

Attached is the 2004 Qualified Allocation Plan approved by the Board of the Texas Department of Housing and Community Affairs on November 14, 2003. The QAP is now pending approval by the Governor.



**Multifamily Finance Production Division
2004 Housing Tax Credit Program
Qualified Allocation Plan and Rules**

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§50.1. 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 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-92-3 (March 4, 1992), 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 this Qualified Allocation Plan (QAP) which is set forth in §§50.1 through 50.24 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, 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, accessible, affordable rental housing in the private marketplace; maximize the number of suitable, accessible, affordable residential rental units added to the state's housing supply; prevent losses for any reason to the state's supply of suitable, accessible, 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 accessible affordable housing developments in rural and urban communities. [2306.6701]

(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 §§50.8 and 50.9 of this title, without in any way limiting the effect or applicability of all other provisions of this title.

§50.2. 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 Regional Allocation 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 Regional Allocation. The Criteria will be approved by that Agency. To ensure that the Rural Regional Allocation receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts. [2306.6723]

§50.3. 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 a document from the Application which is important to a review and scoring of the Application and is required under §§50.8(d) and 50.9(e), (f) and (g) of this title.

(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. Affiliates also include all General Partners, Special Limited Partners and Principals with at least a 10% ownership interest.

(3) **Agreement and Election Statement** - A document in which the Development Owner elects, irrevocably, to fix the Applicable 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).

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- (5) **Applicable Percentage** - The percentage used to determine the amount of the Housing Tax Credit, as defined more fully in the Code, §42(b).
- (A) For purposes of the Application, the Applicable Percentage will be projected at 10 basis points above the greater of:
- (i) the current applicable percentage for the month in which the Application is submitted to the Department, or
 - (ii) 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.
- (B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:
- (i) The percentage indicated in the Agreement and Election Statement, if executed; or
 - (ii) The actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by Code, §42(b) for the most current month; or
 - (iii) The percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.
- (6) **Applicant** - Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation. [2306.6702]
- (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. [2306.6702]
- (8) **Application Acceptance Period** - That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department as more fully described in §§50.9(a) and 50.22 of this title. For Tax Exempt Bond Developments this period is that period of time prior to the deadline stated in §50.12 of this title.
- (9) **Application Round** - The period beginning on the date the Department begins accepting Applications for the State Housing Credit Ceiling and continuing until all available Housing Tax 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. [2306.6702]
- (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 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) has received 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, rental assistance payment, or equity incentive 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); and
 - (vii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. Section 42), 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 of July 31 of the year the Application is submitted); 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 of July 31 of the year the Application is submitted).
 - (C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site, except that a Housing Authority proposing reconstruction of public housing, supplemented with HOPE VI funding or funding from their capital grant fund, will be qualified as an At-Risk Development if it meets the requirements described in §50.7(b)(3) of this title. Redevelopment of any type must include the same site as the original development to qualify in this set-aside.”

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(D) Developments must be at risk of losing all affordability on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development. [2306.6702]

(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) **Board** - The governing Board of the Department. [2306.004]

(15) **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.

(16) **Carryover Allocation Document** - A document issued by the Department, and executed by the Development Owner, pursuant to §50.14 of this title.

(17) **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.

(18) **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.

(19) **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 Texas Water Development Board.

(20) **Commitment Notice** - A notice issued by the Department to a Development Owner pursuant to §50.13 of this title and also referred to as the "commitment."

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

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

(23) **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 Housing Tax Credit Program.

(24) **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).

(25) **Department** - The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established by Chapter 2306, Texas Government Code, including Department employees and/or the Board. [2306.004]

(26) **Determination Notice** - A notice issued by the Department to the Development Owner of a Tax Exempt Bond Development which states that the Development may be eligible to claim Housing Tax Credits without receiving an allocation of Housing Tax 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 Department's determination as to the amount of tax credits necessary for the financial feasibility of the Development and its viability as a rent restricted Development throughout the affordability period.

(27) **Developer** - Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services (which fee cannot exceed 15% of the Eligible Basis) and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(28) **Development** - A proposed qualified low income housing project, for new construction or rehabilitation, as defined by 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

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(B) located on scattered sites and contain only rent-restricted units. [2306.6702]

(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, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract approved by the Department. [2306.6702]

(31) **Development Team** - All Persons or Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.

(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 Texas Water Development 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 Texas Water Development 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. [2306.6702]

(35) **Extended Housing Commitment** - An agreement between the Department, the Development Owner and all successors in interest to the Development Owner concerning the extended housing use of buildings within the Development throughout the extended use period as provided in the Code, §42(h)(6). The Extended 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 Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. This party may also be referred to as the "contractor."

(37) **General Partner** - That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

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

(39) **Guarantor** - Means any Person that provides, or is anticipated to provide, a guaranty for the equity or debt financing for the Development.

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

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

(42) **Housing Credit Agency** - A Governmental Entity charged with the responsibility of allocating 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.

(43) **Housing Credit Allocation** - An allocation by the Department to a Development Owner of Housing Tax Credit in accordance with the provisions of this title.

(44) **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 Development throughout the affordability period and which it allocates to the Development.

(45) **Housing Tax Credit** ("tax credits") - A tax credit allocated, or for which a Development may qualify, under the Housing Tax Credit Program, pursuant to the Code, §42. [2306.6702]

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

(47) **Ineligible Building Types** - Those Developments which are ineligible, pursuant to this QAP, for funding under the Housing Tax Credit Program, as follows:

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(A) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (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 Housing Tax 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 Qualified Elderly Development with any Units having more than two bedrooms.

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

(E) Any Development proposing new construction, other than a Development (new construction or rehabilitation) composed entirely of single-family dwellings, having any Units with four or more bedrooms.

(F) Any Development that violates the Integrated Housing Policy of the Department.

(G) Any Development involving new construction (other than a Qualified Elderly Development, a single family development or a transitional housing development) in which any of the designs in clauses (i) through (iii) of this subparagraph are proposed. For purposes of this limitation, a den, study or other similar space that could reasonably function as a bedroom will be considered a bedroom.

(i) more than 60% of the total Units are one bedroom Units; or

(ii) more than 45% of the total Units are two bedroom Units; or

(iii) more than 35% of the total Units are three bedroom Units.

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

(49) **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 chapter, Chapter 2306, Texas Government Code, and the requirements of the Code, §42. [2306.6702]

(50) **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 §50.5(b)(3) of this title and under the methodology and point system set forth in Chapter 60 of this title, to be proposed. 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 §50.5(b)(4) of this title and under the methodology and point system set forth in Chapter 60 of this title, to be proposed.

(51) **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. [2306.6734]

(52) **ORCA** - Office of Rural Community Affairs, as established by Chapter 487 of Texas Government Code. [2306.6702]

(53) **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 or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(54) **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 disability could be improved by more suitable housing conditions,

(B) has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. Section 15002), or

(C) has a disability, as defined in 24 CFR §5.403.

(55) **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 §§50.8 and 50.22 of this title.

(56) **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.

(57) **Principal** - the term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

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(A) partnerships, Principals include all General Partners and Special LP and Principals with at least 10% ownership interest ;

(B) corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) limited liability companies, Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(58) **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 within the past five years.

(59) **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.

(60) **Qualified Allocation Plan (QAP)** - [2306.6702] A plan adopted by the Board, and approved by the Governor, under this title, and as provided in the Code, § 42(m)(1) and as further provided in §§50.1 through 50.24 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; and

(B) consistent with 2306.6710(e), Texas Government Code, gives preference in Housing Credit Allocations to Developments that, as compared to other Developments:

(i) when practicable and feasible based on documented, committed, and available Third-Party funding sources, serve the lowest income tenants per housing tax credit; and

(ii) produce for the longest economically feasible period the greatest number of high quality Units committed to remaining affordable to any tenants who are income-eligible under the Housing Tax Credit Program; and

(C) provides a procedure for the Department, the Department's agent, or private contractor of the Department to use in monitoring compliance with the Qualified Allocation Plan, notifying the IRS of noncompliance, and monitoring for noncompliance with habitability standards through regular site visits.

(61) **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).

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

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

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

(B) is intended and operated for occupancy by at least one individual 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual 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 individuals 55 years of age or older. (See 42 U.S.C. Section 3607(b)).

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

(65) **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 At-Risk Development Set-Aside and the TX-USDA-RHS Set-Aside.

(66) **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 it 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). [2306.6729]

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

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(68) **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, 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.

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.

(69) **Rules** - The Department's Housing Tax Credit Qualified Allocation Plan and Rules as presented in this title.

(70) **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. [2306.6702]

(71) **Rural Development** - A Development located within a Rural Area and for which the Applicant applies for tax credits under the Rural Regional Allocation.

(72) **Selection Criteria** - Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §50.9(g) of this title.

(73) **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 as permitted by the Qualified Allocation Plan on a priority basis. [2306.6702]

(74) **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).

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

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(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.”

(76) **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), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(77) **Third Party** - A Third Party is a Person who is not an:

(A) Applicant, General Partner, Developer, or General Contractor, or

(B) an Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor, or

(C) Person(s) receiving any portion of the contractor fee or developer fee.

(78) **Threshold Criteria** - Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §50.9(f) of this title. [2306.6702]

(79) **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 Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of Housing 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.

(80) **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.

(81) **Unit** - Any residential rental unit in a Development consisting of an accommodation including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation. [2306.6702]

§50.4. 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 that purpose by 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.

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

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

(1) The Applicant, Development Owner, Developer or Guarantor 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) The Applicant, Development Owner, Developer or Guarantor has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline; or,

(3) The Applicant, Development Owner, Developer or Guarantor at the time of Application is: subject to an enforcement action under state or federal securities law; is subject to a federal tax lien; or is the subject of an enforcement proceeding with any Governmental Entity; or

(4) The Applicant, Development Owner, Developer or Guarantor 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 Housing Tax Credits from the

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Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax Exempt Bond Developments is unresolved as of the date the Application is submitted; or

(5) [2306.6703 as amended] At the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) a member of the Board; or

(B) the Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over housing tax credits employed by the Department.

(6) [2306.6703] 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 Housing Tax Credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the Area Median Gross 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,

(7) The Development is located in a municipality or, if located outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds unless the Applicant:

(A) has obtained prior approval of the Development from the governing body of the appropriate municipality or county containing the Development in the form of a resolution; and

(B) has included in the Application a written statement of support from that governing body referencing this rule and authorizing an allocation of housing tax credits for the Development; or

(8) The Applicant proposes to construct a new Development that is located one linear mile (measured by a straight line on a map) or less from a Development that:

(A) serves the same type of household as the new Development, regardless of whether the Developments serve families, elderly individuals, or another type of household;

(B) has received an allocation of Housing Tax Credits (including Tax Exempt Bond Developments) for new construction at any time during the three-year period preceding the date the application round begins (or for Tax Exempt Bond Developments the three-year period preceding the date the Volume I is submitted); and

(C) has not been withdrawn or terminated from the Housing Tax Credit Program.

(D) An Application is not ineligible under this paragraph if:

(i) the Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.); or

(ii) the Development is located in a county with a population of less than one million; or

(iii) the Development is located outside of a metropolitan statistical area; or

(iv) the local government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A) through (C) of this paragraph. [2306.6703]

(E) In determining the age of an existing development as it relates to the application of the three-year period, the development will be considered from the date the Board took action on approving the allocation of tax credits. For example, a Development whose credits were approved by the Board on March 15, 2002, could not have a new Development located within one mile until March 16, 2005. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(h).

(b) Disqualification and Debarment. The Department will disqualify an Application, and/or debar a Person (see 2306.6721, Texas Government Code), if it is determined by the Department that those issues identified in paragraphs (1) through (6) of this subsection exist. 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. Causes for disqualification and debarment include: [2306.6721]

(1) The provision of fraudulent information, knowingly false documentation, or other intentional or negligent material misrepresentation in the Application or other information submitted to the Department at any stage of the evaluation or approval process; or,

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(2) at the time of Application or at any time during the two-year period preceding the date the application round begins (or for Tax Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) a member of the Board; or

(B) the executive director, the deputy executive director for programs, the deputy executive director for housing operations, the director of multifamily finance production, the director of portfolio management and compliance or the director of real estate analysis employed by the Department.

(3) The Applicant, Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas funded by the Department is in Material Non-Compliance with the LURA (or any other document containing an Extended 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, and such Material-Noncompliance is not corrected as provided herein. Any corrective action documentation affecting the Material Non-Compliance status score for Applicants competing in the 2004 Application Round must be received by the Department no later than 30 days prior to the close of the Application Acceptance Period, and any corrective action documentation affecting the Material Non-Compliance status score for Applicants with a Tax Exempt Bond Development must be received by the Department no later than 30 days prior to the submission of Volumes I and II. The Department may take into consideration the representations of the Applicant regarding compliance violations described in §50.9(f)(9)(C) and (D) of this title; however, the records of the Department are Controlling; or,

(4) The Applicant, Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties outside of the state of Texas has an 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 Chapter 60 of this title, to be proposed; or,

(5) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to pay in full any fees billed by the Department after the due date has passed, as further described in §50.21 of this title; or

(6) The Applicant or a Related Party, the Development Owner, or the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of the Development, or individual employed as a lobbyist or in another capacity on behalf of the Development, communicates with any Board member 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. Communication with Department staff must be in accordance with §50.9(b) of this title; violation of the communication restrictions of §50.9(b) is also a basis for disqualification and/or debarment. [2306.1113]

(7) It is determined by the Department's General Counsel that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including Section 2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the 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: [2306.223]

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

(2) the Development Owner undertaking the proposed 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 Development Owner is not financially responsible;

(4) the Development Owner has contracted, or will contract for the proposed Development with, a Developer 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) has breached a contract with a public agency and failed to cure that breach; 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;

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(5) the financing of the housing Development is not a public purpose and will not provide a public benefit; and

(6) the Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner. (See 2306.223, Texas Government Code).

(d) Representation by Former Board Member or Other Person. [2306.6733]

(1) A former Board member or a former executive director, deputy executive director, director of multifamily finance production, director of portfolio management and compliance, director of real estate analysis or manager over housing tax credits previously employed by the Department may not:

(A) for compensation, represent an Applicant or one of its Related Parties for an allocation of tax credits 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 ceased;

(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 ceased.

(2) A Person commits an offense if the Person violates this section. An offense under this section is a Class A misdemeanor. (See 2306.6733, Texas Government Code).

(e) Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment. An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) through (d) of this section will first be notified in accordance with the Administrative Deficiency process described in §50.9(d)(3) of this title. They may also utilize the appeals process described in §50.18(b) of this title.

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

(a) **Floodplain.** Any Development proposing new construction located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No Developments proposing rehabilitation, with the exception of developments with federal funding assistance from HUD or TX USDA-RHS, will be permitted in the 100 year floodplain unless they already meet the requirements established in this subsection for new construction.

(b) **Ineligible Building Types.** Applications involving Ineligible Building Types as defined in §50.3(47) of this title will not be considered for allocation of tax credits.

(c) **Scattered Site Limitations.** Consistent with §50.3(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 affordability 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 Housing Tax Credits. The Department will limit the allocation of tax credits to no more than \$1.2 million per Development. The Department shall not allocate more than \$2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor. In order to encourage the capacity enhancement of developers in rural areas, the Department will prorate the credit amount allocated in situations where an Application is submitted in the Rural Regional Allocation and the Development has 76 Units or less. To be considered for this provision, a copy of a Joint Venture Agreement and narrative on how this builds the capacity of the inexperienced developers is required. Tax Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax Exempt Bond Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply [2306.6711(b)]:

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(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, grants or social services; and

(4) to a Development Consultant with respect to the provision of consulting services, provided the Development Consultant fee received for such services does not exceed 10% of the fee to be paid to the Developer (or 20% for Qualified Nonprofit Developments), or \$150,000, whichever is greater.

(e) Limitations on the Size of Developments.

(1) The minimum Development size will be 16 Units.

(2) Rural Developments involving new construction will be limited to 76 Units unless the Market Analysis clearly documents that larger developments are consistent with the comparables in the community and that there is significant demand for additional Units. Rural Developments involving only rehabilitation do not have a size limitation.

(3) Developments involving new construction, that are not Tax Exempt Bond Developments, will be limited to 250 Units, wherein the maximum rent restricted Units will be limited to 200 Units. 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 provide replacement of previously existing affordable multifamily units on its site (in a number not to exceed the original units being replaced) or that were originally located within a one mile radius from the proposed Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months.

(f) **Limitations on the Location of Developments.** Staff will only recommend, and the Board may only allocate, housing tax credits to more than one Development in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. This limitation applies only to communities contained within counties with populations exceeding one million (which for calendar year 2004 are Harris, Dallas, Tarrant and Bexar Counties). For Tax Exempt Bond Developments, the year of the Development is the calendar year in which the Board approves the housing tax credits for the Development. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(h). [2306.6711]

(g) **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.

(h) **Unacceptable Sites.** Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.

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

(a) **Regional Allocation Formula.** [2306.111(d)] As required by 2306.111, Texas Government Code, the Department uses a regional distribution formula developed by the Department to distribute credits from the State Housing Credit Ceiling to all urban/exurban areas and rural areas. The formula is based on the need for housing assistance, and the availability of housing resources in those urban/exurban areas and rural areas, and the Department uses the information contained in the Department's annual state low income housing plan and other appropriate data to develop the formula. This formula establishes separate targeted tax credit amounts for rural areas and urban/exurban areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published in the *Texas Register* and on the Department's web site. The regional allocation for rural areas is referred to as the Rural Regional Allocation and the regional allocation for urban/exurban areas is referred to as the Urban/Exurban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition or be located in a Prison Community. Approximately 5% of each region's allocation for each calendar year shall be allocated to Developments which are financed through TX-USDA-RHS and that meet the definition of a Rural Development and do not exceed 76 Units if new construction. These Developments will be attributed to the Rural Regional Allocation in each region where they are located. Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will not be considered under this set-aside.

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(b) **Set-Asides.** An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies:

(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 the 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 controlling managing General Partner. If the organization's Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit set-aside must have the nonprofit entity or its nonprofit affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. [2306.6729 and 2306.6706(b)]

(2) At least 15% of the allocation to each Uniform State Service Region will be set aside for allocation under 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 §50.3(12) of this title and in both urban/exurban and rural communities in approximate proportion to the housing needs of each Uniform State Service Region. [2306.6714]. A Housing Authority proposing reconstruction of public housing supplemented with HOPE VI funding will be eligible to participate in this set-aside. In order to qualify for this set-aside, the housing authority providing the HOPE VI funding must provide evidence that it received a HOPE VI grant from HUD and made a commitment that HOPE VI funds will be provided to the Development. To qualify as an At-Risk Development, the Applicant must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §50.3(12)(A) of this title, or provide evidence that it will renew, retain or preserve the financial benefit described in §50.3(12)(A) of this title.

(c) **Redistribution of Credits.** [2306.111(d)] If any amount of housing tax credits remain after the initial commitment of housing tax credits among the Rural Regional Allocation and Urban/Exurban Regional Allocation within each Uniform State Service Region and among the 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 §50.9(c) of this title and the level of demand exhibited in the Uniform State Service Regions during the Allocation Round. However as described in subsection (b)(1) of this section, 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 Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

§50.8. 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 §50.21 of this title. Only one Pre-Application may be submitted by an Applicant for each site under the State Housing 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 utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. 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 Administrative Deficiencies. 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) **Communication with the Department.** Applicants that submit a Pre-Application are restricted from communication with Department staff as provided in §50.9(b) of this title. [2306.1113]

(c) **Pre-Application Evaluation Process.** Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria, and if requested by the Applicant, evaluated in regard to the inclusive capture rate as restricted under §1.32(g)(2) of this title. Any Application from a TX-USDA-RHS 515 Development (including new construction and rehabilitation) is exempted from the Pre-Application Evaluation Process and is 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. Pre-Applications that are found to have Administrative Deficiencies will be handled in accordance with §50.9(d)(3) of this title.

(d) **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 "Pre-Application Self-Scoring Form," and
- (2) Evidence of site control as evidenced by the documentation required under §50.9(f)(7)(A) of this title.
- (3) Consistent with §50.9(f)(8)(B) of this title, evidence that all of the notifications required under that section have been made prior to the close of the Pre-Application Acceptance Period. [2306.6704]

(e) **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 and §50.9(g)(17) of this title, 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.

§50.9. 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 §50.21 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 in an Application Round. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. 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. [2306.6708] An Applicant may not change or supplement an Application in any manner after the filing deadline, except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §50.3(1) of this title or to the amendment of an Application after a commitment or allocation of tax credits as further described in §50.18 of this title.

(b) **Communication with the Department.** Applicants that submit a Pre-Application or Application are restricted from communication with Department staff as described in this subsection. The Applicant or a Related Party, the Development Owner, or the General Contractor, or any Affiliate of the General Contractor, that is active in the ownership or Control of the Development, or individual employed as a lobbyist or in another capacity on behalf of the Development, may communicate with an employee of the Department with respect to the Development so long as that communication satisfies the conditions established under paragraphs (1) through (5) of this subsection. §50.5(b)(6) of this title applies to all communication with Board members. Communications with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.

- (1) The communication must be restricted to technical or administrative matters directly affecting the Application;
- (2) The communication must occur or be received on the premises of the Department during established business hours;
- (3) Communication with the Executive Director, the Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Single Family Finance Production, the Director of Portfolio Management and Compliance, and the Director of Real Estate Analysis of the Department must only be in written form which includes electronic communication through the Internet; and
- (4) Communication with other Department staff may be oral or in written form which includes electronic communication through the Internet; and

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(5) a record of the communication must be maintained by the Department and included with the Application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication. [2306.1113]

(c) **Adherence to Obligations.** [2306.6720] 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 enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the LURA.

(d) **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 Administrative Deficiencies, in which event the Applicant may 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 (g) of this section. Where a particular scoring criterion involves multiple points, the Department will award points to the proportionate degree, 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 purposes of releasing the Submission Log in ranked order by score.

(3) **Administrative Deficiencies.** If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. The Department staff may request clarification or correction 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 Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within eight 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 unresolved. If deficiencies are not clarified or corrected within ten 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.

(4) **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 Real Estate Analysis Division. This prioritization order will also be used in making recommendations to the Board. Assignments will be determined by first selecting the Applications with the highest scores in the Nonprofit Set-Aside statewide. Then selection will be made for the Applications with the highest scores in the At-Risk and TX-USDA-RHS Set-Asides within each Uniform State Service Region. Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments, regardless of Set-Aside, in accordance with the requirements under §50.7(a) of this title for a Rural Regional Allocation and Urban/Exurban Regional Allocation. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban/Exurban Regional Allocation. Funds for the Rural Regional Allocation within a region, for which there are no eligible feasible applications, will go to the Urban/Exurban Regional Allocation for that region and will not be shifted to Rural Developments in another region. If the Department determines that an allocation recommendation would cause a violation of the \$2 million limit described in §50.6(d) of this title, the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting set-aside and regional allocation goals. 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

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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 necessary to ensure that all available housing tax credits are allocated within the period required by law. [2306.6710(a), (b) and (d); 2306.111]

(5) Underwriting Evaluation and Criteria. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits. In determining an appropriate level of housing tax credits, the Department shall, at a minimum, evaluate the cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for the county in which the Development is to be located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. 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 rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title. Receipt of feasibility points under §50.9(g)(1) of this title does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under §50.9(g)(1) of this title. [2306.6711(b); 2306.6710(d)]

(A) The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external 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 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.

(6) 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 Portfolio Management and Compliance Division, in accordance with Chapter 60 of this title.

(7) 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 to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the health and safety of the residents. For Developments applying under the TX-USDA-RHS Set-Aside, the Department may rely on the physical site inspection performed by TX-USDA-RHS.

(e) **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 one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. If a Public Housing Authority organized an entity for the purpose of developing residential units the Public Housing Authority shall be considered a principal for the purpose of this requirement. If the individual requesting the certification was not the Development Owner, General Partner or Developer, but was the individual within one of those entities doing the work associated with the development of the units, the individual must show that the units were successfully developed as required below, and also provide written confirmation from the entity involved stating that the individual was the person responsible for the development. If rehabilitation experience is being claimed to qualify for an Application involving new

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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, or Developer of: (i) at least 100 residential units; or

(ii) at least 36 residential units 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 documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience. 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 Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

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

(2) Financial 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 "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has 10% or more ownership interest in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit. 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 individuals, 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 with their Application that this is the case.

(3) Previous Participation. Upon receipt of the evidence required under this paragraph, an acknowledgement from the Portfolio Management and Compliance Division will be provided to the Applicant for inclusion in their Application(s). A completed and executed "Previous Participation and Background Certification Form" as provided in the Application must be provided for each entity shown on an organizational chart as described in subsection (f)(9)(A) of this section that has 10% or more ownership interest in the Development Owner, Developer or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2004 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 Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(4) National Previous Participation. Upon receipt of the evidence required under this paragraph, an acknowledgement from the Portfolio Management and Compliance Division will be provided to the Applicant for inclusion in their Application(s). If the Development Owner or any of its Affiliates shown on the organizational chart described in subsection (f)(9)(A) of this section that have 10% or more ownership interest in the Development Owner have, or have had, ownership or Control of affordable housing, being housing that receives any form of financing and/or assistance from any Governmental Entity for the purpose of enhancing affordability to persons of low or moderate income, outside the state of Texas, then evidence must be submitted that such Persons have sent the "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. Nonprofit entities and public housing authorities are only required to submit documentation for the entity itself; documentation for board members and executive directors is not required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. This form is only necessary when the Developments involved are outside the state of Texas. An original form is not required.

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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 the agency.

(f) **Threshold Criteria.** The following Threshold Criteria listed in paragraphs (1) through (15) of this subsection are mandatory requirements at the time of Application submission:

(1) Completion and submission of the Application, which includes the entire Uniform Application and any other supplemental forms which may be required by the Department. [2306.1111]

(2) Completion and submission of the Site Packet (Volume 2) as provided in the Application.

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

(4) Certifications. The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic amenities selected for the Development. The Applicant must certify that they will satisfy at least the minimum point threshold for amenities as further described in §50.9(g)(7)(D). 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, then the amenity may not be included among those provided to complete this exhibit. 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.

(B) A certification that the Development will have all of the following Unit Amenities. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to complete this exhibit. 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) Computer line/phone jack available in all bedrooms (only one phone line needed);

(ii) Mini blinds or window coverings for all windows;

(iii) Dishwasher and Disposal (not required for TX-USDA-RHS Developments);

(iv) Refrigerator;

(v) Oven/Range;

(vi) Exhaust/vent fans in bathrooms;

(vii) Ceiling fans in living areas and bedrooms; and

(viii) be designed in accordance with International Building Code.

(C) 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 Codes or other locally adopted building codes.

(D) 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.) [2306.257; 2306.6705(a)(7)]

(E) 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 a report at least once in each 90-day period following the date of the Commitment Notice until the Cost Certification is submitted, 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. [2306.6734]

(F) 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 individuals 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 individuals with hearing or vision impairments. Additionally, in Developments where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level 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 individuals with mobility impairments or individuals with hearing or

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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. Any Developments designed as single family structures must also satisfy the requirements of 2306.514, Texas Government Code. [2306.6722 and 2306.6730]

(G) 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, historic preservation codes notwithstanding. Minimum Standard Energy Saving Measures are identified in clauses (i) through (v) 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. [2306.6725(b)]

(i) Insulation values must meet the 2000 International Energy Conservation Code (IECC) for the region in which the development is located. Developments must also include soffit and ridge vents and insulated 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 90% AFUE furnace if using gas; or in dry climates an evaporative cooling system may replace the Energy Star cooling system;

(iii) Water heaters to have an energy factor no less 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; and

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

(H) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 7(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.

(I) A certification that the Development Owner agrees to establish a reserve account consistent with 2306.186 Texas Government Code and as further described in Chapter 60 of this title. [Section 2306.186]

(5) Design Items. This exhibit will provide:

(A) All of the architectural drawings identified in clauses (i) through (iv) 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 (iv) of this subparagraph. For Developments involving rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (ii) of this subparagraph are required:

(i) 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 and common buildings and amenities; and

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

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

(iii) 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; and

(iv) Unit floor plans for each type of Unit showing special accessibility and energy features. The net rentable areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" provided in the application. For purposes of completing the Rent Schedule for loft or studio type Units (which still must meet the definition of Bedroom), a Unit with 650 square feet or less is considered not more than a one-bedroom Unit, a Unit with 651 to 900 square feet is considered not more than a two-bedroom Unit and a Unit with greater than 900 square feet is considered not more than a three-bedroom Unit; and

(B) A boundary survey of the proposed Development site and of the property purchased. In cases where more property is purchased than the proposed site of the Development, the survey or plat must show the survey calls for both the larger site and the subject site. The survey does not have to be recent; but it must show the property purchased and the property proposed for development. In cases where the site of the Development is only a part of the site being purchased, the depiction or drawing of the Development portion may be professionally compiled and drawn by an architect, engineer or surveyor.

(C) 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.

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(6) 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, 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. [2306.6705(a)(1)]

(B) All Developments must submit the "Development Cost Schedule" provided in the Application. 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 Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. [2306.6705(a)(2) and (3)]

(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 submit a Property Condition Assessment performed in accordance with §1.36 of this title, Property Condition Assessment Guidelines. For Developments receiving financing from TX-USDA-RHS, a copy of the Housing Quality Standards Checklist prepared by TX-USDA-RHS may be submitted in lieu of the Property Condition Assessment.

(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.

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

(A) Evidence of site control in the name of Development Owner. 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 site must be identified at the time of Application (not required at Pre-Application). 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. [2306.6705(a)(5)]

(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 zoning ordinance that applies to the location of the Development or that there is not a zoning requirement; 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 at the time of Application 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

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form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. No later than April 1, 2004 (or for Tax Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed), the Applicant must submit to the Department written evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that it 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, 2004, 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, or Determination Notice 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 discusses 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) 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 Development Owner and/or expressly allows the transfer to the Development Owner; or,

(ii) bona fide commitment or term sheet for the interim and permanent loans 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 Development Owner 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 and any required Guarantors. 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. Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an application has been filed as required by the Application Submission Procedures Manual. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was received. If the required financing commitment has not been received by that date, the Application will be reevaluated for financial feasibility; if determined to be feasible the Department may proceed with an allocation recommendation; 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 Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(D) Provide the documents in clause (i) of this subparagraph and either of the documents described in clauses (ii) and (iii) of this subparagraph, and satisfying the requirements of clause (iv) of this subparagraph, if applicable:

- (i) a copy of the full legal description
- (ii) 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 Development Owner; or

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

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

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

(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 must be published in the newspapers of both the Development community and the Metropolitan Statistical Area, unless the local newspaper of the Development community is published at least five times a week in which case the notice need only be published in the local newspaper of the Development community. Developments that involve rehabilitation and which are already serving low income residents are not required to publish this notice or provide this exhibit.

(B) Evidence of notification meeting the requirements identified in clause (i) of this subparagraph to all of the individuals and entities identified in clause (ii) of this subparagraph. Evidence of such notifications shall include a copy of the exact letter and other materials that were sent to the individual or entity 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 must not be older than three months from the first day of the Application Acceptance Period.[2306.6704] If evidence of these notifications was submitted with the Pre-Application Threshold for the same Application and satisfied the Department's review of Pre-Application Threshold, then no additional notification is required at Application.

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

- (I) The Applicant's name, address, individual contact name and phone number;
- (II) The Development name, address, city and county;
- (III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
- (IV) Statement of whether the Development proposes new construction or rehabilitation;
- (V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.);
- (VI) The total number of Units and total number of low income Units;
- (VII) The percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate;
- (VIII) The number of Units and proposed rents (less utility allowances) for the low income Units and the number of Units and proposed rents for any market rate Units; and
- (IX) The expected completion date if credits are awarded.

(ii) Notification must be sent to all of the following individuals and entities. Officials to be notified are those officials in office at the time the Application is submitted.

(I) City and County Clerks and Neighborhood Organizations. Evidence must be provided that a letter requesting information on neighborhood organizations and meeting the requirements of "Clerk Notification" as outlined in the Application was sent no later than January 15, 2004 to the city clerk and county clerk for the city and county where the Development is proposed to be located. A copy of the reply letter from the city and county clerks must be provided. For urban/exurban areas, all entities identified in the letters from the city and county clerks whose listed address has the same zip code as the zip code for the Development must be provided with written notification, and evidence of that notification must be provided. If any other zip codes exist within a half mile of the Development site, then all entities identified in the letters from the city and county clerks with those adjacent zip codes must also be provided with written notification, and evidence of that notification must be provided. For rural areas, all entities identified in the letters from the city and county clerks whose listed address is within a half mile of the Development site must be provided with written notification, and evidence of that notification must be provided. If the Applicant can provide evidence that the proposed Development is not located within the boundaries of an entity on a list from the clerk(s), then such evidence in lieu of notification may be acceptable. If no reply letter is received from the city or county clerk by February 25, 2004, then the Applicant must submit a statement attesting to that fact. If an Applicant has knowledge of any neighborhood organizations on record with the state or county in which the Development is to

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be located and whose boundaries contain the proposed Development site, the Applicant must notify those organizations. If the Applicant has no knowledge of neighborhood organizations within whose boundaries the Development is proposed to be located, the Applicant must attest to that fact.

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

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

(IV) Presiding officer of the governing body of any municipality containing the Development;

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

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

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

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

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

(C) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development site prior to the date the Application is submitted. Evidence submitted with the Application must include photographs of the site with the installed sign and invoice receipt confirming installation from the entity that installed the sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the development. The information and lettering on the sign must meet the requirements identified in the Application. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's Option, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If the option in clause (i) of this subparagraph is used, then evidence must be provided affirming the local zoning notification requirements.

(i) all addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) for Developments located in communities that do not have zoning, communities that do not require a zoning notification, or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development site.

(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 photograph 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) The Development Owner shall certify to the Department that it shall consider as potential tenants holders of Section 8 vouchers or certificates or other tenants based rental assistance programs.

(9) 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) Chart which clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries.

(B) Each entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has 10% or more ownership interest in the Development Owner, Developer or Guarantor, shall provide the following documentation, as applicable:

(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 or from the state in which the entity is to be formed if different from Texas; and

(II) executed letter(s) of intent to organize signed by a representative of each organization that is a party to the proposal or a copy of the draft organizational documents for the entity to be formed

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including Articles of Incorporation, Articles of Organization or Partnership Agreement with a signed notation from a representative of each organization acknowledging intent to organize.

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

(I) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Organization from the Secretary of State; and

(II) for entities formed in a state other than Texas a certificate of authority to do business in Texas or an application for a certificate of authority,

(III) Copies of the entity's governing documents, including, but not limited to, its Articles of Incorporation, Articles of Organization, Certificate of Limited Partnership, Bylaws, Regulations and/or Partnership Agreement.

(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 and that those Persons signing the Application constitute all Persons required to sign or submit such documents. A cover sheet must be placed before the copy of the organizational documents, 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 all relevant documents by page number or by section and subsection if the pages are not numbered.

(C) Evidence that each entity shown on an the organizational chart described in subparagraph (A) of this paragraph that has 10% or more ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Evidence must be a certification from the Department for each of those Persons required to submit these documents as further described under §50.9(e)(3) of this title. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification is the appropriate Person appearing in the organizational chart provided in subparagraph (A) of this paragraph.

(D) Evidence that, if the Development Owner or any of its Affiliates shown on the organizational chart described in subparagraph (A) of this paragraph that have 10% or more ownership interest in the Development Owner have, or have had, ownership or Control of affordable housing, being housing that receives any form of financing and/or assistance from any Governmental Entity for the purpose of enhancing affordability to persons of low or moderate income, outside the state of Texas, that such Persons have submitted the appropriate "National Previous Participation and Background Certification Form" to the Department. Evidence must be a certification from the Department for each of those Persons required to submit these documents as further described under §50.9(e)(4) of this title. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification is the appropriate Person appearing in the organizational chart provided in subparagraph (A) of this paragraph

(E) Evidence, in the form of a certification, that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units in the capacity of owner, General Partner or Developer. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under subsection (e)(1) of this section. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification appears in the organizational chart provided in subparagraph (A) of this paragraph.

(10) 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. [2306.6705(a)4]

(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. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that

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Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

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

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to its inability to provide all documentation as described.

(I) Submit at least one of the following:

(-a-) historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 3 months from the first day of the Application Acceptance Period;

(-b-) The two most recent consecutive annual operating statement summaries;

(-c-) the most recent consecutive six months of operating statements and the most recent available annual operating summary;

(-d-) all monthly or annual operating summaries available and a written statement from the seller refusing to supply any other summaries or expressing the inability to supply any other summaries, 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 first day the Application Acceptance Period, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, 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; [2306.6705(a)(6)]

(iii) a relocation plan outlining relocation requirements and a budget with an identified funding source; and [2306.6705(a)(6)]

(iv) if applicable, evidence that the relocation plan has been submitted to the appropriate legal agency. [2306.6705(a)(6)]

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

(A) All Applications involving a nonprofit General Partner, regardless of the Set-Aside applied under, must submit all of the documents described in clauses (i) and (ii) of this subparagraph: [2306.6706]

(i) an IRS determination letter which states that the nonprofit organization is a 501(c)(3) or (4) entity; and

(ii) the "Nonprofit Participation Exhibit."

(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §50.7(b)(1) of this title, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i) through (vi) of this subparagraph.

(i) copy of the page from the articles of incorporation or bylaws indicating that one of the exempt purposes of the nonprofit organization is to provide low income housing;

(ii) copy of the page from the articles of incorporation or bylaws indicating 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 Credit Allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the nonprofit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, being the sole General Partner; and otherwise meet the requirements of the Code, §42(h)(5);

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

(v) a certification that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement.

(vi) 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, if the Development is not located in a rural area.

(12) Applicants applying for acquisition credits or affiliated with the seller, that will be evaluated in accordance with §1.32(e)(1) of this title, must provide all of the documentation described in subparagraphs (A)

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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.

(A) an appraisal, not more than 6 months old as of the first day of the Application Acceptance Period, which complies with the Uniform Standards of Professional Appraisal Practice and the Department's Market Analysis and Appraisal Policy. For Developments which require an appraisal from TX-USDA-RHS, 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 and may be provided from TX-USDA-RHS. The appraisal may be submitted as a Supplemental Threshold Report consistent with the timelines and submission documentation requirements identified in paragraph (14)(D) of this subsection. 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, and details of any relationship between the seller and the Applicant or any Affiliation with the Applicant or the Development Owner, 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 seller'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."

(13) Evidence of an "Acknowledgement of Receipt of Financial Statement and Authorization to Release Credit Information" must be provided for any Person that has 10% or more ownership interest in the Development Owner or General Partner, the Developer, or Guarantor, as required under §50.9(e)(2) of this title. 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 with their Application that this is the case in lieu of submitting the Acknowledgement.

(14) Supplemental Threshold Reports. Documents under subparagraph (A) and (B) of this paragraph must be submitted as further stated 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, §§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 more than 12 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated at least three months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been reinspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report; 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 Applicants 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 Analysis prepared at the Applicant's expense by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in the Market Analysis Rules and Guidelines, §1.33 of this title. The Market Analysis must be prepared in accordance with the methodology prescribed in the Market Analysis Rules and Guidelines, §1.33 of this title. In the event that a Market Analysis on the Development is older than 6 months as of the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than 12 months old as of the first day of the Application Acceptance Period. The Market Analysis should be prepared for and addressed to the Department. For Applications in the TX-USDA-RHS Set-Aside, the appraisal, required under paragraph (12)(A) of this subsection, will satisfy the requirement for a Market Analysis; no additional Market Analysis is required; however the Department may request additional information as needed. [2306.67055 as added Section 21 of 2306]

(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 acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the Market Analysis and may substitute its own analysis and underwriting conclusions for those submitted by the Qualified Market Analyst.

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(C) Inserted at the front of each of these reports must be a transmittal letter from the individual 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, 2004. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, March 31, 2004. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration.

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

(g) **Selection Criteria.** All Applications will be evaluated and ranking points will be assigned according to the Selection Criteria listed in paragraphs (1) through (18) of this subsection.

(1) **Development Financial Feasibility.** Applications will receive points based on the supporting financial data provided behind this exhibit in addition to the commitment letter required under subsection (f)(7)(C) of this section. The supporting financial data shall include a thirty year pro forma prepared by the permanent or construction lender specifically identifying each of the first ten years and every fifth year thereafter. The commitment letter must include the anticipated total operating expenses, net operating income and debt service for the first year of stabilized operation as reflected in the pro forma. The pro forma must indicate, and the commitment letter must confirm, that the development pro forma maintains a 1.10 debt coverage ratio throughout the initial thirty years proposed. In addition, the commitment letter must state that the lenders assessment finds that the Development will be feasible for thirty years. Points will be awarded if these criteria are met. No partial points will be awarded. For developments receiving financing from TX-USDA-RHS, the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans" shall meet the requirements of this section. (28 points). [2306.6710(b)(1)]

(2) **Quantifiable Community Participation from Neighborhood Organizations.** [2306.6710(b)(1); 2306.6725(a)(2)] Points will be awarded based on written statements of support or opposition from neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site.

(A) **Receipt of Input.** Letters must be received by the Department no later than April 30, 2004, and only, for scoring purposes, directly from neighborhood organizations or with the Application. Letters must be addressed to the Texas Department of Housing and Community Affairs, "Attention: Director of Multifamily Finance Production Division (Neighborhood Input)". Letters received after April 30, 2004 will be summarized and provided for the Board's information and consideration, but will not affect the score for the Application. Separate from scoring, the Department urges all persons and organizations that wish to provide input to the Department to do so well before (and, preferably earlier than ten days before) the day of a Board meeting when a final decision must be made so the input may be carefully considered. Board decisions often cannot be delayed and late input is difficult for the Board and Department to fully consider.

(B) **Neighborhood Organizations.** For the purposes of the scoring of this exhibit, neighborhood organizations are organizations that are on record with the county or state in which the development is proposed to be located as of March 1 of the application year and that have a primary purpose of working to affect matters related to the welfare of the neighborhood that contains the proposed development site, not including governmental entities.

(C) **Scoring of Input.** For scoring purposes, each neighborhood organization may submit one letter that represents the organization's input. The letter must identify the specific Development and be signed by the chairman of the board, chief executive office or comparable head of the organization and include the signer's address and phone number. The letter must state and provide documentation which shows that it is from a neighborhood organization; that it is on record with the state or county in which the Development is proposed to be located; and that the organization's boundaries contain the proposed Development site. The letter must also provide the total number of members of the organization and a brief description of the process used to determine the members' position. To be accurately scored, the letter must clearly and concisely state each reason for the organization's support for or opposition to the proposed Development and provide specific evidence supporting that input. It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the city and county clerks under subsection (f)(8)(B)(ii)(I) of this section, if the organization provides evidence that the proposed Development site is within the organization's boundaries and that it is on record with the county or state. It is also possible that neighborhood organizations

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that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring.

(i) Applicants that accurately certify that they do not know of any neighborhood organizations that are on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development, and for which no letters were received, will be awarded the higher of zero points or the average number of points received by all Applications for this exhibit.

(ii) The score for this exhibit will range from a maximum of +12 points to -12 points and the number of points to be allocated to each organization's letter will be determined by the Executive Award and Review Advisory Committee based on the factual basis of the written statements and evidence from the neighborhood organizations. The Department may investigate a matter and contact the Applicant and neighborhood organizations for more information.

(D) Evaluation of Basis of Input. The Department highly values quality public input addressed to the merits of a Development. Input that points out possible errors in the Department's analysis and matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law will not be considered. To protect the integrity of the Department's processes and decisions, evidence of false statements or misrepresentations from applicant representatives, neighborhood representatives, or other persons will be considered for appropriate action, including possible referral to local district and county attorneys. 2306.6725(a)(2)

(3) Development Location Characteristics. [2306.6725(a)(4)] 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 (F) of this paragraph. Areas qualifying under any one of the subparagraphs (A) through (F) of this paragraph will receive 5 points. An Application may only receive points under one of the subparagraphs (A) through (F) of this paragraph. An Application may receive an additional ten points pursuant to subparagraph (G) of this paragraph in addition to any points awarded in subparagraphs (A) through (F) of this paragraph.

(A) A geographical area which is:

(i) an Economically Distressed Area; or

(ii) a Colonia, or

(iii) a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD.

(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 first day of the Application Acceptance Period.

(C) a city-sponsored area or zone where a city or county has, through a local government initiative, specifically encouraged or channeled growth, neighborhood preservation or redevelopment. 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, and

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

Applicant.

(D) the Development is located in a census tract in which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census), that is higher than the MFI for the county in which the census tract is located, as established by HUD. This comparison shall be made using the most recent data available from both sources as of as of October 1 of the year preceding the applicable program year. In those years when the U.S. Census does not publish median family income information at the census tract level, the most recent U.S. Census MFI available for the tract shall be multiplied by the change between HUD's published data for the county MFI as of the year in which the Census MFI was published and the county MFI as of October 1 of the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county.

(E) the Development is located in a census tract in which there are no other existing developments supported by housing tax credits. [2306.6725]

(F) the Development is located in a county that has received an award as of November 15, 2003, within the past three years, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real

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Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.

(G) the Development is located in an incorporated city that is not a Rural Area but has a population no greater than 100,000 based on the most current available information published by the United States Bureau of the Census as of October 1 of the year preceding the applicable program year. The Development can not exceed 100 Units to qualify for these points. (10 points)

(4) Site Location Characteristics. Sites will be evaluated based on proximity to amenities, the presence of positive site features and the absence of negative site features. Sites will be rated based on the criteria below.

(A) Proximity of site to amenities. Developments located on sites within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three services appropriate to the target population will receive five points. A site located within one-quarter mile of public transportation or located within a community that has "on demand" transportation, or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Qualified Elderly Development is providing its own specialized van service, then this will be a requirement of the LURA. Only one service of each type listed below will count towards the points. A map must be included identifying the development site and the location of the services, as well as written directions from the site to each service. The services must be identified by name on the map and in the written directions. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be at least 50% complete by the date the Application is submitted. (5 points)

- (i) Full service grocery store or supermarket
- (ii) Pharmacy
- (iii) Convenience Store/Mini-market
- (iv) Department or Retail Merchandise Store
- (v) Bank/Credit Union
- (vi) Restaurant (including fast food)
- (vii) Indoor public recreation facilities, such as civic centers, community centers, and libraries
- (viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools
- (ix) Hospital/medical clinic
- (x) Doctor's offices (medical, dentistry, optometry)
- (xi) Public Schools (only eligible for Developments that are not Qualified Elderly Developments)
- (xii) Senior Center (only eligible for Qualified Elderly Developments)

(B) Negative Site Features. Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development site. The distances are to be measured from all boundaries of the Development site. Applicants must indicate on a map the location of any negative site feature, with the exception of slope which must be documented with an engineer's certificate to ensure that points are not deducted. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect. (-7 points)

(i) Developments located adjacent to or within 300 feet of junkyards will have 1 point deducted from their score.

(ii) Developments located adjacent to or within 300 feet of active railroad tracks will have 1 point deducted from their score. Rural Developments funded through TX-USDA-RHS are exempt from this point deduction.

(iii) Developments located adjacent to or within 300 feet of an Interstate Highway including frontage and service roads will have 1 point deducted from their score.

(iv) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.

(v) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.

(vi) Developments located adjacent to or within 100 feet of high voltage transmission power lines will have 1 point deducted from their score.

(5) Housing Needs Characteristics. Each Application, dependent on the city or county where the Development 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

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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). [2306.6725(a)(4)]

(6) Support and Consistency with Local Planning. All documents must not be older than 6 months from the first day of the Application Acceptance Period. Points may be received under any of subparagraphs (A) through (C) 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 (3 points).

(B) Evidence that the Applicant has hosted a public meeting to which the neighborhood and other interested persons have been invited. Evidence must include copies of the method of notification used and a transcript of the meeting, as well as a list of meeting attendees. (6 points).

(C) Community Support from Elected Officials. Points will be awarded based on the written statements of support or opposition from local and state elected officials representing constituents in areas that include the location of the Development. Letters of support must identify the specific Development and must clearly state support or opposition of the specific Development at the proposed location. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or official no later than May 31, 2004. Letters received after May 31, 2004 will be summarized for the Board in the board summary provided by staff, but will not affect the score of the Application. Officials to be considered are those officials in office at the time the Application is submitted. 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. Points can be awarded for letters of support or opposition as identified in clauses (i) through (iii) of this subparagraph, not to exceed a total of 9 points. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. The Governing Board has directed the Department to request an opinion from the Attorney General on whether recent legislation permits scoring for input from officials other than state officials. If the Attorney General renders an opinion that only input from state officials may be scored, then city and county input will not be scored." [2306.6710(b)(1); [2306.6725(a)(2)]

(i) from State of Texas Representative or Senator (support letters are 3 points each, maximum of 6 points; opposition letters are -3 points each, maximum of -6 points); and

(ii) from the Mayor, City Council member for the area, County Judge, County Commissioner for the area, or a resolution from the City Council or County Commission (support letters or resolutions are 3 points each, maximum of 3 points; opposition letters or resolutions are -3 points each, maximum of -3 points).

(7) Development Characteristics. Applications may receive points under as many of the following subparagraphs as are applicable; however to qualify for points under 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 Applications involving rehabilitation, Developments receiving funding from TX-USDA-RHS, or Developments proposing single room occupancy.

(A) Unit Size. [2306.6710(b)(1)] 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; and

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

(B) Cost per Square Foot. For this exhibit, costs shall be defined as construction costs, including site work, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments do not exceed \$73 per square foot for Qualified Elderly and Transitional Developments, and \$62 for all other Developments. (9 points). [2306.6710(b)(1)]

(C) Unit Amenities and Quality. [2306.111(g)(3)(A) and 2306.6710(b)(1)] Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) through (xviii) of this subparagraph, not to exceed 12 points in total. Applications involving rehabilitation or proposing single room occupancy will double the points listed for each item, not to exceed 12 points in total.

(i) Covered entries (1 point);

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- (ii) Nine foot ceilings (1 point);
- (iii) Microwave ovens (1 point);
- (iv) Self-cleaning or continuous cleaning ovens (1 point);
- (v) Ceiling fixtures in all rooms (globe with ceiling fan in all bedrooms) (1 point);
- (vi) Refrigerator with icemaker (1 point);
- (vii) Laundry connections (1 point);
- (viii) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets (1 point);
- (ix) Laundry equipment (washers and dryers) in units (3 points);
- (x) Thirty year architectural shingle roofing (1 point);
- (xi) Covered patios or covered balconies (1 point);
- (xii) Covered parking (including garages) of at least one covered space per Unit (2 points);
- (xiii) 100% masonry on exterior, which can include stucco and cementious board products, excluding efis (3 points);
- (xiv) Greater than 75% masonry on exterior, which can include stucco and cementious board products, excluding efis (1 points);
- (xv) Use of energy efficient alternative construction materials (structurally insulated panels) with wall insulation at a minimum of R-20 (3 points).
- (xvi) R-15 Walls / R-30 Ceilings (rating of wall system) (3 points);
- (xvii) 12 SEER HVAC or evaporative coolers in dry climates (3 points);
- (vxiii) Energy Star or equivalently rated Kitchen Appliances (2 points)

(D) Common Amenities. All Developments, must meet at least the minimum threshold of points to satisfy the Threshold requirement under §50.9(f)(4)(A). To receive additional points for this exhibit, Developments must first provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (iii) of this subparagraph and made available for the benefit of all tenants. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to complete this exhibit. [2306.111(g)(3)(A) and 2306.6710(b)(1)]

(i) Applications must meet a minimum threshold of points (based on the total number of Units in the Development) prior to accruing actual points for this exhibit, as follows:

- (I) Total Units are less than 40, 3 points are required to meet Threshold;
- (II) Total Units are between 40 and 76, 6 points are required to meet Threshold;
- (III) Total Units are between 77 and 99, 9 points are required to meet Threshold;
- (IV) Total Units are between 100 and 149, 12 points are required to meet Threshold;
- (V) Total Units are between 150 and 199, 15 points are required to meet Threshold;
- (VI) Total Units are more than 200, 18 points are required to meet Threshold.

(ii) Points for additional amenities. Developments providing additional amenities beyond the threshold identified in clause (i) of this subparagraph will be awarded points based on the point structure below, not to exceed 6 points. The Applicant will total its points for amenities and then subtract the threshold requirement in order to come up with the point total. (For example, a 200-unit Development would have to accumulate 24 points in Common Amenities in order to net a score of 6, but a 36-Unit Development would only have to accumulate 9 points in order to net a score of 6.) Developments proposing rehabilitation or proposing Single Room Occupancy will receive double points for each item. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §50.18(c) of this title and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in the cancellation of a Commitment Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

(iii) Amenities for selection include those items listed in subclauses (I) through (XXIII) of this clause. Both Developments designed for families and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in §50.9(f)(4)(D) of this title. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population.

- (I) Full perimeter fencing with controlled gate access (3 points)
- (II) Gazebo w/sitting area (1 point)
- (III) Accessible walking path (1 point)
- (IV) Community gardens (1 point)
- (V) 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 (1 point);

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- (VI) Public telephone(s) available to tenants 24 hours a day (2 points);
- (VII) A service coordinator office (1 point);
- (VIII) Barbecue grills and picnic tables - at least one for every 50 Units (1 point)
- (IX) Covered pavilion w/barbecue grills and tables (2 points)
- (X) Swimming pool (3 points)
- (XI) Furnished fitness center (2 points)
- (XII) Equipped Business Center (computer and fax machine) (2 points)
- (XIII) Game/TV/Community room (1 point)
- (XIV) Library (separate from the community room) (1 point)
- (XV) Enclosed sun porch or covered community porch/patio (2 points)
- (XVI) Service coordinator office in addition to leasing offices (1 point)
- (XVII) Senior Activity Room (Arts and Crafts, Health Screening, etc.) - Only Qualified Elderly

Developments Eligible (2 points)

(XVIII) Secured Entry (elevator buildings only) - (1 point)

(XIX) Horseshoe or Shuffleboard Court - Only Qualified Elderly Developments Eligible (1 point)

(XX) Community Dining Room w/full or warming kitchen - Only Qualified Elderly Developments Eligible (3 points)

(XXI) Two Children's Playgrounds Equipped for 5 to 12 year olds, two Tot Lots, or one of each - Only Family Developments Eligible (2 points)

(XXII) Sport Court (Tennis, Basketball or Volleyball) - Only Family Developments Eligible (2 points)

(XXIII) Furnished and staffed Children's Activity Center - Only Family Developments Eligible (3 points)

(E) The Development is an existing Residential Development without maximum rent limitations or set-asides for affordable housing and 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 first day of the Application Acceptance Period (4 points).

(F) The Development is a mixed-income Development comprised of both market rate Units and qualified tax credit Units. Points will be awarded to Developments with a Unit based Applicable Fraction which is no greater than: [2306.6710(b)(1)(C); 2306.111(g)(3)(E)]

(i) 80% (8 points); or,

(ii) 85% (6 points); or,

(iii) 90% (4 points); or

(iv) 95% (2 points).

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

(8) Sponsor Characteristics. Evidence that a HUB, as certified by the Texas Building and Procurement 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 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, 2004 and renewable after that date. (3 points)

(9) Developments Targeting Tenant Populations of Individuals with Children. The Rent Schedule of the Application must show that 30% or more of the Units in the Development have more than 2 bedrooms (1 point).

(10) Development Provides Supportive Services to Tenants. Points may be received under both subparagraphs (A) and (B) of this paragraph. [2306.254 and 2306.6725(a)(1) and 2306.6710(b)(1) and Rider 6 of Appropriations]

(A) Applicants 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 Applicant 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 subparagraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided (maximum of 6 points).

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

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- (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; organized team sports programs, youth programs; scholastic tutoring; social events and activities; senior meal program; home-delivered meal program; community gardens or computer facilities; any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§ 601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

(11) Tenant Characteristics - Populations with Special Needs. Evidence that the Development is designed for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist the homeless 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, as may be amended from time to time. All of the items described in subparagraphs (A) through (E) of this paragraph must be submitted. Points will be awarded consistent with subparagraph (F) of this paragraph:

- (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 to supplement any anticipated operating and funding gaps
- (F) Points will be awarded as follows:

- (i) If all Units in the Development are designed solely for transitional housing for homeless persons, 22 points will be awarded; or
- (ii) If at least 25% of the Units in the Development are designed for transitional housing for homeless persons, 15 points will be awarded.

(12) Low Income Targeting Points for Serving Residents at 40% and 50% of AMGI (up to 8 points). An Application may qualify for points under subparagraph (C) of this paragraph. 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. [2306.6725(a)(3); 2306.111(g)(2)and (3)(B); 2306.6710(b)(1)(C) and (G); 2306.6710(e)]

(A) No more than 40% of the total number of low income units (including Units at 60% and 30% of AMGI) will be counted as designated for tenants at or below 50% of the AMGI for purposes of determining the points in the 50% and 40% AMGI categories. No more than 15% of the total number of low income targeted units will be counted as designated for tenants at 40% of the AMGI for purposes of determining the points in the 40% AMGI categories. For purposes of calculating "Total Low Income Targeted Units" for this exhibit, Units at 30% and 60% of AMGI are also included.

(B) In the table below no Unit may be counted twice in determining point eligibility. Use normal rounding to the hundredth to calculate the percentages, points and "Total Points" for 40% and 50% Units. In calculating the percentages, the denominator includes every low income Unit in the Development, not just the 40% and 50% Units. Normal rounding disregards all digits that are more than one decimal place past the digit rounded; therefore, the thousandths place must not be rounded prior to rounding to the hundredth, e.g. 35.0449% equals 35.04%, not 35.05%. To calculate "Rounded Total Points" disregard the hundredth place in "Total Points" and round normally, eg. 7.50 equals 8 and 7.49 equals 7. The final total points requested must be a whole number consistent with this rounding methodology.

(C) Developments should be scored based on the structure in the table below. Only Developments located in counties 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	Percentage of Rent Restricted Units (a/b)	O		Points
			Weight A	Weight B	

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(a)					
50%	(a)		X	10	15
40%	(a)		X	20	30
					TOTAL POINTS=
TOTAL LI TARGETED UNITS* (b)					ROUNDED TOTAL POINTS =
*Includes all Low Income Units					

(13) Low Income Targeting Points for Serving Residents at 30% of AMGI (up to 12 points). Applications that propose Units with rents set at 30% AMGI and reserved for occupancy by extremely low-income (those earning annual gross incomes of 30% or less of the AGMI) will be awarded up to 12 points. Developments must have a source of financing for the 30% units. Applicant must submit evidence that the proposed Development has either received development -based rental assistance from a governmental or non-governmental entity, which does not have an identity of interest with the Applicant (with the exception of Applications involving Public Housing Authorities); or received an allocation of funds for on-site Development costs from a local unit of government or a nonprofit organization, which is not related to the Applicant. Such funds can include Community Development Block Grant funds, HOPE VI, local HOME (not funded from the Department), a local housing trust, Affordable Housing Program from the Federal Home Loan Bank or Tax Increment Financing, HUD Section 202, HUD Section 811 and HUD Section 8, and must be in the form of a grant or a forgivable loan (with the exception of Applications involving Public Housing Authorities). Points will be determined on a sliding scale based on the percentage of 30% units. The Development must have already applied for funding from the funding entity. Evidence at the application stage shall include a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was received. If the required financing commitment has not been received by that date, the Application will have the points for this item deducted from its final score and will be reevaluated for financial feasibility. No funds from TDHCA’s HOME (with the exception of non-Participating Jurisdictions) or Housing Trust Fund sources will qualify under this category. In order to qualify for these points, the Applicant must provide a 5 year rental assistance contract for development-based vouchers for each 30% Unit or grant funds of \$12,500 per 30% Unit. Use normal rounding.

- (A) 3% to 5% of total Development Units at 30% AMGI receives 8 points; or
- (B) 6% to 8% of total Development Units at 30% AMGI receives 10 points; or
- (C) 9% to 10% of total Development Units at 30% AMGI receives 12 points

[2306.6725(a)(3); 2306.111(g)(2) and (3)(B)/(D); 2306.6710(b)(1) (C) and (G); 2306.6710(e)]

(14) Leveraging from local and private resources. An Application may qualify for points under only one of subparagraphs (A) or (B) of this paragraph. However, if an Applicant has requested points under paragraph (13) of this section, the Application is not eligible to receive points under this paragraph. (maximum of 9 points) [2306.6710(b)(1)(E)]

(A) Evidence that the proposed Development has received an allocation of funds for on-site development costs from a local unit of government or a nonprofit organization, which is not related to the Applicant. Such funds can include Community Development Block Grant funds, HOPE VI, local HOME (not funded from the Department), a local housing trust, Affordable Housing Program from the Federal Home Loan Bank or Tax Increment Financing, HUD Section 202 , HUD Section 811 and HUD Section 8 and must be in the form of a grant or a forgivable loan. In-kind contributions such as donation of land or waivers of fees such as building permits, water and sewer tap fees, or similar contributions that benefit the Development will be acceptable to qualify for these points. Points will be determined on a sliding scale based on the amount per Unit from outside sources. The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was

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received. If the required financing commitment has not been received by that date, the Application will have the points for this item deducted from its final score and will be reevaluated for financial feasibility. No funds from the Department's HOME or Housing Trust Fund sources will qualify under this category. Use normal rounding. No funds from TDHCA's HOME (with the exception of non-Participating Jurisdictions) or Housing Trust Fund sources will qualify under this category. (up to 9 points).

- (i) A contribution of \$500 to \$1,000 per Low Income Unit receives 3 points; or
- (ii) A contribution of \$1,001 to \$3,500 per Low Income Unit receives 6 points; or
- (iii) A contribution of \$3,501 to \$6,000 per Low Income Unit receives 9 points; or

(B) Evidence that the proposed Development is partially funded by development-based Housing Choice or rental assistance vouchers from a governmental or non-governmental entity for a minimum of five years. Such entity cannot have an identity of interest with the Applicant with the exception of Applications involving Public Housing Authorities. Evidence at the time the Application is submitted must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was received. If the required financing commitment has not been received by that date, the Application will have the points for this item deducted from its final score and will be reevaluated for financial feasibility. No funds from the Department's HOME or Housing Trust Fund sources will qualify under this category. Use normal rounding. (up to 9 points).

- (i) Development-Based Vouchers for 3% to 5% of the total Units receives 3 points; or
- (ii) Development-Based Vouchers for 6% to 8% of the total Units receives 6 points; or
- (iii) Development-Based Vouchers for 9% to 10% of the total Units receives 9 points.

(15) Length of Affordability Period. [2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1); and § 22 of 2306.6710(e)] In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the 30 years required in the Code may receive points as follows:

(A) Add 5 years of affordability after the extended use period for a total affordability period of 35 years (3 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years (6 points)

(16) 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). [2306.6725(b)]

(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

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(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) through (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) through (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 whichever occurs the later 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.

(17) Pre-Application Points. [2306.6704] Applications which submitted 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 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) as in the Pre-Application in the same

Set-Asides; and

(D) be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at Pre-Application, with the exclusion of points for support and opposition under subsections (g)(2) and (g)(6)(C) of this title. An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

(i) to request the Pre-Application points and have the Department cap the Application score at no greater than the 5% increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for changing the point structure outside the 5% range from Pre-Application to Application; or

(ii) to request that the Pre-Application points be forfeited and that the Department evaluate the Application as requested in the self-scoring sheet.

(18) Point Reductions.

(A) [2306.6710(b)(2)] Penalties will be imposed on an Application if the Applicant has 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 are those extensions related to the submission of the carryover and the closing of the construction loan as identified in §50.21 of this title. For each extension request made, the Applicant will be required to pay a \$2,500 extension fee as provided in §50.21(k) of this title and will receive a 2 point deduction for not meeting the Carryover deadline and a 5 point deduction for not meeting the closing of the construction loan deadline. Subsequent extension requests after the first extension request made for each

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development from the preceding round for these two deadlines will not result in a further point reduction than already described. No penalty points will be deducted for extensions that were requested on developments that involved rehabilitation or in which the Department is the primary lender.

(B) Penalties will be imposed on an Application if the Developer or Principal of the Applicant has been removed by the lender, equity provider, or limited partners in the past five years for its failure to perform its obligations under the loan documents or limited partnership agreement. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they disclose each instance of removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application, must disclose this information and the situation will be evaluated on a case-by-case basis. 3 points will be deducted for each instance of removal.

(h) Tie Breaker Factors. [2306.185(a)(1) and (b)]

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban/Exurban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in paragraphs (1) through (5) of this subsection, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) The number of points awarded for amenities under subsection (g)(7)(C) of this section;

(B) The number of points awarded for amenities under subsection (g)(7)(D) of this section;

(C) The number of rentable square feet per credit amount requested; and

(D) The length of time the Development will be kept affordable.

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

(2) This clause identifies how ties will be handled when dealing with the restrictions on location identified in §50.5(a)(8) and §50.6(f), and in dealing with any issues relating to capture rate calculation. When two Tax Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the lot number issued during the Bond Review Board lottery in making its determination. When two competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in (h)(1) of this subsection. When a Tax Exempt Bond Development and a competitive Housing Tax Credit Application in the Application Round would both violate one of these restrictions, the following determination will be used:

(A) Tax Exempt Bond Developments that have received their reservation from the Bond Review Board prior to April 30, 2004 will take precedence over the Housing Tax Credit Application in the 2004 Application Round; and

(B) Housing Tax Credit Applications in the 2004 Application Round will take precedence over the Tax Exempt Bond Developments that have received their reservation from the Bond Review Board between May 1, 2004 and July 31, 2004; and

(C) After July 31, 2004, a Tax Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2004 Application Round on the Waiting List. However, if no reservation has been issued, then the Waiting List Application will be eligible for its allocation first.

(i) **Staff Recommendations.** [2306.1112 and 2306.6731] 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. The 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 subsection (g) of this section that were used in making this determination.

§50.10 Board Decisions; Waiting List; Forward Commitments

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

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(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any 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. Good cause includes the Board's decision to apply discretionary factors. [2306.6725(c) and 2306.6731]

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. In making tax credit decisions (including those related to Tax Exempt Bond Developments), the Board, in its discretion, may evaluate, consider and apply any one or more of the following discretionary factors: [2306.111(g)(3)]

- (A) the market study;
- (B) the proposed location of the Development, including supporting broad geographic dispersion;
- (C) the compliance history of the Applicant and/or Developer;
- (D) the Applicant and/or Developer's efforts to engage the neighborhood;
- (E) the financial feasibility of the Development;
- (F) the Development's proposed size and configuration;
- (G) the housing needs of the community in which the Development will be located and the needs of the community, area, region and state;
- (H) the Development's proximity to other rent restricted developments, including avoiding overconcentration;
- (I) the availability of adequate public and private facilities and services;
- (J) the anticipated impact on local school districts, giving due consideration to the authorized land use;
- (K) laws relating to fair housing including affirmatively furthering fair housing;
- (L) the efficient use of the tax credits;
- (M) consistency with local needs, including consideration of revitalization or preservation needs;
- (N) the allocation of credits among many different entities without diminishing the quality of the housing;
- (O) meeting a compelling housing need;
- (P) providing integrated, affordable housing for individuals and families with different levels of income;
- (Q) any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes and the policies of Chapter 2306, Texas Government Code; or
- (R) other good cause as determined by the Board.

(2) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. 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 or Applicant. [2306.057]

(b) **Waiting List.** [2306.6711(c) and (d)] 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, concurrently with the issuance of commitments, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the Waiting List. 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 considering score and discretionary factors. 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 2004 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 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.

§50.11. 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. [2306.6717(a)(1)]

(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) Not later than 14 days after the close of the Pre-Application Acceptance Period, or Application Acceptance Period for Applications for which no Pre-Application was submitted, the Department shall: [2306.1114]

(A) publish an Application submission log on its web site.

(B) give notice of a proposed Development in writing that provides the information required under clause (i) of this subparagraph to all of the individuals and entities described in clauses (ii) through (viii) of this subparagraph. [2306.6718(a) through (c)]

(i) The following information will be provided in these notifications:

(I) The relevant dates affecting the Application including the date on which the Application was filed, the date or dates on which any hearings on the Application will be held and the date by which a decision on the Application will be made;

(II) A summary of relevant facts associated with the Development;

(III) A summary of any public benefits provided as a result of the Development, including rent subsidies and tenant services; and

(IV) The name and contact information of the employee of the Department designated by the director to act as the information officer and liaison with the public regarding the Application.

(ii) Presiding officer of the governing body of the political subdivision containing the Development (mayor or county judge) 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 presiding officer of the governing body 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 presiding officer of the governing body before the Application is scored, if opposition is received prior to scoring being completed. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate [Rider 4 of Appropriations Bill];

(iii) Any member of the governing body of a political subdivision who represents the area containing the Development. If the governing body has single-member districts, then only that member of the governing body for that district will be notified, however if the governing body has at-large districts, then all members of the governing body will be notified;

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(iv) state representative and state senator who represent the community where the Development is proposed to be located. If the state representative or senator hold a community meeting, the Department shall provide appropriate representation.

(v) United States representative who represents the community containing the Development;

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

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

(viii) Any Neighborhood Organizations on record with the city or county in which the Development is to be located and whose boundaries contain the proposed Development site, based on the letters obtained by the Applicant from the city and county clerks under §50.9(f) of this title or otherwise known to the Applicant or Department and on record with the state or county.

(ix) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing.

(C) The elected officials identified in 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 Uniform State Service Regions of the state to receive comment on the submitted Applications and on other issues relating to the Housing Tax Credit Program. [2306.6717(c)]

(5) The Department shall make available on the Department's website information regarding the Housing Tax Credit Program including notice of public hearings, meetings, Application Round opening and closing dates, submitted Applications, and Applications approved for underwriting and recommended to the Board, and shall provide that information to locally affected community groups, local and state elected officials, local housing departments, any appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, nonprofit and for-profit organizations, on-site property managers of occupied Developments that are the subject of Applications for posting in prominent locations at those Developments, and any other interested persons including community groups, who request the information. [2306.6717(b); 2306.6732]

(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 completion of each stage of the Application process, including the results of the Application scoring and underwriting phases and the commitment phase, the results will be posted to the Department's web site. [2306.6717(a)(3)]

(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 as further described in §50.20(b) of this title, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application. [2306.6711(a) and 2306.6717(a)(2)]

(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 120th 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. [2306.6711(e)]

(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. [2306.6717(d)]

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

(a) **Filing of Applications for Tax Exempt Bond Developments.** Applications for a Tax Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2004 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap 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 §50.21 of this title.

(2) Applicants which receive advance notice of a Program Year 2004 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §50.21 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 60 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 Developments.** Tax Exempt Bond Development Applications are subject to all rules in this title, with the only exceptions being the following sections: §50.4 of this title (regarding State Housing Credit Ceiling), §50.7 of this title (regarding Regional Allocation and Set-Asides), §50.8 of this title (regarding Pre-Application), §50.9(d)(2) and (4) of this title (regarding Selection Criteria Review and Prioritization), §50.9(g) of this title (regarding Selection Criteria), §50.10(b) and (c) of this title (regarding Waiting List and Forward Commitments), and §50.14 of this title (regarding Carryover and 10% Test). Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §50.9(f) 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. Applicants will be required to meet all conditions of the Determination Notice by the time the construction loan is closed unless otherwise specified in the Determination Notice. Applicants must meet the requirements identified in §50.15(a) of this title.

(c) **Supportive Services for Tax Exempt Bond Developments.** [2306.254] 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 subsection include:

(1) the services must be in at least 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, organized team sports programs, 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 Developments.** Code §42(m)(2)(D) requires the bond issuer (if other than the Department) to ensure 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, §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 subsection, 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, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by Code §42(m)(2)(D), that the 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, and upon approval by the Board.

(e) **Satisfaction of Requirements for Tax Exempt Bond Developments.** If the Department staff determines that all requirements of this QAP and Rules have been met, the Department will recommend that the Board authorize the issuance of a Determination Notice. The Board, however, may utilize the discretionary factors identified in §50.10(a) of this title in determining if they will authorize the Department to issue a Determination Notice to the Development Owner. The Determination Notice, if authorized by the Board, will confirm that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

§50.13 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 Development Owner in a specified amount, subject to the feasibility determination described at §50.17 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 §50.21 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 an extension request and associated extension fee as described in §50.21 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 regards 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 Development Owner in a specified amount, subject to the requirements set forth at §50.12 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 §50.21 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 Housing Tax Credit 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.

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(5) A Commitment or Determination Notice shall not be issued with respect to any Development in violation of the calculation relating to the inclusive capture rate as restricted under §1.32(g)(2) of this title,, unless The Committee makes a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit 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 the Applicant, the Development Owner, the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of one or more other low income rental housing properties 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 of each year(or for Tax Exempt Bond Developments as of 10 business days prior to the Board's vote to allocate credits. Any corrective action documentation affecting the Material Non-Compliance status score for Applicants must be received by the Department no later than May 15 of each year (or for Tax Exempt Bond Developments no later than 20 business days prior to the Board's vote to allocate credits).

(b) **Agreement and Election Statement.** Together with the Development Owner's acceptance of the Carryover Allocation, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage for the Development as that for the month in which the Carryover Allocation 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 Percentage for a Development, the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable, to assure that the Carryover Allocation Document can be so executed.

§50.14. 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. Developments involving acquisition/rehabilitation must submit the Carryover documentation to the Department no later than December 1 of the year in which the Commitment Notice is issued, however they will be ineligible for extensions beyond that date. Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment Notice is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month. If the financing structure, syndication rate, amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department. 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) The Development Owner must have purchased the property for the Development.

(2) A current original plat or 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.

(3) 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 Development Owner, General Partner and Principal must execute and provide to the Department Form 8821 within ten business days of the issuance of a Commitment Notice or Determination Notice. Any information provided by the IRS will be evaluated by the Department and may be utilized by the Board to determine if a Carryover Allocation will be made.

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

(5) For all Developments involving new construction, evidence of the availability of all necessary utilities/services to the Development site must be provided. 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 Development Owner. 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.

(6) Development Owners must provide evidence to the Department that they have notified the District office of the Texas Department of Transportation of their proposed property consistent with the template provided in the Carryover Allocation Procedures Manual.

(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 must 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 of the year following the execution of the Carryover Allocation Document in a format prescribed by the Department.

§50.15. 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. The evidence must be submitted no later than June 1 of the year after the execution of the Carryover Allocation Document, and no later than 14 days after the closing of the construction loan for Tax Exempt Bond Developments, with the possibility of an extension as described in §50.21 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. Owners of Tax Exempt Bond Developments will be fined \$2,500 if this requirement is not fulfilled.

(b) **Commencement of Substantial Construction.** The Development Owner must submit evidence of having commenced and continued substantial construction activities. The evidence must be submitted not later than December 1 of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §50.21 of this title. The minimum activity necessary to meet the requirement of substantial construction for new Developments will be defined as having expended 10% of the construction contract amount for the Development, adjusted for any change orders, and as documented by both the most recent construction contract application for payment and the inspecting architect. The minimum activity necessary to meet the requirement of substantial construction for rehabilitation Developments will be defined as having expended 10% of the construction budget as documented by the inspecting architect. Evidence of such activity shall be provided in a format prescribed by the Department.

§50.16. Cost Certification, LURA.

(a) **Cost Certification.** If a Carryover Allocation was not requested and received, Developments must be placed in service by December 31 of the year the Commitment Notice was issued. Developments receiving a Carryover Allocation must be placed in service by December 31 of the second year following the year the Carryover Allocation Agreement was executed. Developments requesting IRS Forms 8609 must submit the required Cost Certification documentation no later than April 1 of the year following the date the buildings were placed in service. Any Developments issued a Commitment Notice or Determination Notice that fails to submit its Cost Certification documentation by this time will be reported to the IRS. The Department will perform an initial evaluation of the Cost Certification documentation within 45 days from the date of receipt of the Cost Certification documentation and notify the Owner in a deficiency letter of all additional required documentation. Once the Department has determined that all required documents have been received, the Department will issue IRS Forms 8609 no later than 90 days from the date of receipt of those final documents. 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).** The Development Owner must request a LURA from the Department no later than September 1 of the first year in which credits will be claimed. The Development Owner must date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution by December 1 of the first year in which credits will be claimed. In addition, the initial compliance and monitoring fee must also be submitted to the Department by December 1 of that same

year. After receipt of the signed LURA from the Department, 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 no later than the date that the Cost Certification Documentation is submitted 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, or assigns, 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.

§50.17. 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 Application to determine whether a building is eligible for the credit under the Code, §42. The Development Owner 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 a Development Owner 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 affordability period. [2306.6711(b)] 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 Development Owner must meet specific criteria as defined by the Seventy-fifth Legislature. A General Contractor hired by a Development Owner or a Development Owner, if the Development Owner serves as General Contractor must demonstrate a history of constructing similar types of housing without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §50.9(f)(4)(H) of this title, which sufficiently documents that the General Contractor has constructed some housing without the use of Housing Tax 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 Development Owner identified in the related Commitment Notice or Determination Notice. If an allocation is made to a member or Affiliate of the ownership entity proposed at the time of Application, the Department will transfer the allocation to the ownership entity as consistent with the intention of the Board when the Development was selected for an award of tax credits.. Any other transfer of an allocation will be subject to review and approval by the Department consistent with §50.18(c) of this title. 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 current documentation regarding the owner including documentation to show consistency with 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 §50.21 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,

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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 are 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 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 §50.21 of this title. For properties receiving financing through TX-USDA-RHS, the Department shall accept the inspections performed by TX-USDA-RHS in lieu of having other Third party Inspections. [2306.081]

(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document and as further outlined in §50.16 of this title, 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, and consistent with IRS Notice 88-116, the placed in service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function and more specifically when the first Unit in the building is certified as being suitable for occupancy in accordance with state and local law and as 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 Development Owner 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 at 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.

(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 Housing 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.

§50.18 Board Reevaluation, Appeals; Amendments, Housing Tax Credit and Ownership Transfers, Sale of Tax Credit Properties, Withdrawals, Cancellations.

(a) **Board Reevaluation.** [2306.6731(b)] Regardless of development 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.** [2306.6715] 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) Eligibility Requirements;
- (ii) Disqualification or debarment criteria;
- (iii) Pre-Application or Application Threshold Criteria;
- (iv) 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.

(D) Any Department decision that results in termination of an 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 any stage of the Application evaluation process identified in §50.9 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. [2306.6714(a)(4)]

(c) **Amendment of Application Subsequent to Allocation by Board.** [2306.6712 and 2306.6717(a)(4)]

(1) If a proposed modification would materially alter a Development approved for an allocation of a housing tax credit, or if the Applicant has altered any selection criteria item for which it received points, 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 §50.19 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

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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; (G) an increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and
- (H) 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 15th 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.** [2306.6713] A Development Owner 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 of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer. A Development Owner 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. A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request and specifically disclose if the transfer is requested because a Person active in the Development is being, or has been, removed by the lender, equity provider, or limited partners for its failure to perform its obligations under the loan documents or limited partnership agreement. 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 Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(e) **Sale of Certain Tax Credit Properties.** Consistent with 2306.6726, Texas Government Code, not later than two years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under 2306.6725, Texas Government Code and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) during the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the federal home investment partnership program;

(B) during the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) during the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

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(2) Notwithstanding items for which points were received consistent with §50.9(g) of this title, a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)), and the Department declines to purchase the Development.

(f) **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.

(g) **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 Applicant or the Development Owner, 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 or the Development is untrue or misleading;

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §50.5 of this title if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

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

(h) **Alternative Dispute Resolution Policy.** In accordance with Section 2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation and nonbinding arbitration. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's General Counsel and Dispute Resolution Coordinator. The proposal should describe the dispute and the details of the process proposed (including proposed participants, third party, when, where, procedure, and cost). The Department will evaluate whether the proposed process would fairly, expeditiously, and efficiently assist in resolving the dispute and promptly respond to the proposal.

§50.19. 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 compliance with the provisions of the Code, §42 and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules are set forth in Department Rule §60.1 of this title, to be proposed 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 or rehabilitation phase associated with any Development under this title. The Department will monitor under this requirement by requiring a copy of reports from all construction inspections performed for the lender and/or syndicator for the Development. Those reports must indicate that the Department may rely on those reports. The Department may provide those inspectors for the lender and/or syndicator with required documentation to be completed that will confirm satisfaction of the requirements of this rule. If necessary, the Department may obtain a Third Party inspection report for purposes of monitoring. The Development Owner 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

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construction documents, plans or specifications for the Development to perform these inspections. If reports are not submitted to the Department or can not be relied upon, the Applicant will be responsible for payment of any necessary 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 Development Owner 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. [2306.081(a) to (c); 2306.6719]

(c) The Department will monitor compliance with all representations 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 Development Owner must collect information and retain records for each qualified low income building in the Development, on a monthly basis (with respect to the first year of a building's Credit Period and on an annual basis, thereafter in accordance with IRS Regulation 1.42-5(b)(1) and (2)).

(e) The Development Owner will deliver to the Department no later than the last day in April 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.

(f) 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. [2306.6728 and 2306.269(b)(1) and (2)]

(g) Certification and Review.

(1) On or before February 1st of each year, the Department will send each Development Owner of a completed Development the Fair Housing Sponsor Report (form provided by the Department) to be completed by the Development 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 Fair Housing Sponsor Report, Part A "Owner's Certification of Program Compliance" shall cover the preceding calendar year and shall at a minimum cover the requirements under IRS Regulation 1.42-5(c) and §60.1 of this title, to be proposed.

(2) Review.

(A) The Department staff will review the Fair Housing Sponsor Report for compliance with the requirements of the Code, §42.

(B) The Department will monitor the Development for compliance under Section 42 and §60.1 of this title, to be proposed.

(C) The Department will perform on-site inspections of all buildings in each low income 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.

(D) 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.

(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 paragraph (2) of this subsection or both; however, if the information provided by TX-USDA-RHS is not sufficient for the Department to

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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.

(h) Inspection provision. The Department retains the right to perform an on site inspection of any low income 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 (g)(2)(C) of this section.

(i) 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 provided by the Development Owner, 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.

(j) 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.

(k) 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 (g)(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 from the date of notice to the Development Owner, 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 from the date of notice to the Development Owner 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.

(l) 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 non-compliance 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 this section for three years from the end of the calendar year the Department receives the certifications and records.

(m) Notices to the Department. A Development Owner must comply with §50.18(d) of this title for the event listed in paragraph (1) of this subsection and must notify the division responsible for compliance within the Department in writing of the events listed in paragraphs (2) and (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.

(n) 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.

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(o) These provisions apply to all buildings for which a housing tax 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.

(p) **Material Non-Compliance.** [2306.185(a)] In accordance with §50.5(b)(3) and (4) of this title, the Department will disqualify an Application for funding if the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of one or more other low income rental housing properties 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 §50.5(b)(4) 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 §60.1 of this title, to be proposed.

(q) **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. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

§50.20. 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 committed pursuant to Commitment Notices during such calendar year;
- (2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;
- (3) the cumulative amount of Housing Credit Allocations made during such calendar year; and
- (4) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) **Application Log.** [2306.6702(a)(3) and 2306.6709] 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 all General Partners of the Development Owner, 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 Uniform State Service 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 individuals 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 the Carryover Allocation Agreement 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.

§50.21. 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, may 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. Pre-Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% 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. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. [2306.6716(d)]

(d) **Refunds of Pre-Application or Application Fees.** [2306.6716(c)] 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 30th 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 external underwriter in accordance with §50.9(d)(4) 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 external underwriting will be credited against the commitment fee established in subsection (f) 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.

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(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 \$750. Inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development. Developments receiving financing through TX-USDA-RHS that will not have construction inspections performed through the Department will be exempt from the payment of an inspection fee.

(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.** [2306.6716(b)] All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated 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 20 days prior to the date for which an extension is being requested and 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. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. 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 for good cause.

§50.22. 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 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. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. 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.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's web site to provide necessary data to the Department.

§50.23. Waiver and Amendment of Rules.

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(a) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(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.

§50.24. Deadlines for Allocation of Housing Tax Credits. [2306.6724]

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program. (b) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year. [2306.67022]

(d) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for housing tax credits.

(e) Applications for Housing Tax Credits to be issued a Commitment Notice during the Application Round in a calendar year must be submitted to the Department not later than March 1.

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

(g) The Board shall approve final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31. Department staff will subsequently issue Commitment Notices based on the Board's approval. Final commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.