than July 1 of each year a schedule of Application fees that specifies the amount to be charged at each stage of the application process. 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.

(k) **Extension Requests.** All extension requests relating to the Commitment Notice, Carryover, Closing of Construction Loan, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a non-refundable extension fee in the form of a check in the amount of \$2,500. Such requests must be submitted to the



Department at least 30 days prior to the date for which an extension is being requested. Extension requests and fees will not be accepted any later than this deadline date. The extension request shall specify a requested extension date and the reason why such an extension is required. The Department, in its sole discretion, may consider and grant such extension requests for all items except for the Closing of Construction Loan and Substantial Construction Commencement. The Board may grant extensions, for the Closing of Construction Loan and Substantial Construction Commencement. The Board may waive related fees.

**§49.22. Manner and Place of Filing All Required Documentation.**

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

(b) All notices, information, correspondence and other communications under this title shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or for hand delivery or courier to 507 Sabine, Suite 400, Austin, Texas 78701. Every such correspondence required or contemplated by this title to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Notice by courier, express mail, certified mail, or registered mail will be effective on the date it is officially recorded as delivered by return receipt or equivalent and in the absence of such record of delivery it will be presumed to have been delivered by the fifth business day after it was deposited, first-class postage prepaid, in the United States first class mail. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

**§49.23. Waiver and Amendment of Rules.**

(a) The Board, in its discretion, may waive any one or more of these Rules in cases in which the Board finds that compelling circumstances exist outside the control of the Applicant or Development Owner..

(b) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001, as may be amended from time to time.

**§49.24. Deadlines for Allocation of Low Income Housing Tax Credits.**

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft Qualified Allocation Plan required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program.

(b) The Board shall adopt and submit to the Governor the Qualified Allocation Plan not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the Qualified Allocation Plan not later than December 1 of each year.

(d) An Applicant for a low income housing tax credit to be issued a Commitment Notice during the Application Round in a calendar year must submit an Application to the Department not later than March 1.

(e) The Board shall review the recommendations of Department staff regarding Applications and shall issues a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30.

(f) The Board shall issue final Commitment Notices for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31.