



**2011 QUALIFIED ALLOCATION PLAN**  
Housing Tax Credit Program



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2011 Qualified Allocation Plan  
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### §49.1. General Program Information.

- (a) **Purpose and Authority.** The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits authorized by applicable federal income tax laws. Pursuant to Chapter 2306, Subchapter DD, of the Texas Government Code, the Department is authorized to make Housing Tax Credit Allocations for the State of Texas. As required by §42(m)(1) of the Code, the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§49.1 - 49.17 of this chapter. 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) **Allocation Goals.** It is the policy of this Department and the Board, as expressed through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula to promote maximum utilization of the available tax credit amount and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built.

### §49.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code, §1.1 of this title (relating to Definitions), and repeated in the Tax Credit (Procedures) Manual.

- (1) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as described in §42(b) of the Code. However, where the property has not placed in service or an Agreement and Election Statement has not been executed the Applicable Percentage must be estimated as of the date of the Application submission. For purposes of the Application, the Applicable Percentage must be projected at:
- (A) not less than 9% through December 31, 2013 for 70% present value credits unless extended by Congress; or
  - (B) fifteen (15) basis points over the current Applicable Percentage for 30% present value credits associated with acquisition and with qualified Tax-Exempt Bond Developments, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.
- (2) **Application Acceptance Period**--That period of time during which Applications may be submitted to the Department.
- (3) **Area Median Gross Income (AMGI)**--Area median gross household income, as determined for all purposes under and in accordance with the requirements of §42 of the Code.
- (4) **Carryover Allocation**--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and Treasury Regulations, §1.42-6.
- (5) **Carryover Allocation Document**--A document issued by the Department, and executed by the Development Owner, pursuant to §49.12(e) of this chapter (relating to Carryover).
- (6) **Code**--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other

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

- (7) **Certificate of Reservation**--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.
- (8) **Community Revitalization Plan**--A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.
- (9) **Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.
- (10) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.
- (11) **Development Site**--The area, or if scattered site, areas, on which the Development is proposed to be located.
- (12) **Economically Distressed Area**--A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code, and has adopted and enforces the model rules under §16.343, Texas Water Code.
- (13) **Eligible Basis**--With respect to a building within a Development, the building's Eligible Basis pursuant to §42(d) of the Code.
- (14) **Existing Residential Development**--Any Development Site which contains existing residential Units at the time the Application is submitted to the Department.
- (15) **Housing Credit Allocation**--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this chapter.
- (16) **Housing Credit Allocation Amount**--With respect to a Development or a building within a Development, the amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period which the Board allocates to the Development.
- (17) **Qualified Nonprofit Organization**--An organization that meets the requirements of Texas Government Code §2306.6706 and §2306.6729.
- (18) **Qualified Nonprofit Development**--A Development in which a Qualified Nonprofit Organization is to own an interest in the Development directly or through a partnership and materially participates (within the meaning of §469(h) of the Code) in the development and operation of the development throughout the Compliance Period.
- (19) **State Housing Credit Ceiling**--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code.
- (20) **Supportive Housing**--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living.

- (21) **Tax Credit (Procedures) Manual**--The manual produced and amended from time to time by the Department which reiterates the rules and provides guidance for the filing of tax credit related documents.
- (22) **Tax-Exempt Bond Development**--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.
- (23) **Transit Oriented District**--A mixed-use residential and commercial area, located within a radius of one-quarter mile from an existing or proposed transit stop, designed to encourage pedestrian activities and maximize access to public transportation.

### §49.3. Program Calendar.

All documentation noted in this section must be submitted to the Department offices located at 221 E. 11th Street, Austin, TX 78701, by 5:00 p.m. (CST) by the date indicated.

Due Date	Documentation Required
12/20/2010	Application Acceptance Period Begins (Competitive HTC Only).
12/20/2010	Pre-application Neighborhood Organization Request Date (Competitive HTC Only).
12/31/2010	Pre-application Response to Neighborhood Organization Request Date (Competitive HTC Only).
01/07/2011	Pre-Application Final Delivery Date (Competitive HTC Only).
01/21/2011	Full Application Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, Rural Rescue, HOME or HTF Applications the request must be sent no later than fourteen (14) days prior to the submission of the Threshold Documentation.
02/15/2011	Experience Certification Delivery Date (For Tax-Exempt Bond Applications the Experience Certification Documentation must be submitted with the Application).
02/22/2011	Full Application Response to Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, HOME or HTF Applications the response should be received no later than seven (7) days prior to the Application submission.
03/01/2011	Full Application Delivery Date (Competitive HTC Only).
03/01/2011	Quantifiable Community Participation (QCP) Delivery Date (Competitive HTC Only).
03/01/2011	Unit of General Local Government Resolutions for Applications applying for TDHCA HOME funds and selecting §49.9(a)(5) points (must be submitted with Application).
03/01/2011	Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable). For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than 60 days prior to the Board meeting at which the tax credits will be considered. The 60 day deadlines are available on the Department's website.

Due Date	Documentation Required
03/02/2011	Rural Rescue Application Submission Period (Ends 11/15/2011).
04/01/2011	Input from State Senator or Representative Delivery Date (Competitive HTC Only).
04/01/2011	Market Analysis Delivery Date (Competitive HTC Only).
04/01/2011	Resolutions Delivery Date. (For Tax-Exempt Bond Developments all resolutions are due no later than 14 days prior to the Board meeting at which the tax credits will be considered).
Mid-May	Final Scoring Notices Issued (Competitive HTC Only).
06/01/2011	Withdraw Deadline for State Senator or Representative Letters (Competitive HTC Only).
06/15/2011	Application Challenges Deadline (Competitive HTC Only).
Late June	Release of Eligible Applications for Consideration for Award in July (Competitive HTC Only).
Late July	Final Awards (Competitive HTC Only).
Mid-August	Commitments are Issued (Competitive HTC Only).
11/01/2011	Carryover Documentation Delivery Date (Competitive HTC Only).
07/01/2012	10% Test Documentation Delivery Date (Competitive HTC Only).
07/01/2012	Documentation of Commencement of Substantial Construction Delivery Date (Competitive HTC Only).
12/31/2013	Placement in Service Deadline (Competitive HTC Only).
Forty-five (45) days prior to Board meeting	Amendment Requests.
Fifteen (15) business days prior to Board meeting	Extension Requests.

#### §49.4. Ineligible Applicants, Applications and Developments.

- (a) **Ineligible Applicants.** An Applicant is ineligible if any Applicant, Development Owner, Developer or Guarantor involved with the Application:
- (1) 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 (§2306.6721(c)(2))
  - (2) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application deadline; or
  - (3) at the time of Application is subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; or is the subject of an enforcement proceeding with any Governmental Entity; or
  - (4) has any past due audits and has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a Commitment of Housing Tax Credits from the 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 or other

- Applications applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than thirty (30) days after Volume III of the Application is submitted; or (§2306.6703(a)(1))
- (5) 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; (§2306.6703(a)(2))
  - (6) The Applicant proposes to replace in less than fifteen (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 thirty (30) years or more 100% 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% 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
    - (C) The applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization; or
    - (D) If the redemption of the applicable private activity bonds will occur in the first five years of the operation of the Development and complies with §429(h)(4), Internal Revenue Code of 1986:
      - (i) on the date the Certificate of Reservation is issued, the Texas Bond Review Board determines that there is not a waiting list for private activity bonds in the same priority level established under §1372.0321 of the Texas Government Code or, if applicable, in the same uniform state service region, as referenced in §1372.0231, Texas Government Code, that is served by the proposed Development; and
      - (ii) the applicable private activity bonds will be redeemed according to underwriting, if any, established by the Department; (§2306.6703)
  - (7) 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;
  - (8) There is, involving the Application or Applicant, a violation of §2306.6733 of the Texas Government Code;
  - (9) Has been voluntarily or involuntarily removed from a rent or income restricted multifamily Development by a lender, equity provider, or any other owners or investors as a Principal during the previous ten (10) years, however designated, or any combination thereof or if any litigation to effectuate such removal has been instituted, and is continuing at the time of Application the Department shall be promptly notified by the Applicant. The Applicant will provide the Department staff with such information as it may reasonably request to evaluate the facts and circumstances surrounding such actual or threatened removal and prepare a report to the Executive Director. The information considered and addressed in the report will include, but not be limited to those identified in subparagraphs (A) - (D) of this paragraph. The Executive Director will make a determination, based on the report,

whether facts and circumstances are present that would support the institution of formal debarment proceedings. Any debarment under this provision shall be for a period that will not exceed five (5) years. No person shall be debarred except by formal action taken by the Department's Governing Board.

- (A) Whether the Developer or Principal has invested more of its financial resources in the Development than it has received from or in connection with the Development;
  - (B) Whether such Developer or Principal had the ability to address the facts and circumstances that ultimately led to actual or threatened removal by other means or whether uncooperative parties or other facts and circumstances beyond its control prevented any other such resolution;
  - (C) The contributing or causative effect of circumstances beyond such Applicant's, Development Owner's, Developer's or Guarantor's control, such as significant changes in market conditions or a natural disaster; and
  - (D) The compliance history of the Development during the time of the Applicant's, Development Owner's, Developer's or Guarantor's involvement.
- (b) **Ineligible Applications.** The Department will terminate an Application for those issues identified in paragraphs (1) - (11) of this subsection. In addition to termination, the Department may debar a Person for one (1) year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines those issues identified in paragraphs (1) - (8) of this subsection exist and the facts warrant debarment:
- (1) The provision of fraudulent information, knowingly falsified 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
  - (2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer, or Guarantor, or any Affiliate that Controls one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA or if such Material Noncompliance is identified during the Application review or the program rules in effect for such property as further described in Chapter 60 of this title (relating to Compliance Administration); or (§2306.6721(c)(3))
  - (3) The Applicant, Development Owner, Developer, or any Guarantor, anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entity that is active in the ownership or Control has been a Principal of any entity that failed to make all loan payments to the Department in accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department; or
  - (4) 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 cure any fees described in §49.14 of this chapter (relating to Program Related Fees) seven (7) days prior to the Board meeting at which the decision for the Application is to be made; or
  - (5) An Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by an Applicant or a Related Party, violates §2306.1113 relating to Ex Parte Communication as further described in §49.7 of this chapter (relating to Application Process); or
  - (6) It is determined by the Department's Executive Director 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 §2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the Application; or
  - (7) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated

- during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations; or
- (8) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose pre-development award of non-tax credit funds from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing; or
  - (9) The Application is submitted after the Application submission deadline (time or date); includes an electronic submission that is unreadable by the Department's computer system; has an entire Volume of the Application missing; or has a Material Deficiency as defined under §1.1 of this title (relating to Definitions). If an Application is determined ineligible pursuant to this subsection, the Application will be terminated without further consideration and the Applicant will be notified of such termination. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant; or
  - (10) In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other Persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven (7) business days of the date of the request by the Department, the Department may terminate the Application; or
  - (11) If more than 50% of the Developer Fee is deferred as reflected in the Sources and Uses exhibit in the Application or the commitments from the lender or syndicator.
- (c) **Ineligible Developments.** Those Developments identified in paragraphs (1) - (14) of this subsection are considered ineligible for funding under the Housing Tax Credit Program:
- (1) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code) 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;
  - (2) A property that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
  - (3) 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;
  - (4) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such;
  - (5) Any Development with any building(s) with four or more stories that does not include an elevator;
  - (6) Any Qualified Elderly Development proposing more than 70% two-bedroom Units;
  - (7) Any Development that violates §1.15 of this title (relating to Integrated Housing Rule);
  - (8) Any Development located in an Urban Area involving New Construction, Reconstruction or Adaptive Reuse of Units (except for a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and Single Room Occupancy units, as provided in §42(i)(3)(B)(iii) and (iv) of the Code) in which any of the designs in subparagraphs (A) - (E) of this paragraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings, but they do apply to the multifamily dwellings. An Application may reflect a total of Units for a given bedroom size greater than the percentages in subparagraphs (A) - (E) of this paragraph to the extent that the increase is only to reach the next highest number divisible by four:

- (A) More than 30% of the total Units are one bedroom and/or Efficiency Units; or
  - (B) More than 55% of the total Units are two bedroom Units; or
  - (C) More than 40% of the total Units are three bedroom Units; or
  - (D) More than 5% of the total Units in the Development with four or more bedrooms; or
  - (E) Only two and three bedroom Unit Developments;
- (9) Any Development which is intended to house seniors that is not consistent with the definition of a Qualified Elderly Development;
- (10) Any Development that contains residential Units that violates the general public use requirement under Treasury Regulation §1.42-9;
- (11) Development Sites with negative characteristics in subparagraphs (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or TRDO-USDA are exempt. For purposes 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 to all boundaries of the property containing the negative characteristic. If none of these negative features exist, the Applicant must sign a certification to that effect. The negative characteristics include:
- (A) Developments located adjacent to or within 300 feet of junkyards;
  - (B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail; (Rural Developments funded through TRDO-USDA are exempt);
  - (C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;
  - (D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;
  - (E) Developments where the buildings are located within the "fall line" of high voltage transmission power lines;
  - (F) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports; or
  - (G) Development is located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in §243.002 of the Texas Government Code.
- (12) **One Mile Same Year Rule.** Staff will not recommend an allocation in the same Application Round if the Developments are, or will be, located less than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's State Housing Credit Ceiling, the Development is considered to be in the calendar year in which the Board votes, not in the year of the State Housing Credit Ceiling. This limitation applies only to communities contained within counties with populations exceeding one million. For purposes of this chapter, any two sites not more than one linear mile apart are deemed to be "in a single community." (§2306.6711(f)) This restriction does not apply to the allocation of Housing Tax Credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Development Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio; and (§2306.67021)
- (13) **Unacceptable Sites.** Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department, based on the evaluation factors identified in the Site Evaluation form, augmented by any other inspections or other documented findings of the Department. The Department will advise the Applicant if it makes an initial finding that a proposed site is unacceptable and provide the applicant with a reasonable opportunity to address any identified concerns. If in the Department's reasonable judgment the Applicant is not able to address adequately the Department's concerns regarding the site, the Department will issue a determination that the site is

unacceptable. If not appealed in accordance with §49.10(d) of this chapter (relating to Appeals Process), this determination becomes final.

- (14) **Development Amenities.** These amenities must be at no charge to the tenants. All New Construction, Reconstruction or Adaptive Reuse Units must provide the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation Developments must provide the amenities in subparagraphs (C) - (M) of this paragraph unless expressly identified as not required. (§2306.187) Deviations for good cause, by which one or more of the foregoing will not be provided, must be approved prior to award and the request for such deviation must be included in the Application. The Executive Director may issue such approvals. Requests not approved may be appealed to the Board in accordance with §49.10(d) of this chapter.
- (A) All New Construction Units must be wired with RG-6 COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;
  - (B) Laundry Connections;
  - (C) Blinds or window coverings for all windows;
  - (D) Screens on all operable windows;
  - (E) Disposal and Energy-Star rated dishwasher (not required for TRDO-USDA or SRO Developments; Rehabilitation Developments exempt from dishwasher if one was not originally in the unit);
  - (F) Energy-Star rated refrigerator;
  - (G) Oven/Range;
  - (H) Exhaust/vent fans (vented to the outside) in bathrooms;
  - (I) Energy-Star rated ceiling fans in living areas and bedrooms;
  - (J) Energy-Star rated lighting in all Units which may include compact florescent bulbs;
  - (K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252;
  - (L) All Units must be air-conditioned; and
  - (M) Fire sprinklers in all Units where required by local code.

#### §49.5. Site and Development Restrictions.

- (a) **Floodplain.** Any Development proposing New Construction or Reconstruction and located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the 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 one-hundred (100) year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation (excluding Reconstruction) with the exception of Developments with existing and ongoing federal funding assistance from HUD or TRDO-USDA, will be permitted in the one-hundred (100) year floodplain unless they already meet the requirements established in this subsection for New Construction, or if the Unit of General Local Government has undertaken mitigation efforts and can establish that the property is no longer within the one-hundred (100) year floodplain.
- (b) **Credit Amount.** (§2306.6711(b)) An Applicant may not request more than \$2 million in annual tax credits for any given Application. The Department shall not allocate more than \$2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer, Related Party or Affiliate of the Development Owner). Tax-Exempt Bond Development Applications are not subject to this limitation and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. Competitive Housing Tax Credits approved by the Board during the 2011 calendar year, including commitments from the 2011 Credit Ceiling and forward commitments from the 2012 Credit

Ceiling, are applied to the credit cap limitation for the 2011 Application Round. In order to evaluate this \$2 million limitation, nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. All entities that share a Principal are Affiliates. For purposes of determining the \$2 million limitation of tax credits, a Person is not deemed to be an Affiliate solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing";
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a Development Consultant or Developer that do not exceed 10% of the Developer Fee (or 20% for Qualified Nonprofit Developments) to be paid or \$150,000, whichever is greater.

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

- (1) The minimum Development size will be 16 Units.
- (2) Developments in Rural Areas involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units. Rehabilitation Developments (excluding Reconstruction) do not have a limitation as to the number of Units.
- (3) Urban Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings), in the Competitive Housing Tax Credit Application Round will be limited to 252 total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 restricted and total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Construction. Only Developments that consist solely of acquisition/Rehabilitation or Rehabilitation may exceed the maximum Unit restrictions.
- (4) For Applications that are proposing an additional phase to an existing tax credit Development; that are otherwise adjacent to an existing tax credit Development; or that are proposing a Development on a contiguous site to another Application awarded in the same program year, the combined Unit total for the existing and proposed Developments may not exceed the maximum allowable Development size set forth in this subsection unless:
  - (A) the first phase of the Development has been completed and has maintained occupancy of at least 90% for a minimum six (6) month period as reflected in the submitted rent roll; or
  - (B) a resolution from the Governing Body of the city or county, in which the proposed Development is located, dated no more than one (1) year old from the date the Application is submitted. Such resolution must state that there is a need for additional Units and that the Governing Body has reviewed a market study, the conclusion of which supports the need for additional Units. The resolution must be submitted to the Department by the Resolution Delivery Date as indicated in §49.3 of this chapter (relating to Program Calendar); or
  - (C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the Development Site; provided, however, the combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.

(d) **Developments Proposing to Qualify for a 30% increase in Eligible Basis.** Staff will only recommend a 30% increase in Eligible Basis if (paragraphs (2) and (3) of this subsection do not apply to Tax-Exempt Bond Applications):

- (1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 30% Housing Tax Credit Units per households in the

- tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a QCT that has in excess of 30% Housing Tax Credit Units per households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5)(C) of the Code, unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. The eleven (11) digit census tract number must be clearly marked on the map. These ineligible Qualified Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report; or
- (2) The Development qualifies for and receives Renewable Energy Tax Credits. For purposes of this paragraph, the Application will be required to include an architect's letter or signed third party contractor bid as evidence that the Applicant will be eligible to request Renewable Energy Tax Credits in its income tax filings. In addition, the architect's letter or signed third party contractor bid must include a statement that the increased cost differential of the Renewable Energy items over non Renewable Energy alternatives exceeds the value of the energy tax credits to be received. The Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification. Any amenities as it relates to this item must benefit the entire Development; or
  - (3) Pursuant to the authority granted by H.R. 3221, the Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph:
    - (A) Any Rural Development;
    - (B) Developments proposing at least 50% of the total number of Units for Supportive Housing;
    - (C) Developments proposing to provide 10% of the Low-Income Units, that will serve individuals and families at or below 30% of AMGI, in excess of those that are in §49.9(a)(3) of this chapter (relating to Selection Criteria); or
    - (D) Developments proposed in high opportunity areas as provided in clauses (i) - (iii) of this subparagraph:
      - (i) A four story or greater Development with structural parking that is proposed to be located within one-quarter mile of existing major bus transfer centers, regional or local commuter rail transportation stations, and/or Transit Oriented Districts that are accessible to all residents including Persons with Disabilities; or
      - (ii) A Development that is proposed to be located in a census tract which has an AMGI that is higher than the AMGI of the county or place in which the census tract is located as of the first day of the Application Acceptance Period; or
      - (iii) A Development that is proposed in a census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the 2011 Housing Tax Credit Site Demographic Characteristics Report).
  - (4) The Development proposing to build in an area impacted by a disaster for which federal legislation providing additional credits has been enacted.

#### §49.6. Allocation Process.

- (a) **Regional Allocation Formula.** This formula, developed by the Department, establishes separate targeted tax credit amounts for Rural Areas and Urban Areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published on the Department's website. The regional allocation for Rural Areas is referred to as the Rural Regional Allocation and the regional allocation for Urban Areas is referred to as the Urban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition. The Regional Allocation target will reflect that at least 20% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments in

Rural Areas with a minimum of \$500,000 for each Uniform State Service Region. (§2306.111(d)(3); §2306.1115)

- (b) **Allocation Set-Asides.** An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies: (§2306.111(d))
- (1) **Nonprofit Set-Aside.** 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 §42(h)(5) of the Code. Qualified Nonprofit Organizations must have the Controlling interest in the Development Owner applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement; (§2306.6729 and §2306.6706(b))
  - (2) **USDA Set-Aside.** At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through TRDO-USDA. (§2306.111(d)(2)) If an Application in this Set-Aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Developments financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program, in whole or in part, will not be considered under this Set-Aside. Any Rehabilitation or Reconstruction of an existing §515 Development that retains the §515 loan and restrictions will be considered under the At-Risk Development and TRDO-USDA Set-Asides, unless such Development is also financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program. Commitments of 2011 Competitive Housing Tax Credits issued by the Board in 2011 will be applied to each Set-Aside, Rural Regional Allocation, Urban Regional Allocation and/or TRDO-USDA Set-Aside for the 2011 Application Round as appropriate;
  - (3) **At-Risk Set-Aside.** At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional formula required under subsection (a) of this section. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO. An At-Risk Development is a Development that: (§2306.6702)
    - (A) Has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under at least one of the following federal laws, as applicable:
      - (i) Section 221(d)(3) and (5), National Housing Act (12 U.S.C. §17151);
      - (ii) Section 236, National Housing Act (12 U.S.C. §1715z-1);
      - (iii) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);
      - (iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);
      - (v) The Section 8 Additional Assistance Program for housing Developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;
      - (vi) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;
      - (vii) Sections 514 - 516, Housing Act of 1949 (42 U.S.C. §§1484 - 1486); or

- (viii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. §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 (2) 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;
  - (D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew all possible financial benefit if available, and at least maintain existing affordability to qualify as an At-Risk Development;
  - (E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a qualified contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II completed and, if applicable, documentation from the original application regarding the right of first refusal.
- (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 Set-Asides, Rural Regional Allocation and Urban Regional Allocation, the Department may redistribute the credits amongst the different regions and Set-Asides based on the need to most closely achieve regional allocation goals and the level of demand exhibited in the Uniform State Service Regions during the Application Round. However, if there are any tax credits set aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after the allocation under §49.7(g)(3) of this chapter (relating to Application Process), those tax credits shall be made available in any other Rural Area in the state, first, and then to Developments in Urban areas of any uniform state service region. (§2306.111(d)(3)) As described in subsection (b)(1) and (2) 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.

#### §49.7. Application Process.

- (a) **General.** The application process has two parts, a pre-application which is voluntary and applies only to Applications submitted under the State Housing Credit Ceiling and an Application which is mandatory. An Applicant that does not provide an Application on or before the deadlines provided for herein is not eligible to be placed on the list of eligible Applicants to which awards of tax credits may be made. Pre-applications and Applications submitted to the Department are subject to restrictions on Ex Parte Communications as further described in paragraph (1) of this subsection and the Administrative Deficiency process as further described in paragraph (2) of this subsection.
  - (1) **Ex Parte Communications.** (§2306.1113)
    - (A) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, except for communications that actually occur in properly posted open meetings, as permitted by §2306.1113 of the Texas Government Code a member of the Board may not communicate with any other Board member or with the following Persons:

- (i) an Applicant or Related Party; and
    - (ii) any Person who is:
      - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
        - (-a-) a General Contractor; and
        - (-b-) a Developer; and
        - (-c-) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or
      - (II) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.
  - (B) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:
    - (i) the Applicant or a Related Party; and
    - (ii) any Person who is:
      - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
        - (-a-) a General Partner or General Contractor; and
        - (-b-) a Developer; and
        - (-c-) a Principal or Affiliate of a General Partner or General Contractor; or
      - (II) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.
  - (C) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:
    - (i) the communication must be restricted to technical or administrative matters directly affecting the Application;
    - (ii) the communication must occur or be received on the premises of the Department during established business hours; and
    - (iii) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:
      - (I) the date, time, and means of communication;
      - (II) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;
      - (III) the subject matter of the communication; and
      - (IV) a summary of any action taken as a result of the communication.
  - (D) Notwithstanding subparagraph (A) or (B) of this paragraph, a Board member or Department employee may communicate without restriction with a Person listed in subparagraph (A) or (B) of this paragraph during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.
  - (E) Subparagraph (A) of this paragraph does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present, provided that all matters related to Applications to be considered by the Board will not be discussed.
- (2) **Administrative Deficiency Process.** The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification or correction to information originally submitted in the Application. For example, if exhibits and other information required under §49.8 of this chapter (relating to Threshold Criteria) are not originally submitted in the Application (i.e. financing commitment missing entirely from

the Application) staff will recommend termination of the Application. However, for information missing in part from the Application (i.e. financing commitment is submitted but it is not executed by the lender) staff will request the missing or corrected information via an Administrative Deficiency. For exhibits and other information required under §49.9 of this chapter (relating to Selection Criteria) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form. For information missing in part from the Application (i.e. the letter from the Appropriate Local Official does not include all required information) staff will request the missing information via an Administrative Deficiency and award points provided the information submitted in response to the Administrative Deficiency is satisfactory to the Department.

- (A) **Administrative Deficiencies for Applications submitted under the State Housing Credit Ceiling and Rural Rescue Applications.** If an Application contains Administrative Deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, Quantifiable Community Participation (QCP) and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, 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. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, revise the Unit mix (both income levels and bedroom mixes), or adjust their self-score except in response to a direct request from the Department as a result of an Administrative Deficiency or by approved amendment of an Application after a commitment or allocation of tax credits as further described in §49.13(b) of this chapter (relating to Board Reevaluation) (§2306.6708). This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division during their review. To the extent that the review of Administrative Deficiency documentation during the review alters the score assigned to the Application, Applicants will be re-notified of their final score.
- (B) **Administrative Deficiencies for Tax Exempt Bond Applications.** If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these

reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five (5) business days. Failure to resolve all outstanding deficiencies by 5:00 p.m. on the fifth business day following the date of the deficiency notice will result in a penalty fee of \$500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination pursuant to §49.4 of this chapter (relating to Ineligibility). The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. This Administrative Deficiency process applies equally to the Real Estate Analysis Division review and feasibility evaluation and the same penalty and termination will be assessed.

- (b) **Pre-application Submission.** The purpose of the pre-application process is to enable Applicants interested in pursuing the Application to assess generally who else is interested in submitting Applications and the nature of their proposed Development. Based on an understanding of the potential competition they can make a better and more informed decision whether they wish to proceed to prepare and submit an Application.
- (1) As used herein a "complete pre-application" means a pre-application that meets all of the Department's criteria for an Application with all required information and exhibits provided pursuant to the application checklist provided in the Tax Credit (Procedures) Manual.
  - (2) The pre-application must be submitted in accordance with the Application Acceptance Period and Pre-application Final Delivery Date as identified in §49.3 in this chapter (relating to Program Calendar).
  - (3) To submit the complete pre-application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete pre-application to the Department prior to the Pre-application Final Delivery Date.
  - (4) The pre-application must be accompanied by a paper certification with an original signature in the form provided in the pre-application. Furthermore, the pre-application must be a single file, individually bookmarked at each of the required volumes and exhibits presented in the order as required in the application checklist.
  - (5) If a pre-application is not submitted to the Department on or before the applicable deadline indicated in §49.3 of this chapter, the Applicant will be deemed to have not made a pre-application.
  - (6) The required pre-application fee as described in §49.14 of this chapter (relating to Program Related Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department.
  - (7) Only one pre-application may be submitted by an Applicant for each site. Prior to the pre-application deadline 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.
  - (8) Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of pre-application. 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.

- (c) **Pre-application Threshold Criteria.** The Pre-application Threshold Criteria include:
- (1) Submission of a pre-application;
  - (2) Evidence of Site Control through March 1, 2011 as evidenced by the documentation required under §49.8(8)(A) of this chapter; and
  - (3) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. (§2306.6704)
    - (A) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:
      - (i) No later than the Pre-application Neighborhood Organization Request Date identified in §49.3 of this chapter, the Applicant must e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") a completed "Neighborhood Organization Request" letter as provided in the pre-application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;
      - (ii) If no reply letter is received from the local elected officials by the Pre-application Response to Neighborhood Organization Request Date, then the Applicant must certify to that fact in the pre-application;
      - (iii) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the pre-application submission.
    - (B) Not later than the date the pre-application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Pre-application Notification Template" provided in the pre-application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are required to notify county officials. Evidence of notification is required in the form of a certification provided in the pre-application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entities prescribed in clauses (i) - (ix) of this subparagraph, in the event that the Department requires proof of notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by the recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the pre-application is submitted.
      - (i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;
      - (ii) Superintendent of the school district containing the Development;
      - (iii) Presiding officer of the board of trustees of the school district containing the Development;
      - (iv) Mayor of any municipality containing the Development;

- (v) All elected members of the Governing Body of any municipality containing the Development;
  - (vi) Presiding officer of the Governing Body of the county containing the Development;
  - (vii) All elected members of the Governing Body of the county containing the Development;
  - (viii) State senator of the district containing the Development; and
  - (ix) State representative of the district containing the Development.
- (C) 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) Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;
  - (v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (general or elderly);
  - (vi) The approximate total number of Units and approximate total number of low-income Units;
  - (vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;
  - (viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and any market rate Units, if applicable. Rents to be provided are those that are effective at the time of the pre-application, which are subject to change as annual changes in the area median income occur; and
  - (ix) The expected completion date if credits are awarded.
- (D) Pre-applications not meeting the Pre-application Threshold Criteria identified in this subsection will be terminated and the Applicant will receive a written notice to that effect. 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.
- (d) **Pre-application Results.** Only pre-applications which have satisfied all of the Pre-application Threshold Criteria requirements set forth in subsection (c) of this section and §49.9(a)(14) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a Development on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.
- (e) **Application Submission.** An Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application in order to be considered for Housing Tax Credits.
- (1) As used herein a "complete application" means an Application that meets all of the Department's criteria for an Application with all required information and exhibits provided pursuant to the application checklist provided in the Tax Credit (Procedures) Manual.
  - (2) For Applications submitted under the State Housing Credit Ceiling, the Application must be submitted by the Full Application Delivery Date as identified in §49.3 of this chapter. The Full Application Delivery Date for Tax-Exempt Bond Developments is triggered by the

- Certificate of Reservation issued by the Texas Bond Review Board and is further defined in §49.11 of this chapter (relating to Tax-Exempt Bond Developments).
- (3) To submit the complete application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete application to the Department.
  - (4) The Application must be accompanied by a paper certification with an original signature in the form provided in the Application. Furthermore, the Application must be a single file, individually bookmarked at each of the required volumes and exhibits presented in the order as required by the application checklist.
  - (5) If an Application is not submitted to the Department on or before the applicable deadline indicated in paragraph (1) of this subsection, the Applicant will be deemed to have not made an Application.
  - (6) The required Application fee as described in §49.14 of this chapter must be submitted with the Application in order for the Application to be accepted by the Department.
  - (7) Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, an Applicant may withdraw an 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.
- (f) **Evaluation Process.** Applications submitted for consideration (including Tax Exempt Bond Developments) will be reviewed according to the Eligibility, Threshold and for competitive applications under the State Housing Credit Ceiling, for Selection Criteria. An Application, during any of these stages of review, may be determined to be ineligible as further described in §49.4 of this chapter. Applicants will be notified in these instances.
- (g) **Subsequent Evaluation and Methodology for Award Recommendations to the Board.** The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. In general these will be those Applications identified as most competitive and that meet the requirements of Eligibility and Threshold. However, an Application may be reviewed by the Real Estate Analysis Division prior to the completion of the Eligibility and Threshold reviews. The procedure identified in paragraphs (1) - (6) of this subsection will also be used in making recommendations to the Board:
- (1) Applications with the highest scores in the TRDO-USDA Allocation until the minimum requirements stated in §49.6(b)(2) of this chapter (relating to USDA Set-Aside) are attained. If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region;
  - (2) Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in §49.6(b)(3) of this chapter (relating to At-Risk Set-Aside) of this chapter are attained;
  - (3) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under §49.6(a) of this chapter (relating to Regional Allocation Formula), without exceeding the credit amounts available for a Rural Regional Allocation and Urban Regional Allocation in each region. To the extent that Applications in the At-Risk and TRDO-USDA Set-Asides are not competitive enough within their respective Set-Asides, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region;
  - (4) If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after allocation under paragraph (3) of this subsection those tax credits shall then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the Region's Rural Allocation. (§2306.111(d)(3)) This will be referred to as the Rural collapse;
  - (5) If there are any tax credits remaining in any sub-region after the Rural collapse, in the Rural Regional Allocation or Urban Regional Allocation, they then will be combined and

- made available to the Application in the most underserved sub-region as compared to the sub-region's allocation. This will be referred to as the statewide collapse;
- (6) Staff will ensure that at least 10% of the State Housing Credit Ceiling is allocated to Qualified Nonprofit Organizations to satisfy the Nonprofit Set-Aside. If 10% is not met through the existing competitive process, then the Department will add the highest scoring Application by a Qualified Nonprofit Organization statewide until the 10% Nonprofit Set-Aside is met. Staff will ensure that at least 20% of the State Housing Credit Ceiling is allocated to Rural Developments. If this 20% minimum is not met through the existing competitive process, then the Department will add the highest scoring Rural Development Application statewide until the 20% Rural Development Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban Regional Allocation. Funds for the Rural Regional Allocation or Urban Regional Allocation within a region, for which there are no eligible feasible Applications, will be redistributed as provided in §49.6(c) of this chapter (relating to Redistribution of Credits). If the Department determines that an allocation recommendation would cause a violation of the \$2 million limit described in §49.5(b) of this chapter (relating to Credit Amount), the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting Set-Aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available Housing Tax Credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a waiting list, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive Housing Tax Credits are allocated within the period required by law. (§2306.6710(a) - (f); §2306.111)
- (h) **Underwriting Evaluation.** The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate allocation of Housing Tax Credits. In making this determination, the Department will use the Underwriting Rules and Guidelines found in §1.32 of this title. 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.
- (i) **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 in accordance with Chapter 60 of this title (relating to Compliance Administration), and will be evaluated in detail for eligibility under §49.4 of this chapter.
- (j) **Site Evaluation.** Site conditions shall be evaluated through a physical site inspection by the Department or its assigns. Such inspection will evaluate the Development Site based upon the criteria set forth in the Site Evaluation form. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, 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 TRDO-USDA Set-Aside, the Department may rely on the physical site inspection performed by TRDO-USDA.
- (k) **Application Process for Rural Rescue Applications under the 2012 Credit Ceiling.** The Rural Rescue Applications will be reviewed according to the process outlined in this subsection.
- (1) **Submission Requirements.** Rural Rescue Applications may be submitted during the Rural Rescue Application Submission Period as identified in §49.3 of this chapter. A complete

- Application must be submitted at least sixty (60) days prior to the date of the Board meeting at which the Applicant would like the Board to act on the proposed Development. Applications must include the full Application Fee as further described in §49.14 of this chapter. Applicants must submit documents in accordance with the application checklist provided in the Tax Credit (Procedures) Manual for all Volumes, including Volume IV.
- (A) Applications will be processed on a first-come, first-served basis. Applications unable to meet all Administrative Deficiency and underwriting requirements within thirty (30) days of the request by the Department, will remain under consideration, but will lose their submission status and the next Application in line will be moved ahead in order to expedite those Applications ready to proceed. Applications for Rural Rescue will be processed and evaluated as described in this paragraph. Applications will be reviewed to ensure that the Application is eligible as a rural "rescue" Development as described in paragraph (2) of this subsection.
- (B) Prior to the Development being recommended to the Board, TRDO-USDA shall provide the Department with a copy of the physical site inspection report performed by TRDO-USDA, if applicable.
- (2) **Eligibility and Threshold Review.** All Rural Rescue Applications will be reviewed pursuant to §49.8 and §49.9 of this chapter. Additional eligibility requirements include the criteria listed in subparagraphs (A) - (C) of this paragraph. Applications found to be ineligible will be notified.
- (A) Applications must be funded through TRDO-USDA;
- (B) Applications must be able to provide evidence that the loan:
- (i) has been foreclosed and is in the TRDO-USDA inventory; or
  - (ii) is being foreclosed; or
  - (iii) is being accelerated; or
  - (iv) is in imminent danger of foreclosure or acceleration; or
  - (v) is for an Application in which two adjacent parcels are involved, of which at least one parcel qualifies under clauses (i) - (iv) of this subparagraph and for which the Application is submitted under one ownership structure, one financing plan and for which there are no market rate units; and
- (C) Applicants must be identified as in compliance with TRDO-USDA regulations.
- (3) **Selection Criteria Review.** All Rural Rescue Applications will be evaluated against the Selection Criteria pursuant to §49.9 of this chapter and a score will be assigned to the Application. The minimum score for Selection Criteria as identified in §49.9(a) of this chapter is not required to be achieved to be eligible.
- (4) **Credit Ceiling and Applicability of this chapter.** All Rural Rescue Applicants will receive their credit allocation out of the 2012 Credit Ceiling and therefore, will be subject to the rules and guidelines identified in the 2012 Qualified Allocation Plan (QAP). However, because the 2012 QAP will not be in effect during the time period that the Rural Rescue Applications can be submitted, Applications submitted and eligible under the Rural Rescue Set-Aside will be considered to have satisfied the requirements of the 2012 QAP by having satisfied the requirements of the 2011 QAP, to the extent permitted by statute.
- (5) **Procedures for Recommendation to the Board.** Consistent with subsection (c) of this section, staff will make its recommendation to the Committee. The Committee will make Commitment recommendations to the Board. Staff will provide the Board with a written, documented recommendation which will address at a minimum the financial and programmatic viability of each Application and a breakdown of which Selection Criteria were met by the Applicant. The Board will make its decision based on §49.10(a) of this chapter (relating to Board Decisions). Any award made to a Rural Rescue Development will be credited against the TRDO-USDA Set-Aside for the 2011 Application Round, as required under subsection (g)(3) of this section.

- (6) **Limitation on Allocation.** No more than \$350,000 in credits will be forward committed from the 2011 State Housing Credit Ceiling. To the extent Applications are received that exceed the maximum limitation; staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

#### §49.8. Threshold Criteria.

The Threshold Criteria listed in this section are mandatory requirements that must be submitted at the time of Application submission unless specifically indicated otherwise. If any of the Threshold Criteria indicated below are not resolved, clarified or corrected to the satisfaction of the Department, through the Administrative Deficiency process the Application will be terminated.

- (1) **Submission of the Application.** Includes the entire Uniform Application and any other supplemental forms which may be required by the Department and in the format prescribed by the Department. (§2306.1111)
- (2) **Governing Body Resolutions.** The following resolutions, if applicable to the proposed Development, must be submitted by the Resolutions Delivery Date as indicated in §49.3 of this chapter (relating to Program Calendar) and may not be more than one year old from the date the Volume 1 is submitted to the Department.
- (A) **Twice the State Average.** If the Development is located in a municipality or in a valid Extra Territorial Jurisdiction (ETJ) of a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board) the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must reference this rule and authorize an allocation of Housing Tax Credits for the Development; (§2306.6703(a)(4))
- (B) **One Mile Three Year Rule.** If the Applicant proposes to construct a Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))
- (i) Serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and
  - (ii) has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Volume I is submitted); and
  - (iii) has not been withdrawn or terminated from the Housing Tax Credit Program;
  - (iv) 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. §§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. §§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 Governing Body, of the Unit of General 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) - (C) of this paragraph.
  - (v) In determining when an existing Development received an allocation 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. In dealing with ties between two or more Developments as it relates to this rule, refer to §49.9(b) of this chapter (relating to Selection Criteria).
- (C) **Developments in Certain Census Tracts.** Staff will not recommend and the Board will not allocate Housing Tax Credits for a Competitive Housing Tax Credit or Tax-Exempt Bond Development located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract as established by the U.S. Census Bureau for the most recent Decennial Census unless:
  - (i) The Development is in a Place whose population is less than 100,000;
  - (ii) The Applicant proposes only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or
  - (iii) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development. These ineligible census tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.
- (3) **Rehabilitation Costs.** Developments involving Rehabilitation must establish that the Rehabilitation will substantially improve the condition of the housing and will involve at least \$15,000 per Unit in direct hard costs (including site work, contingency, contractor profit, overhead, and general requirements) unless financed with TRDO-USDA in which case the minimum is \$9,000.
- (4) **Experience Certification.** No later than the Experience Certification Delivery Date as indicated in §49.3 of this chapter, an Applicant must submit the documents required in this section to obtain the required certification. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in its Application(s). Experience must meet the criteria of both subparagraphs (A) and (B) of this paragraph with evidence of such provided as stated in subparagraphs (C) and (D) of this paragraph.
  - (A) One of the Principals of the Development Owner, General Partner, Developer or the General Contractor must provide evidence reasonably acceptable to the Department that they have acquired actual experience through previous participation in and subsequent completion of comparable residential units (single family, multifamily) as demonstrated by the submission of a housing tax credit Application, receipt of award, submission of post award activities (Commitment, Carryover, 10% test, etc.), construction oversight, lease-up, stabilization, and receipt of IRS Forms 8609. Executive Directors of non-profits and public housing authorities may qualify for this experience requirement; and
  - (B) The Principal requesting the certificate must have experience with the same type of construction as the Application is proposing (single family, multifamily, new construction, rehabilitation, etc.) and have acquired their experience in connection with a development with at least 80% as many units as the Units in the Development for which Application is being made, in no event less than 36 units. The Department will, in issuing an Experience Certificate, state any limitations. Persons who establish that they have participated in the development of 200 units or more will not be further restricted by size. Experience of multiple parties may not be aggregated. Rehabilitation experience must have been substantial and involved at least \$15,000 of direct cost per Unit.

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- (C) Evidence for experience must clearly indicate that:
- (i) the Principal was a Principal of the Development Owner, General Partner or Developer (of the Development submitted as experience) during the complete specified timeframe and process as identified in subparagraph (A) of this paragraph; and
  - (ii) the Development has been completed (as evidenced by the number of Units completed); and
  - (iii) 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
- (D) One or more of the following documents must be submitted as evidence of completion of the development:
- (i) American Institute of Architects (AIA) Document A111 - Standard Form of Agreement between Owner & Contractor;
  - (ii) AIA Document G704 - Certificate of Substantial Completion;
  - (iii) AIA Document G702 - Application and Certificate for Payment;
  - (iv) Certificate of Occupancy;
  - (v) IRS Form 8609, (only one for per development is required);
  - (vi) HUD Form 9822;
  - (vii) Development agreements;
  - (viii) Partnership agreements; or
  - (ix) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience.
- (5) **Certifications.** The "Certification Form" provided in the Application confirming the following items:
- (A) A certification of the basic common amenities selected for the Development. All Developments must meet at least the minimum threshold of points based on the total number of Units in the Development. These points are not associated with the Selection Criteria points in §49.9(a) of this chapter. 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 satisfy this requirement. Developments proposing Rehabilitation (excluding Reconstruction) or proposing Single Room Occupancy will receive 1.5 points for each point item (do not round). Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §49.13(b) of this chapter (relating to Amendments) 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, Determination Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.
- (i) Applications must meet a minimum threshold of points as follows:
    - (I) Total Units are less than 16, 1 point is required to meet Threshold;
    - (II) Total Units are 17 to 24, 3 points are required to meet Threshold;
    - (III) Total Units are 25 to 40, 4 points are required to meet Threshold;
    - (IV) Total Units are 41 to 76, 7 points are required to meet Threshold;
    - (V) Total Units are 77 to 99, 10 points are required to meet Threshold;
    - (VI) Total Units are 100 to 149, 13 points are required to meet Threshold;
    - (VII) Total Units are 150 to 199, 16 points are required to meet Threshold; or
    - (VIII) Total Units are 200 or more, 19 points are required to meet Threshold;
  - (ii) The amenities include those items listed in subclauses (I) - (XXVI) of this clause. Both general population and Qualified Elderly Developments can earn points for providing
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each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraphs (D) and (F) of this paragraph. 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. The Applicant is instructed to review Chapter 60 of this title (relating to Compliance Administration) for detailed definitions and standards as it relates to the amenities listed in this subparagraph;

- (I) Full perimeter fencing (2 points);
- (II) Controlled gate access (2 points);
- (III) Gazebo w/sitting area (1 point);
- (IV) Accessible walking/jogging path separate from a sidewalk (1 point);
- (V) Community laundry room with at least one washer and dryer for each 25 Units (1 point);
- (VI) Barbecue grill and picnic table-at least one of each for every 50 Units (1 point);
- (VII) Covered pavilion that includes barbecue grills and tables (2 points);
- (VIII) Swimming pool (3 points);
- (IX) Furnished fitness center (2 points);
- (X) Equipped and functioning business center or equipped computer learning center (2 points);
- (XI) Furnished Community room (1 point);
- (XII) Library with an accessible sitting area (separate from the community room) (1 point);
- (XIII) Enclosed community sun porch or covered community porch/patio (2 points);
- (XIV) Service coordinator office in addition to leasing offices (1 point);
- (XV) Senior Activity Room (Arts and Crafts, etc.) (2 points);
- (XVI) Health Screening Room (1 point);
- (XVII) Secured Entry (elevator buildings only) (1 point);
- (XVIII) Horseshoe pit, putting green or shuffleboard court (1 point);
- (XIX) Community Dining Room w/full or warming kitchen (3 points);
- (XX) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point);
- (XXI) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);
- (XXII) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (XXIII) Furnished and staffed Children's Activity Center (3 points);
- (XXIV) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);
- (XXV) Dog Park (2 points); or
- (XXVI) Green Building amenities that include the following:
  - (-a-) Development Energy Savings (1 point for each item):
    - (-1-) at least 50% of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved gray water collection system; or
    - (-2-) native trees and plants installed that are appropriate to the site's soils and microclimate and located to allow for shading in the summer and heat gain in the winter;
  - (-b-) Tenant Energy Savings (2 points for each item):
    - (-1-) On-site photovoltaic panels or wind-driven turbines for generating at least 5kW of electricity that are incorporated into the engineered structural design of the roof(s) and neither of which protrude from any roof structure by more than 8 feet and are designed and wired to supplement the Development's

- electric power. Photographs and data sheets of the proposed equipment must be submitted with the Application;
- (-2-) If the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west-facing walls; and the east-west axis of the building is within 15 degrees of due east-west;
  - (-3-) If the east-west axis of the building oriented within 15 degrees of due east-west utilizes a narrow floor plate (less than 40 feet) and single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation;
  - (-4-) 100% of HVAC condenser units are located so they are fully shaded 75% of the time during summer months (May through August);
  - (-5-) Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west; applies only to rehabilitation where windows are not replaced with Energy Star rated windows;
  - (-6-) Install low-flow or high efficiency toilets that exceed State requirements;
  - (-7-) Install bathroom lavatory faucets, showerheads and kitchen faucets that exceed the State standard. All fixtures throughout the Development must meet the standard at the time of Application. Rehabilitation Developments may install compliant faucet aerators instead of replacing entire faucets;
  - (-8-) Provide solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire Development;
  - (-9-) Sub-metered utility meters for any utility in a Rehabilitation Development which was not already sub-metered at the time of Application;
  - (-10-) If the Development uses Energy-Star qualified windows and glass doors exclusively; insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and Energy Star rated HVAC, and domestic hot water heaters, and insulation that exceeds Energy Star standards;
  - (-11-) If the Development promotes energy efficiency by demonstrating a certified HERS score of 85 or lower;
  - (-12-) Thermally and draft efficient doors (SHGC of 0.40 or lower (for doors with glass) and U-value specified by climate zone according to the 2006 IECC) (2 points); or
  - (-13-) Recycling service provided throughout the compliance period;
- (-c-) Other Green Features/Indoor Health (1 point for each item):
- (-1-) Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation;
  - (-2-) Healthy flooring, provide at least one of the following for 50% of flooring: finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum seven (7) year wear through warranty; or
  - (-3-) Healthy finish materials, use paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;
- (-d-) LEED (Leadership in Energy and Environmental Design) Certification. If at the time of Cost Certification a LEED Certification (Certified, Silver,

Gold or Platinum levels) for the Development is obtained then the maximum points allowed under this paragraph will be awarded and none of the green building amenities selected under this paragraph will need to be substantiated. Conversely, if at the time of Cost Certification a LEED Certification has not been obtained then the Applicant will be required to prove up 6 points under this subparagraph;

- (B) A certification that the Development will meet the minimum threshold for size of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with the points in §49.9(a)(4) of this chapter. Developments proposing Rehabilitation (excluding Reconstruction) or Single Room Occupancy will not be subject to the requirements of this subparagraph.
- (i) 550 square feet for an Efficiency Unit;
  - (ii) 650 square feet for a one Bedroom Unit that is not in a Qualified Elderly Development; 550 square feet for a one Bedroom Unit in a Qualified Elderly Development;
  - (iii) 900 square feet for a two Bedroom Unit that is not in a Qualified Elderly Development; 700 square feet for a two Bedroom Unit in a Qualified Elderly Development;
  - (iv) 1,000 square feet for a three Bedroom Unit; and
  - (v) 1,200 square feet for a four Bedroom Unit;
- (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 to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.
- (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. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))
- (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 until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)
- (F) Pursuant to §2306.6722 of the Texas Government Code, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from the Development engineer, an accredited architect or Department-approved third party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C, and this subparagraph. (§2306.6722 and §2306.6730)

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- (G) For Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.
- (H) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))
- (I) A certification that the Development will be built by a 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.
- (J) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 of the Texas Government Code and as further described in §1.37 of this title (relating to Reserve for Replacement Rules and Guidelines).
- (K) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of §49.9(a)(2) of this chapter, has not given money or a gift to cause the Neighborhood Organization to take its position of support or opposition, nor has provided any assistance to a Neighborhood Organization outside of the assistance allowed under §49.9(a)(2)(A)(viii) to meet the requirements under §49.9(a)(2) of this chapter as it relates to the Applicant's Application or any other Application under consideration in 2011.
- (L) Operate in accordance with the requirements pertaining to rental assistance in Chapter 60 of this title.
- (M) A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households.
- (N) A certification that the Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.
- (O) A certification that the Applicant, Development Owner, Developer or Guarantor involved with the Application has not been voluntarily or involuntarily removed from a rent or income restricted multifamily Development by a lender, equity provider, or other investors or owners as a Principal during the previous ten (10) years, however designated, or any combination thereof or if any litigation to effectuate such removal has been instituted and is continuing at the time of Application. If an Applicant or Developer signs the certification, 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.

- (6) **Architectural Drawings.** 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 subparagraphs (A) - (C) of this paragraph. For Developments involving Rehabilitation for which the Unit configurations are not being altered, only the items identified in subparagraphs (A) and (C) of this paragraph are required:
- (A) 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) Is consistent with the number of buildings and building type/unit mix specified in the "Building/Unit Configuration" provided in the Application;
    - (iii) Identifies all residential and common buildings; and
    - (iv) Clearly delineates the flood plain boundary lines and shows all easements;
  - (B) 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. Adaptive Reuse Developments, are only required to provide building plans delineating each Unit by number, type and area consistent with those in the "Rent Schedule" and pictures of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition; and
  - (C) Unit floor plans for each type of Unit. The Net Rentable Areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" and "Building/Unit Configuration" provided in the Application. Adaptive Reuse Developments, are only required to provide Unit floor plans for each distinct typical Unit type (i.e. one-bedroom, two-bedroom) and for all Unit types that vary in Net Rentable Area by 10% from the typical Unit.
- (7) **Development Costs, Corresponding Credit Request and Syndication Information.**
- (A) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period.
  - (B) 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.
  - (C) If projected site work costs (excluding ineligible demolition costs) include unusual or extraordinary items or exceed \$9,000 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.
- (8) **Readiness to Proceed.**
- (A) **Site Control.** Evidence of Site Control in the name of the 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 of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided:
    - (i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or
    - (ii) A contract for lease (the minimum term of the lease must be at least forty-five (45) years) which is valid for the entire period the Development is under consideration for tax credits; or

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- (iii) A contract for sale, an exclusive option to purchase or a lease which is valid for the entire period the Development is under consideration for tax credits by the same Development Owner, Applicant or Affiliate as indicated at pre-application. For Tax Exempt Bond Development Applications, site control must be valid through December 1, 2010 with option to extend through March 1, 2011 (Applications submitted for lottery) or ninety (90) days from the date of the Certificate of Reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered (Applications not submitted for lottery). The potential expiration of Site Control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting. Proof of consideration, as specified in the contract, must be submitted.
  - (iv) If the acquisition can be characterized as an identity of interest transaction, as described in §1.32 of this title (relating to Underwriting Rules and Guidelines) subclauses (I) - (III) of this clause must be provided:
    - (I) Documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement specifically indicating the asset value for the Development Site; and
    - (II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the Application;
      - (-a-) An appraisal meeting the requirements of paragraph (14)(D) of this section; and
      - (-b-) Any other verifiable costs of owning, holding, or improving the Property that, when added to the value from subclause (I) of this clause, justifies the Applicant's proposed acquisition amount.
        - (-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense, capitalized costs of any physical improvements made to the property that benefit the proposed Development, the cost of rezoning, replatting and any off-site costs to provide utilities or improve access to the property that benefit the proposed Development. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the subject Development's award will be considered.
        - (-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the property, and the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the property and avoid foreclosure. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the subject Development's award will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include operating expenses, including, but not limited to, property taxes and interest expense.
    - (III) In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) of this clause

plus costs identified in subclause (II)(-b-) of this clause, or the "as-is" value conclusion evidenced by subclause (II)(-a-) of this clause. The resulting acquisition cost will be referred to as the "identity of interest adjusted acquisition cost."

- (B) **Zoning.** Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period. (§2306.6705(5))
- (i) For New Construction, Adaptive Reuse or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that:
    - (I) The Development is located within the boundaries of a Unit of General Local Government which does not have a zoning ordinance; and either subclause (II) or (III) of this clause;
    - (II) The letter must state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or
    - (III) The letter must state that there is a need for affordable housing, if no such planning document exists;
  - (ii) For New Construction or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government 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
    - (II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the Unit of General Local Government a release agreeing to hold the Unit of General Local Government and all other parties harmless in the event that the appropriate zoning is denied. (§2306.6705(5)(B)) Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice. No extensions may be requested to the deadline for submitting evidence of final approval of appropriate zoning.
  - (iii) For Rehabilitation Developments, documentation of current zoning is required. If the property is currently a non-conforming use as presently zoned, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction which addresses the items in subclauses (I) - (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) **Financing Requirements.**
- (i) 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. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to this chapter must be identified in the "Rent Schedule" and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the Housing Tax Credit LURA and monitored throughout the extended use period. 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 subclauses (I) - (IV) of this clause:

- (I) Financing is in place as evidenced by:
    - (-a-) A valid and binding loan agreement; and
    - (-b-) Deed(s) of trust in the name of the Development Owner as grantor; or
    - (-c-) For TRDO-USDA §515 Developments involving, an executed TRDO-USDA letter indicating TRDO-USDA has received a notification of the tax credit Application; or
  - (II) 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 includes the following as identified in items (-a-) - (-d-) of this subclause:
    - (-a-) Has been executed by the lender; and
    - (-b-) A minimum loan term of fifteen (15) years with at least a thirty (30) year amortization; and
    - (-c-) An expiration date; and
    - (-d-) All the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate, any required Guarantors, and anticipated developer fees paid during construction and anticipated deferred developer fees. 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 as evidenced by:
    - (-a-) A term sheet or commitment from the lending agency which clearly describes the amount and terms of the funding must be submitted. If applying for points under §49.9(a)(5) of this chapter then documentation must be submitted as required by the deadlines stated therein; and
    - (-b-) 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 checklist in the Tax Credit (Procedures) Manual; and
  - (IV) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from a 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 six (6) months prior to the close of the Application Acceptance Period;
- (ii) 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; and (§2306.6705(1))
  - (iii) Provide a term sheet or 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, anticipated developer fees paid during construction and anticipated deferred developer fees,

syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

- (D) **Tax Assessment and Title.** Provide the documents in clauses (i) and (ii) of this subparagraph:
- (i) A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the Development Site (unless the site is located on land that is not subject to federal, state or local property taxes); and
  - (ii) A copy of:
    - (I) The current title policy (or title status report if on Tribal Land) including a legal description which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or
    - (II) a current title commitment including a legal description, with the proposed insured matching the name of the Development Owner and the title of the Development Site vested in the name of the seller or lessor as indicated on the sales contract, option or lease;
    - (III) If the title policy, title status report, or commitment is more than six (6) months old as of the day the Application Acceptance Period closes, then a letter from the title company/Bureau of Indian Affairs indicating that nothing further has transpired on the policy, title status report or commitment must be provided.
- (9) **Notifications.**
- (A) **Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in clauses (i) - (iii) of this subparagraph.** Notification must not be older than three (3) months from the first day of the Application Acceptance Period. (§2306.6705(9)) If evidence of these notifications was submitted with the pre-application for the same Application and satisfied the Department's review of Pre-application Threshold, then no additional notification is required at Application. However, re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10%, a total increase of greater than 10% for any given level of AMGI, or a change to the population being served (elderly or general). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three (3) months prior to the date the Volume III of the Application is submitted.
- (i) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:
    - (I) No later than the Full Application Neighborhood Organization Request Date as identified in §49.3 of this chapter, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

- (II) If no reply letter is received from the local elected officials by the Full Application Response to Neighborhood Organization Request Date, then the Applicant must certify to that fact in the certification form provided in the Application;
  - (III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the submission of the Application, in the certification form provided in the Application.
- (ii) No later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are required to notify county officials. Evidence of notification is required in the form of a certification provided in the Application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entities prescribed in subclauses (I) - (IX) of this clause, in the event that the Department requires proof of notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Application is submitted.
- (I) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph;
  - (II) Superintendent of the school district containing the Development;
  - (III) Presiding officer of the board of trustees of the school district containing the Development;
  - (IV) Mayor of 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.
- (iii) Each such notice must include, at a minimum, all of the following:
- (I) The Applicant's name, address, individual contact name and phone number;
  - (II) The Development name, address, city and county;
  - (III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs (TDHCA);
  - (IV) Statement of whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
  - (V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family or elderly);
  - (VI) The approximate total number of Units and approximate total number of low-income Units;
  - (VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate 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 the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Application, which are subject to change as annual changes in the area median income occur; and
    - (IX) The expected completion date if credits are awarded.
  - (B) **Signage on Property or Alternative.** A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted, as evidenced in the Certification of Notification provided in the Application, unless prohibited by local ordinance or code or restrictive covenants. Scattered site Developments must install a sign on each non-contiguous Development Site. The sign must identify that a residential development is being proposed and must provide contact information for the Applicant in the form of a phone number or web address where they can obtain more information. The Applicant shall make reasonable efforts to maintain the sign on the site until the day that the Board takes final action on the Application for the Development. In areas where the Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, 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. 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 Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, evidence of the applicable ordinance or code or restrictive covenant must be submitted in the Application.
    - (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.
  - (C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications.
- (10) **Development's Proposed Ownership Structure.**
  - (A) 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. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.
  - (B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, shall provide for entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of name reservation of the entity name from the Texas Office of the Secretary of State.

- (C) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive directors is 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 2011 versions of these forms, as required in the Uniform Application, must be submitted. Units of General 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.
- (D) The experience certification, as further described under paragraph (4) of this section, is submitted that reflects a Person that appears in the organizational chart provided in subparagraph (A) of this paragraph.
- (11) **Development's Projected Income and Operating Expenses.**
- (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 or proof of application for such 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(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;
- (D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (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 the Applicant's 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 twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;
- (-b-) The two (2) most recent consecutive annual operating statement summaries;
- (-c-) The most recent consecutive six (6) months of operating statements and the most recent available annual operating summary;
- (-d-) All monthly or annual operating summaries available; and
- (II) A rent roll not more than six (6) months old as of the first day the Application Acceptance Period, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;
- (ii) A written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))
- (iii) For Qualified Elderly Developments, identification of the number of existing tenants qualified under the target population elected under this title;
- (iv) A relocation plan outlining relocation requirements and a budget with an identified funding source; and (§2306.6705(6))

- (v) If applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))
- (12) **Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.** All Applications under the State Housing Credit Ceiling involving a nonprofit General Partner, regardless of whether the Nonprofit Set-Aside was selected, in which the Development will receive some financial or tax benefit for the involvement of the nonprofit General Partner, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Tax-Exempt Bond Applications only need to submit the information in subparagraphs (A) and (B) of this paragraph.
- (A) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;
- (B) The "Nonprofit Participation Exhibit" as provided in the Application;
- (C) 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 non-profit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must be the controlling managing member; and otherwise meet the requirements of §42(h)(5) of the Code; and
- (iii) That one of the exempt purposes of the nonprofit organization is to provide low-income housing; and
- (iv) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board; and
- (v) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and
- (D) A copy of the nonprofit organization's most recent audited financial statement; and
- (E) 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 ninety (90) miles from the Development, if the Development is not located in a Rural Area.
- (13) **Authorization to Release Credit Information.** The authorization to release credit information must be unbound and clearly labeled. An "Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of 10% or more 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.
- (14) **Supplemental Threshold Reports.** The Third Party reports as required in this section must meet the requirements stated in subparagraphs (A) - (F) of this paragraph. The Environmental Site Assessment, Property Condition Assessment and Appraisal (if applicable) must be submitted on or before the Third Party Report Delivery Date as identified in §49.3 of this chapter. The Market Analysis Report must be submitted on or before the Market Analysis Delivery Date as identified in §49.3 of this chapter. If the entire report is not received by that time, the Application will be terminated and will be removed from consideration. A searchable electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name, and Development location are required.

- (A) **A Phase I Environmental Site Assessment (ESA) Report (required for all Developments):**
- (i) Prepared by a qualified Third Party;
  - (ii) Dated not more than twelve (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 twelve (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 not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report;
  - (iii) Prepared in accordance with §1.35 of this title (relating to Environmental Site Assessment Rules and Guidelines);
  - (iv) Developments whose funds have been obligated by TRDO-USDA 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; and
  - (v) If the report includes a recommendation that an additional assessment be performed then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.
- (B) **A comprehensive Market Analysis Report (required for all Developments):**
- (i) Prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §1.33 of this title (relating to Market Analysis Rules and Guidelines);
  - (ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than six (6) months old prior to 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 twelve (12) months old as of the first day of the Application Acceptance Period;
  - (iii) Prepared in accordance with the methodology prescribed in §1.33 of this title; and
  - (iv) For Applications in the TRDO-USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §1.34 of this title (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however the Department may request additional information as needed. (§2306.67055, §42(m)(1)(A)(iii))
- (C) **A Property Condition Assessment (PCA) Report (required for Rehabilitation, Reconstruction and Adaptive Reuse Developments):**
- (i) Prepared by a qualified Third Party;
  - (ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period;
  - (iii) Prepared in accordance with §1.36 of this title (relating to Property Condition Assessment Guidelines); and
  - (iv) For Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §1.36 of this title.

- (D) **An appraisal report (required for Rehabilitation Developments and Identity of Interest transactions pursuant to §1.34 of this title):**
- (i) Prepared by a qualified Third Party;
  - (ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than twelve (12) months old as of the first day of the Application Acceptance Period;
  - (iii) Prepared in accordance with the §1.34 of this title; and
  - (iv) For Developments that require an appraisal from TRDO-USDA, the appraisal may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.
- (E) 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. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.
- (F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's 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 report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

#### §49.9. Selection Criteria.

- (a) All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, do not round calculations. Points other than those provided in paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form. All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 130, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: 226.
- (1) **Financial Feasibility.** (§2306.6710(b)(1)(A)) Applications may qualify to receive a maximum of 28 points for this item. Receipt of feasibility points under this paragraph 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 all possible points under this paragraph. Evidence will include the following in addition to the commitment letter required under subsection §49.8(8)(C) of this chapter (relating to Threshold Criteria). To qualify for 20 points the supporting financial data shall include:
- (A) A fifteen (15) year pro forma prepared by the permanent or construction lender:
- (i) Specifically identifying each of the first five (5) years and every fifth year thereafter;
  - (ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and
  - (iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen (15) years proposed for all third party lenders that require scheduled repayment; and

- (B) A statement in the commitment letter, or other form deemed acceptable by the Department, indicating that the lender's assessment finds that the Development will be feasible for fifteen (15) years.
  - (C) For Developments maintaining existing financing from TRDO-USDA, a current note balance must be provided or other form of documentation of the existing loan deemed acceptable by the Department to meet the requirements of this section.
  - (D) To qualify for an additional 8 points, the commitment letter from the permanent or construction lender must indicate that they have reviewed the Applicant's financial position and credit worthiness and have determined that the Applicant meets the financial liquidity or net worth standards that such lender would require in connection with the proposed Development. Furthermore, the letter must describe those standards that such lender would require in connection with the proposed Development. If at any time the Application is under consideration by the Department and the lender changes, the Applicant must provide a subsequent letter from the new lender addressing net worth and liquidity under the new lender's standards in order to remain eligible for the additional 8 points.
- (2) **Quantifiable Community Participation.** (§2306.6710(b)(1)(B); §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. It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under §49.8(9) of this chapter if the organization provides the information and documentation required in subparagraphs (A) and (B) of this paragraph. It is also possible that Neighborhood Organizations 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. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph (11)(B) of this subsection.
- (A) **Submission Requirements.** Each Neighborhood Organization may submit the form as included in the QCP Neighborhood Information Packet that represents the organization's input. In order to receive a point score, the form must be received, by the Department, or postmarked, if mailed by the U.S. Postal Service, no later than the Quantifiable Community Participation Delivery Date as identified in §49.3 of this chapter (relating to Program Calendar). Forms received after the deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The form must:
- (i) State the name and location of the proposed single Development;
  - (ii) Certify that the letter is signed by two officials or board members of the Neighborhood Organization with the authority to sign on behalf of the Neighborhood Organization, and include:
    - (I) the street and/or mailing addresses for the signers of the letter;
    - (II) day and evening phone numbers for the signers of the letter;
    - (III) email addresses and/or facsimile numbers for the signers of the letter and one additional contact for the organization; and
    - (IV) a written description and map of the organization's geographical boundaries;
  - (iii) Certify that the organization has boundaries, and that the boundaries in effect on or before the Full Application Delivery Date identified in §49.3 of this chapter contain the proposed Development Site;
  - (iv) Certify that the organization meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood (§2306.004(23-a)). For

- purposes of this section, "persons living near one another" means two (2) or more separate residential households. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or Reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations;
- (v) Include documentation showing that the organization is on record as of the Full Application Delivery Date with the state or county in which the Development is proposed to be located. The receipt of the QCP form that meets the requirements of this subsection and further outlined in the QCP Neighborhood Information Packet will constitute being on record with the State. The Department is permitted to issue an Administrative Deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state;
  - (vi) A Neighborhood Organization must take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization of that right. Examples of reasonable measure would be giving notice in a newsletter distributed where residents will likely see them; posting notice (in compliance with local signage requirements); or distribution flyers. The Department may exclude from consideration Neighborhood Organizations that do not comply with their own bylaws or other constitutive or governing documents;
  - (vii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the Developer or Applicant to this meeting; and
  - (viii) The form from the Neighborhood Organization for the purposes of this subsection must be submitted to the Department by the Neighborhood Organization and not the Applicant. This documentation must be submitted independent of the Application. Furthermore, while the Applicant may assist the Neighborhood Organization in the Administrative Deficiency process or any other request from the Department as it relates to this item, the Administrative Deficiency Notice from the Department will be issued to the Neighborhood Organization with a copy to the Applicant; however, the Deficiency response must be submitted to the Department directly by the Neighborhood Organization.
- (B) Scoring. The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.
- (i) The score awarded for each letter for this exhibit will be based on the following:
    - (I) Support letters (must establish at least one reason for support) will receive 24 points; or
    - (II) Letters that do not establish a reason for support or opposition or that are unclear will be considered ineligible and scored as neutral (+12 points);
    - (III) Applications for which no letters from Neighborhood Organizations are scored will receive a neutral score of +12 points;
    - (IV) Opposition letters (must state at least one reason for opposition) will receive 0 points;
    - (V) If an Application receives multiple eligible letters, the average score of all eligible letters will be applied to the Application.
  - (ii) The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and Neighborhood Organizations for more information. The Department may consider any relevant information specified

- in letters from other Neighborhood Organizations regarding a Development in determining a score.
- (iii) The Department highly values quality public input addressed to the merits of a Development. Input that identifies 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 concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the Neighborhood Organization refuses to communicate with the Applicant the efforts of the Applicant will not be considered negative. Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered.
- (3) **The Income Levels of Tenants of the Development.** (§§2306.111(g)(3)(B); 2306.111(g)(3)(E); 2306.6710(b)(1)(C); 2306.6710(e); and §42(m)(1)(B)(ii)(I)) Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (C) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level (must round to the next highest whole Unit, no less than one Unit). The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code.
- (A) 22 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Low-Income Units are at or below 30% of AMGI; or
- (B) 20 points if at least 60% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI.
- (C) 18 points if at least 10% of the Low-Income Units in the Development are set-aside with incomes at or below 30% of AMGI; or
- (4) **The Size and Quality of the Units** (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)). Applications may qualify to receive up to 20 points under both subparagraphs (A) and (B) of this paragraph.
- (A) **Size of the Units (6 points).** The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), Developments receiving funding from TRDO-USDA, or Developments proposing Single Room Occupancy without meeting these square footage minimums if requested in the Self Scoring Form. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted in clauses (i) - (v) of this subparagraph. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted in clauses (i) - (v) of this subparagraph, will be re-evaluated and may result in a reduction of the Application score.
- (i) 600 square feet for an Efficiency Unit;
- (ii) 700 square feet for a one Bedroom Unit that is not in a Qualified Elderly Development; 600 square feet for a one Bedroom Unit in a Qualified Elderly Development;

- (iii) 950 square feet for a two Bedroom Unit that is not in a Qualified Elderly Development; 750 square feet for a two Bedroom Unit in a Qualified Elderly Development;
    - (iv) 1,050 square feet for a three Bedroom Unit; and
    - (v) 1,250 square feet for a four Bedroom Unit.
  - (B) Quality of the Units (14 points). Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) - (xvi) of this subparagraph. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation (excluding Reconstruction) or Single Room Occupancy may receive 1.5 points for each point item (do not round).
    - (i) Covered entries (1 point);
    - (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);
    - (iii) Microwave ovens (1 point);
    - (iv) Self-cleaning or continuous cleaning ovens (1 point);
    - (v) Refrigerator with icemaker (1 point);
    - (vi) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);
    - (vii) Laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (3 points);
    - (viii) Thirty (30) year architectural shingle roofing (1 point);
    - (ix) Covered patios or covered balconies (1 point);
    - (x) Covered parking (including garages) of at least one covered space per Unit (2 points);
    - (xi) 100% masonry on exterior (3 points) (Applicants may not select this item if clause (xii) of this subparagraph is selected);
    - (xii) Greater than 75% masonry on exterior (1 point) (Applicants may not select this item if clause (xi) of this subparagraph is selected);
    - (xiii) Structural Insulated Panel construction with wall insulation at a minimum of R-20 and roof at a minimum R-30 (3 points);
    - (xiv) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (3 points);
    - (xv) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (3 points); or
    - (xvi) High Speed Internet service to all Units (2 points).
- (5) **The Commitment of Development Funding by Governmental Instrumentality.** (§2306.6710(b)(1)(E)) Applications may qualify to receive up to 18 points under this paragraph.
  - (A) Submission Requirements. Evidence of the following must be submitted in accordance with the application checklist in the Tax Credit (Procedures) Manual.
    - (i) The loans, grant(s) or in-kind contribution(s) must be attributed to the total number of Units in the Development.
    - (ii) An Applicant may submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form.
    - (iii) An Applicant may substitute any source in response to an Administrative Deficiency Notice or after the Application has been submitted to the Department.
    - (iv) A loan does not qualify as an eligible source unless it has a minimum term of the later of 1-year or the Placed in Service date, and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of loan closing).
    - (v) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar

contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to §49.8(8)(A) of this chapter to qualify. The value of in-kind contributions may only include the time period between award or August 2, 2011 and the Development's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant to clause (viii) of this subparagraph will be counted. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

- (vi) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Governing Body of the Unit of General Local Government in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Unit of General Local Government in applying for HOME Funds from TDHCA for the particular Application.
- (vii) Development based rental subsidies may qualify under this section if evidence of the remaining value of the contract remaining as of December 31st of the application year is submitted from the Governmental Instrumentality. The value of the contract does not include past subsidies.
- (viii) Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity; or a letter from the funding entity indicating that the award of funds with respect to the funding cycle for which the Applicant intends to apply for will be made by August 1, 2011. This letter does not have to confirm that the funds will be awarded to the subject Application, but that awards with respect to the Applications under consideration for the funding cycle will be announced by the previously stated deadline. A statement from the Applicant with respect to the loan amount to be applied for and the specific terms requested or to be requested must be submitted. For in-kind contributions, evidence must be submitted in the Application from the Unit of General Local Government substantiating the value of the in-kind contributions. For in-kind contributions of land, evidence of the value of the contribution must be in the form of an appraisal.
- (ix) If not already provided, at the time the executed Commitment is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the Governing Body of the Unit of General Local Government, or its designee or agent, for the Development Funding to the Department. If the funding commitment from the Governmental Instrumentality has not been received by the date the Department's Commitment is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the

- Application noncompetitive, the Commitment will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Governmental Instrumentalities Development Funding, the Commitment will be rescinded and the credits reallocated.
- (x) Funding commitments from a Governmental Instrumentality will not be considered final unless the Governmental Instrumentality attests to the fact that any funds committed were not first provided to the Governmental Instrumentality by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Governmental Instrumentality or subsidiary.
- (B) Scoring. Points will be determined on a sliding scale based on the amount of funds to be made available to the Development on a per unit basis, based on the total number of Units in the Development. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying loan(s), grants or in-kind contributions from a Governmental Instrumentality pursuant to subparagraph (A) of this paragraph.
- (i) A total contribution of at least \$900 (or \$450 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 6 points; or
  - (ii) A total contribution of at least \$2,250 (or \$1,125 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 12 points;
  - (iii) A total contribution equal to or greater than \$4,500 (or \$2,250 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 18 points.
- (6) **Community Support from State Representative or State Senator.** (§2306.6710(b)(1)(F) and §2306.6725(a)(2)) Applications may qualify to receive 14 points for this item. Letters must identify the specific Development, must clearly state support for or opposition to the specific Development and must be from the State Representative or State Senator that represents the district containing the proposed Development Site. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator on or before the Input from State Senator or Representative Delivery Date as identified in §49.3 of this chapter. A State Representative or State Senator may withdraw (in writing), but may not change or replace a letter that is submitted by the April 1st deadline on or before the Withdraw Deadline for State Senator or Representative Letters as identified in §49.3 of this chapter but may not submit a new letter. After the Withdraw Deadline such letters may not be withdrawn. The previous position of support or opposition that is withdrawn will be scored as neutral (0 points). State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the Application is submitted. Letters of support from State Representatives or Senators that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Support letters are +14 points; neutral letters, or letters that do not specifically refer to the Development, will receive 0 points; Opposition letters (must state reason for opposition) will receive -14 points. If one letter is received in support and one letter is received in opposition the score would be 0 points. A letter that does not directly express support but expresses it indirectly by inference, (i.e. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.
- (7) **The Rent Levels of the Units.** (§2306.6710(b)(1)(G)) Applications may qualify to receive up to 12 points for this item provided the Application has qualified for points under paragraph

- (3) of this subsection, relating to Income Levels of Tenants of the Development. An Application may qualify for points under this subsection by providing additional Low-Income Units at 30% and 50% of AMGI (must round up to the next whole Unit, not less than one Unit), as follows:
- (A) An Application may receive 2 points for every 5% of Low-Income Units at rents and incomes at 50% of AMGI; or
  - (B) An Application may receive 6 points for every 2.5% of Low-Income Units at rents and incomes at 30% of AMGI.
- (8) **The Cost of the Development by Square Foot.** (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) Applications may qualify to receive 10 points for this item. For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, 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). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a high rise building with four or more stories serving any population, the NRA may include elevator served interior corridors. If the proposed Development is a Single Room Occupancy Development, the NRA may include elevator served interior corridors and may include up to 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed \$95 per square foot for Qualified Elderly, single family design, transitional, and Single Room Occupancy Developments (transitional housing for the homeless and Single Room Occupancy units as provided in §42(i)(3)(B)(iii) and (iv) of the Code), unless located in a "First Tier County" in which case their costs do not exceed \$97 per square foot; and \$85 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed \$87 per square foot. The First Tier counties are identified in the Tax Credit (Procedures) Manual. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development Site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte.
- (9) **Tenant Services.** (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) Applications may qualify to receive up to 8 points for this item. The Applicant must certify that the Development will provide a combination of supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. 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. The same service may not be used for more than one scoring item. Applications will be awarded points for selecting services listed in subparagraphs (A) - (U) of this paragraph:
- (A) Joint use library center, as evidenced by a written agreement with the local school district (2 points);
  - (B) Weekday afterschool program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics (i.e. teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.)) (3 points);
  - (C) Daily transportation (2 point);
  - (D) Counseling services (only Supportive Housing Developments eligible) (1 point);
  - (E) Food pantry/common household items (only Supportive Housing Developments eligible) (1 point);
  - (F) GED preparation classes (shall include a certified instructor providing on-site coursework and exam) (2 points);

- (G) English as a second language classes (shall include a certified instructor providing on-site coursework and exam) (2 points);
  - (H) Quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom course is not acceptable (1 point);
  - (I) Annual health fair (1 point);
  - (J) Quarterly health and nutritional courses (1 point);
  - (K) Organized team sports programs or youth programs (1 point);
  - (L) Scholastic tutoring (1 point);
  - (M) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);
  - (N) Weekly exercise classes (2 points);
  - (O) Monthly arts and crafts (1 point);
  - (P) Annual income tax preparation services (1 point);
  - (Q) Monthly transportation to community/social events (i.e. lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc.) (1 point); and
  - (R) Monthly on-site social events (i.e. potluck dinners, game night, etc.) (1 point);
  - (S) Specific and pre-approved caseworker services for seniors and Persons with Disabilities (1 point);
  - (T) Home chore services (such as trash removal and quarterly preventative maintenance including light bulb replacement and hot water heater and other appliance check) for seniors and Persons with Disabilities (1 point);
  - (U) 1 point for 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.
- (10) **Declared Disaster Areas.** (§2306.6710(b)(1)) Applications may receive 7 points, if by the Full Application Delivery Date as identified in §49.3 of this chapter or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared a disaster under Texas Government Code §418.014.
- (11) **Community Input other than Quantifiable Community Participation.** If an Application was awarded 18 or 12 points under paragraph (2) of this subsection, then that Application may receive up to 6 points for letters that qualify for points under subparagraph (A), (B) or (C) of this paragraph. An Application may not receive points under more than one of the subparagraphs (A) - (C) of this paragraph. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero for this item.
- (A) An Application may receive two points (maximum of 6 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community in which the Development is located including, but not limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be counted. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational

- schools, charter schools and depending on how characterized could include day care centers; a PTA or PTO would qualify. Should an Applicant elect this option and the Application receives letters in opposition, then 2 points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.
- (B) An Application may receive 6 points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.
  - (C) An Application may receive 6 points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §49.3 of this chapter, include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.
- (12) **Housing Needs Characteristics.** (§42(m)(1)(C)(ii)) Applications may qualify to receive up to 6 points (if the Development Site is located in a Place with a certain Affordable Housing Need Score). Each Application may receive a score if correctly requested in the Self Score form based on objective measures of housing need in the Place where the Development is located. This Affordable Housing Need Score for each Place will be published in the 2011 Site Demographic Characteristics Report. For purposes of this item a Place is defined as the geographic area contained within the boundaries of:
- (A) An incorporated place; or
  - (B) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census. For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Place characteristics of the incorporated place or CDP whose boundary is nearest to the Development Site.
- (13) **Community Revitalization, (§42(m)(1)(C)(iii)) Historic Preservation or Rehabilitation.** Applications may qualify to receive 6 points under subparagraphs (A) - (C) of this paragraph or 3 points under subparagraph (D) of this paragraph.
- (A) The Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan; or
  - (B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity.
  - (C) Rehabilitation (includes Reconstruction). Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely Reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse;
  - (D) The Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan (3 points).
- (14) **Pre-application Participation Incentive Points.** (§2306.6704) Applicants that submitted a pre-application during the Pre-Application Acceptance Period and meet the requirements

- of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:
- (A) Be for the identical Development Site, or reduced portion of the Development Site as the proposed Development Site under control in the pre-application;
  - (B) Have met the Pre-application Threshold Criteria;
  - (C) Include, as part of this exhibit, a certification signed by the Principal(s) that signed the site control at pre-application confirming they are the same Principal(s) at Application.
  - (D) Be serving the same target population (general or elderly) as in the pre-application;
  - (E) Be applying for the same Set-Asides as indicated in the pre-application (Set-Asides can be dropped between pre-application and Application, but no Set-Asides can be added); and
  - (F) 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 paragraphs (2), (6), and (11) of this subsection. The Application score used to determine whether the Application score is 5% greater or less than the number of points awarded at pre-application will also include all point losses under §49.7(a)(2)(A) of this chapter (relating to Administrative Deficiencies). 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 increasing 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-Score Form.
- (15) **Green Building Amenities.** Application may qualify to receive up to 6 points for this item provided that points under this paragraph are not being requested for the same items utilized for points under §49.8(5)(A) of this chapter. Rehabilitation Developments (excluding Reconstruction) and Single Room Occupancy Developments will receive 1.5 points for each point requested under this paragraph.
- (A) **Development Energy Savings (1 point for each item):**
    - (i) at least 50% of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved gray water collection system; or
    - (ii) native trees and plants installed that are appropriate to the site's soils and microclimate and located to allow for shading in the summer and heat gain in the winter; or
  - (B) **Tenant Energy Savings (2 points for each item):**
    - (i) If the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west-facing walls; and the east-west axis of the building is within 15 degrees of due east-west;
    - (ii) If the east-west axis of the building oriented within 15 degrees of due east-west utilizes a narrow floor plate (less than 40 feet), and single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation;
    - (iii) Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, (applies only to rehabilitation where windows are not replaced with Energy Star rated windows);

- (iv) 100% of HVAC condenser units are located so they are fully shaded 75% of the time during summer months (May through August);
  - (v) Install low-flow or high efficiency toilets that exceed State requirements;
  - (vi) Install bathroom lavatory faucets, showerheads and kitchen faucets that exceed the State standard at the time of Application. All fixtures throughout development must meet the standard. Rehabilitation Developments may install compliant faucet aerators instead of replacing entire faucets; or
  - (vii) Provide Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire Development;
  - (viii) Sub-metered utility meters for any utility in a Rehabilitation Development which was not already sub-metered at the time of Application;
  - (ix) If the Development includes Energy-Star qualified windows and glass doors exclusively; and insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and Energy Star rated HVAC and domestic hot water heaters, and insulation that exceeds Energy Star standards;
  - (x) If the Development promotes energy efficiency by demonstrating a certified HERS score of 85 or lower;
  - (xi) Thermally and draft efficient doors (SHGC of 0.40 or lower (for doors with glass) and U-value specified by climate zone according to the 2006 IECC) are used;
  - (xii) On-site photovoltaic panels or wind-driven turbines for generating at least 5kW of electricity that are incorporated into the engineered structural design of the roof(s) and neither of which protrude from any roof structure by more than 8 feet and are designed and wired to supplement the Development's electric power. Photographs and data sheets of the proposed equipment must be submitted with the Application; or
  - (xiii) Recycling service provided throughout the compliance period.
- (C) **Other Green Features/Indoor Health (1 point for each item):**
- (i) Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation;
  - (ii) Healthy flooring, provide at least one of the following for 50% of flooring. Finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty; or
  - (iii) Healthy finish materials, use paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standards.
- (D) **LEED (Leadership in Energy and Environmental Design) Certification. (6 points)** If at the time of Cost Certification a LEED Certification (Certified, Silver, Gold or Platinum levels) for the Development is obtained then the maximum points allowed under this paragraph will be awarded and none of the green building amenities selected under this paragraph will need to be substantiated. Conversely, if at the time of Cost Certification a LEED Certification has not been obtained then the Applicant will be required to prove up 6 points under this subparagraph.
- (16) **Development Location.** (§2306.6725(a)(4); §42(m)(1)(C)(i)) Applications may qualify to receive 4 points under this item. Evidence must not be more than six (6) months old from the first day of the Application Acceptance Period. An Application may only receive points under one of the subparagraphs (A) - (E) of this paragraph.
- (A) The Development is located in a census tract 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 median family income for the county in which the census tract is located. This comparison shall be made using the most recent data available to the

Department as of the date the Application Round opens 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. These Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

- (B) The proposed Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and is proposed to be located in an elementary school attendance zone that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. An elementary attendance zone does not include magnet school or elementary schools with district-wide possibility of enrollment or no defined attendance zones. The date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (§42(m)(1)(C)(vii))
  - (C) The proposed Development will expand affordable housing opportunities for low-income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. (§42(m)(1)(C)(vii)) These Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.
  - (D) The proposed Development is located in an urban core, on a site where the proposed use is not prohibited by the Unit of General Local Government via ordinance or regulation. For purposes of this item, an urban core is defined as a compact and contiguous geographical area that is located in a Metropolitan Statistical Area within the city limits with a population of no less than 150,000 composed of adjacent block groups of which is zoned to accommodate a mix of medium or high density residential and commercial uses and at least 50% of such land is actually being used for such purposes based on high density residential structures and/or commercial structures already constructed. Evidence must be submitted in the form of zoning maps and a certification provided in the Application.
  - (E) The proposed Development is located in a high opportunity area as identified in §49.5(d)(3)(D)(i) - (iii) of this chapter (relating to Site and Development Restrictions).
- (17) **Economic Development Initiatives.** An Application may qualify to receive 4 points under subparagraphs (A) - (C) of this paragraph. For the purpose of this paragraph, "area" shall mean the boundaries of any zone or community in subparagraph (A) of this paragraph or the area in which funds in subparagraph (B) of this paragraph must be used:
- (A) A Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community. To be eligible for these points, Applicants must submit a letter and a map of the zoned area from a city/county official stating that the proposed Development is located within such a designated zone or area. The letter should be no older than six (6) months from the first day of the Application Acceptance Period (§2306.127); or
  - (B) An area that has received an award within the three year period prior to the beginning of the Application Acceptance Period, from the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Emerging Technologies, Skills Development, Rural Business Enterprise Grants, Certified Development Company Loans, or Micro Loan Program or other state or federally funded economic development initiatives approved by the Department (This excludes limited highway improvement and roadwork projects, but does include broader regional transportation initiatives targeted to expanding economic development); or

- (C) A geographical area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (these census tracts are designated in the 2011 Housing Tax Credits Site Demographics Characteristics Report (§2306.127); or
- (D) Points under subparagraphs (A), (B) and (C) of this paragraph will not be granted if more than 3 Developments received an award of Housing Tax Credits in the applicable area in the seven (7) years prior to the beginning of the Application Acceptance Period. The Applicant must provide receipt of funds to the area by evidence of a map of the designated area for such funding and documentation of the recipient of the award of funds or a letter from the entity granting such funds stating that funds were awarded in the designated area.
- (18) **Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits.** (§2306.6725(b)(2)) Applications may receive 4 points if the proposed Development is located in a census tract in which there are no other existing Developments supported by Housing Tax Credits that serve the same type of household, regardless of whether the Development serves the general or elderly populations. Evidence of the census tract in which the Development is located must be submitted. These census tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.
- (19) **Tenant Populations with Special Housing Needs.** (§42(m)(1)(C)(v)) Applications may qualify to receive 4 points for this item. The Department will award these points to Applications in which at least 5% of the Units are set aside for Persons with Special Needs. For purposes of this section, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. The twelve-month period will begin on the date each building receives its Certificate of Occupancy. For buildings that do not receive a Certificate of Occupancy, the twelve-month period will begin on the placed in service date as provided in the Cost Certification manual. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.
- (20) **Length of Affordability Period.** (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) Applications may qualify to receive up to 4 points. 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 thirty (30) years required in the Code may receive points as follows:
- (A) Add five (5) years of affordability after the extended use period for a total affordability period of thirty-five (35) years (2 points); or
- (B) Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (4 points).
- (21) **Site Characteristics.** Development Sites, including scattered sites, may qualify to receive up to 4 points for this item. Developments Sites must be located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three (3) services appropriate to the target population. A site located within one-quarter mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has another form of transportation,

- including, but not limited to, special transit service 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 Development is providing its own specialized van or funding a comparable service, then this will be a requirement of the LURA. Only one service of each type listed in subparagraphs (A) - (L) of this paragraph will count towards the points. A map must be included identifying the Development Site and the location of the services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be under active construction, post pad by the date the Application is submitted.
- (A) Full service grocery store or supermarket.
  - (B) Pharmacy.
  - (C) Convenience Store/Mini-market.
  - (D) Department or Retail Merchandise Store.
  - (E) Bank/Credit Union.
  - (F) Restaurant (including fast food).
  - (G) Indoor public recreation facilities, such as civic centers, community centers, and libraries.
  - (H) Outdoor public recreation facilities such as parks, golf courses, and swimming pools.
  - (I) Hospital/medical clinic.
  - (J) Medical offices (physician, dentistry, optometry).
  - (K) Public Schools (only eligible for Developments that are not Qualified Elderly Developments).
  - (L) Senior Center.
- (22) **Development Size.** The Development consists of not more than 36 Units (3 points).
- (23) **Sponsor Characteristics.** Applications may qualify to receive a maximum of 2 points for this item. Qualifying under subparagraph (A) shall be worth 1 point and qualifying under subparagraph (B) shall be worth 2 points. (§42(m)(1)(C)(iv))
- (A) The Applicant has submitted a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Applicant will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609; or
  - (B) There is a HUB as certified by the Texas Comptroller of Public Accounts, has at least 51% ownership interest in the General Partner 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 Comptroller of Public Accounts that the Person is a HUB at the close of the Application Acceptance Period.
- (24) **Qualified Census Tracts with Revitalization.** (§42(m)(1)(B)(ii)(III)) Applications may qualify to receive 1 point for this item if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.
- (25) **Developments Intended for Eventual Tenant Ownership--Right of First Refusal.** Applications may qualify to receive 1 point for this item. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) 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.

- (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 (2) 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 (2) years prior to date upon which the Development Owner intends to sell the Development.
- (B) During the two (2) 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 CFR §92.1 (a "CHDO") and is approved by the Department;
  - (ii) During the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and
  - (iii) During the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department;
  - (iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (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) - (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 (2) 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 one hundred twenty (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.
- (26) **Leveraging of Private, State, and Federal Resources.** Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)) Funding sources used for points under paragraph (5) of this subsection may be used for this point item; however, funding amounts may not be duplicative.
- (A) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (do not round) of the Total Housing Development Costs reflected in the Application.
  - (B) For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource which substantiates the value of the in-kind contributions. Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. The value of the contract does not include past subsidies.
  - (C) Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. If qualifying funds awarded through local entities are used for this item, a statement from the local entity must be provided that identifies the original source of funds.
  - (D) Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost.
  - (E) The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government.

- (F) 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. At the time the executed Commitment is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the Governing Body of the entity for the sufficient financing to the Department. If the funding commitment from the private, state or federal source, identified in the Application, or qualifying substitute source, has not been received by the date the Department's Commitment is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA.
- (G) To qualify for this point, the Rent Schedule must show that at least 3% (not using normal rounding) of all Low-Income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.
- (27) **Third Party Funding Outside of Qualified Census Tracts.** Applications may qualify to receive 1 point for this item. (§2306.6710(e)(1)) Evidence that the proposed Development has documented and committed Third-Party funding sources and the Development is located outside of a Qualified Census Tract serving 10% of households at 30% AMGI or less. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the Third-Party funding source and must be equal to or greater than 2% (do not round) of the Total Development Costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. Funding sources and amounts used for points under paragraph (5) of this subsection may not be used for this point item.
- (28) **Scoring Criteria Imposing Penalties.** (§2306.6710(b)(2))
- (A) Penalties will be imposed on an Application if the Applicant has requested an extension of the Carryover or 10% Test deadline, and did not meet the original submission deadline, relating to Developments receiving a Housing Tax Credit Commitment made in the Application Round preceding the current round. For each extension request made, unless the person approving the extension (the Board or the Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated, the Applicant will receive a 5 point deduction. No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

- (B) Penalties will be imposed on an Application if Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to §49.12(a) of this chapter (relating to Post Award Activities).
- (b) **Tie Breaker Factors.**
- (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 Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.
- (A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.
- (B) The Application located in the municipality or, if located outside a municipality, the county that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.
- (C) The amount of requested tax credits per square foot of Net Rentable Area (the lower credits per square foot has preference).
- (D) Developments that are intended for eventual tenant ownership. Such Developments must utilize a detached single family site plan and building design and have a business plan describing how the Development is intended to convert to tenant ownership at the end of the 15-year compliance period.
- (2) This paragraph identifies how ties will be handled when dealing with the restrictions on location identified in §49.8(2)(B) of this chapter (relating to One Mile Three Year Rule), 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 Certificate of Reservation docket number issued by the Texas Bond Review Board (TBRB) 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 paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a Competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:
- (A) Tax-Exempt Bond Developments that receive their Certificate of Reservation from the TBRB on or before April 29, 2011 will take precedence over the Housing Tax Credit Applications in the 2011 Application Round;
- (B) Housing Tax Credit Applications approved by the Board for tax credits in July 2011 will take precedence over the Tax-Exempt Bond Developments that received their Certificate of Reservation from the TBRB on or between May 2, 2011 and July 29, 2011; and
- (C) After July 29, 2011, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the 2011 Application Round on the waiting list. However, if no Certificate of Reservation has been issued by the date the Board approves an allocation to a Development from the waiting list of Applications in the 2011 Application Round or a forward commitment, then the waiting list Application or forward commitment will be eligible for its allocation.
- (c) **Staff Recommendations.** (§2306.1112 and §2306.6731) In accordance with the QAP and other applicable Department rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. Recommendations of staff to the Board will be the recommendations of that Committee except as otherwise disclosed.
- (d) **Tax Credits Financed Under American Recovery and Reinvestment Act of 2009.** (§2306.6736)

- (1) To the extent the Department receives federal funds under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) or any subsequent law (including any extension or renewal thereof) that requires the Department to award the federal funds in the same manner and subject to the same limitation as the awards of the housing tax credits, the following provisions apply.
- (2) Any reference in this chapter to the administration of the housing tax credit program shall apply equally to the administration of such federal funds except:
  - (A) the Department may, as approved by the Board, establish a separate application procedure for such funds, outside of the uniform application cycle referred to in §2306.111, Texas Government Code, and the deadlines established in §2306.6724, Texas Government Code, and any reference herein to the application period shall refer to the period beginning on the date the Department begins accepting applications for such funds and continuing until all such available funds are awarded;
  - (B) unless reauthorized, this section is repealed on August 31, 2011.

#### §49.10. Board Decisions.

- (a) 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 other applicable Department rules.
  - (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); 2306.6731; and 42(m)(1)(A)(iv))
  - (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. The discretionary factors include: (§2306.111(g)(3))
    - (A) The Developer market study;
    - (B) The location;
    - (C) The compliance history of the Developer;
    - (D) The financial feasibility;
    - (E) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;
    - (F) The Development's proximity to other low-income housing Developments;
    - (G) The availability of adequate public facilities and services;
    - (H) The anticipated impact on local school districts;
    - (I) Zoning and other land use considerations;
    - (J) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and
    - (K) Other good cause as found by the Board.
  - (3) 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. Department staff shall provide to the Board a written report regarding the results of the assessments. The Board has established a rule for the materiality of noncompliance in Chapter 60 of this title to address noncompliance associated with the Development, Applicant or Affiliate.

- (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 the Commitment, 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 provided that it takes into account the need to assure adherence to regional allocation requirements. If at any time prior to the end of the Application Round, one or more Commitments expire or a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment 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, 15% At-Risk Set-Aside allocation and 5% TRDO-USDA Set-Aside required under §42(h)(5) of the Code. At the end of each calendar year, all Applications which have not received a Commitment 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 Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this chapter and the application checklist provided in the Tax Credit (Procedures) Manual. 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.
- (1) Unless otherwise provided in the Commitment 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 State Housing Credit Ceiling from which the credits are allocated.
  - (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 §42(h)(1)(C) of the Code.
  - (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.
- (d) **Appeals Process.** (§2306.6715) An Applicant may appeal decisions made by the Department as follows:
- (1) The decisions that may be appealed are identified in subparagraphs (A) - (D) of this paragraph.
    - (A) A determination regarding the Application'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;
    - (C) A recommendation as to the amount of Housing Tax Credits to be allocated to the Application; and
    - (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 calendar day after the date the Department publishes the results of any stage of the Application evaluation process identified in §49.7 of this chapter (relating to Application

- Process). The appeal must be in writing, signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. The Appeal must be addressed to the Department to the attention of the Director of Multifamily Finance. 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 as supplemented in accordance with the limitations and requirements of this chapter (the QAP). 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 fourteen (14) calendar days after the date of actual receipt of the appeal by the Department in its offices. 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 calendar day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or
    - (B) The third calendar 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. 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 the final decision of the Department;
  - (6) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5))
- (e) **Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application.** The Department will address information or challenges received from unrelated entities to a specific 2011 active Application, utilizing a preponderance of the evidence standard, as stated in paragraphs (1) - (4) of this subsection, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than the Application Challenges Deadline as identified in §49.3 of this chapter (relating to Program Calendar):
- (1) Within fourteen (14) business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website;
  - (2) Within seven (7) business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven (7) business days to respond to all information and challenges provided to the Department; and
  - (3) Within fourteen (14) business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.
  - (4) Nothing herein shall serve to limit the authority of the Board to apply discretion for good cause to the fullest extent lawfully permitted.

#### §49.11. Tax-Exempt Bond Developments.

- (a) **Filing of Applications.** 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 2011 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 12:00 p.m. on December 30, 2010. Such filing must be accompanied by the Application fee described in §49.14 of this chapter (relating to Program Related Fees);
  - (2) Applicants which receive advance notice of a Program Year 2011 Certificate of 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 §49.14 of this chapter prior to the Applicant's Certificate of Reservation date as assigned by the TBRB. Those Applications designated as Priority 3 by the TBRB must submit Volumes I and II within fourteen (14) days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least sixty (60) days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is requested by the Applicant. The Department staff will have limited discretion to recommend an Application with appropriate justification of the late submission;
  - (3) Multiple site applications will be considered to be one Application as identified in Chapter 1372, Texas Government Code.
- (b) **Applicability of Rules.** Tax-Exempt Bond Development Applications are subject to all rules in this chapter, with the only exceptions being the following sections: §49.4(c)(12) of this chapter (relating to One Mile Same Year Rule); §49.5(b) of this chapter (relating to Credit Amount); §49.6 of this chapter (relating to Allocation Process); §49.7(b), (c) and (d) of this chapter (relating to Pre-application); §49.7(g) of this chapter (relating to Methodology for Awards); §49.7(k) of this chapter (relating to Rural Rescue Applications); §49.9(a) of this chapter (relating to Selection Criteria); §49.10(b) and (c) of this chapter (relating to Waiting List and Forward Commitments); and §49.12(e) - (g) of this chapter (relating to Carryover, 10% Test and Substantial Construction).
- (c) **Tenant Services.** Tax-Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of supportive services that would otherwise not be available for the tenants. 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. The provision of these services will be included in the LURA. Acceptable services include those described in §49.9(a)(9) of this chapter.
- (d) **Financial Feasibility Evaluation for Tax-Exempt Bond Developments.** Section 42(m)(2)(D), Internal Revenue Code, 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 §1.32 of this title (relating to Underwriting Rules and Guidelines), or request that the Department perform the function. If the issuer underwrites the Development, the Department may request such underwriting report and may upon review 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 §42(m)(2)(D) of the Code. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the

Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §49.14 of this chapter.

- (e) **Certification of Tax Exempt Applications with New Docket Numbers.** Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the Certificate of Reservation expiration date, and subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the TBRB and one of the following must apply:
- (1) The new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The application must remain unchanged. This means that at a minimum, the following cannot have changed: site control, total number of units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, target population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §49.8(9) of this chapter (relating to Threshold Criteria) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. This certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number; or
  - (2) If there are changes to the Application as referenced in paragraph (1) of this subsection or if there is public opposition, the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued.

#### §49.12. Post Award Activities.

- (a) **Adherence to Obligations.** (§2306.6720) Compliance with representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment, 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, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:
- (1) The Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and

- (2) The Board will opt either to terminate the Application and rescind the Commitment, Determination Notice or Carryover Allocation Agreement as applicable or the Department must:
  - (A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board;
  - (B) Prohibit eligibility to apply for Housing Tax Credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to twenty-four (24) months from the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department;
  - (C) In addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to \$1,000 per day for each violation.
- (3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.

(b) **Commitments and Determination Notices.**

- (1) **Commitments.** If the Application is for a commitment from the State Housing Credit Ceiling, the Department shall issue a Commitment 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 in this chapter, 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, pays the required fee specified in §49.14(f) of this chapter (relating to Program Related Fees), and satisfies any other conditions set forth therein by the Department. The Commitment expiration date may not be extended;
- (2) **Determination Notices.** 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 chapter (the QAP) and other applicable Department rules in accordance with the §42(m)(1)(D) of the Code. Applications that receive a Certificate of Reservation from the TBRB on or before November 15, 2010 will be required to satisfy the requirements of the 2010 QAP; Applications that receive a Certificate a Reservation from the TBRB on or after January 1, 2011 will be required to satisfy the requirements of the 2011 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 in §49.11 of this chapter (relating to Tax-Exempt Bond Developments) and compliance by the Development Owner with all applicable requirements of this chapter 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, pays the required fee specified in §49.14(f) of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended.

- Furthermore, no later than sixty (60) days following closing on the bonds, the Development Owner must submit a Management Plan and an Affirmative Marketing Plan (as further described in the carryover procedures as identified in the Tax Credit (Procedures) Manual and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five (5) hours. Certifications must not be older than two (2) years;
- (3) The Department shall notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment 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 other applicable Department rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented;
  - (5) The executed Commitment or Determination Notice must be returned to the Department no later than thirty (30) days after the effective date of the Notice provided that for Commitments under the State Housing Credit Ceiling that date is not later than December 31.
  - (6) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:
    - (A) The Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;
    - (B) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;
    - (C) 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 §49.4 of this chapter (relating to Ineligibility) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or
    - (D) The Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.
- (c) **Agreement and Election Statement.** 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 with respect to a building or buildings for the month in which the Carryover Allocation was accepted (or the month the bonds were closed for Tax-Exempt Bond Developments), as provided in the §42(b)(2) of the Code. 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 (receiving credits from the State Housing Credit Ceiling), 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.

- (d) **Documentation Submission Requirements at Commitment of Funds.** No later than the date the Commitment or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment or Determination Fee as further described in §49.14(f) of this chapter, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded. For each Applicant all of the following must be provided:
- (1) For entities formed outside the state of Texas, evidence that the entity has the authority to do business in Texas in the form of a Certificate of Filing from the Texas Office of the Secretary of State;
  - (2) 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 Amendment from the Texas Office of the Secretary of State if the name reserved at Application has changed;
  - (3) 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 which indicates the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents;
  - (4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;
  - (5) Evidence that the Applicant has and will maintain Site Control through 10% Test; and
  - (6) Any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice.
- (e) **Carryover.** All Developments which received a Commitment, and will not be placed in service and receive IRS Form 8609 in the year the Commitment was issued, must submit the Carryover documentation to the Department no later than the Carryover Documentation Delivery Date as identified in §49.3 of this chapter (relating to Program Calendar) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.
- (1) 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 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.
  - (2) 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.
  - (3) The Carryover Allocation must be properly completed and delivered to the Department as prescribed by the carryover procedures identified in the Tax Credit (Procedures) Manual.
  - (4) All Carryover Allocations will be contingent upon the Development Owner providing evidence that the Development Site is still under control of the Development Owner. For purposes of this paragraph, site control must be identical to the same Development Site that was submitted at the time of Application submission.
  - (5) The Department will not execute a Carryover Allocation Agreement with any Development Owner having any member in Material Noncompliance on October 3, 2011.
- (f) **10% Test.** No later than six (6) 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 (as amended by The Housing and Economic Recovery Act of 2008) and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than the 10% Test Documentation Delivery Date as identified in §49.3 of this chapter. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (6) of this subsection. The 10%

Test Documentation will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment:

- (1) Evidence that the Development Owner has purchased, transferred, leased or otherwise has ownership of, the Development Site;
  - (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 carryover procedures 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 Tax Credit (Procedures) Manual;
  - (3) For all Developments involving New Construction or Adaptive Reuse, 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 should not be older than three (3) months from the first day of the Application Acceptance Period and must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost necessary to obtain service, 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 Site;
  - (4) A Management Plan and an Affirmative Marketing Plan as further described in the carryover procedures identified in Tax Credit (Procedures) Manual;
  - (5) Evidence confirming attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five (5) hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10% Test Documentation; and
  - (6) A Certification from the Architect that the Development will be equipped with Energy Saving Devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation.
- (g) **Commencement of Substantial Construction.** No later than July 1 of the year following the execution of the Carryover Allocation Document the Development Owner must submit evidence of having commenced and continued substantial construction activities as defined in Chapter 60 of this title (relating to Compliance Administration).
- (h) **Land Use Restriction Agreement (LURA)** . The Development Owner must request a LURA from the Department no later than the date specified in Chapter 60 of this title. The Development Owner must complete, date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be included, accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the 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 representations, 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. The LURA shall contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, as approved by the Board. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

- (i) **Cost Certification.** The cost certification procedures as identified in the Tax Credit (Procedures) Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.
- (1) Required cost certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment or Determination Notice that fails to submit its cost certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §49.13(c) of this chapter (relating to Extension Requests);
  - (2) The Department will perform an initial evaluation of the cost certification documentation and notify the Development Owner in a deficiency letter of all additional required documentation. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be copied to the syndicator;
  - (3) For the Department to release IRS Forms 8609, Developments must have:
    - (A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; December 31 of the second year following the year the Carryover Allocation Agreement was executed; or approved Placed in Service deadline;
    - (B) Submitted all Cost Certification documentation as more fully described in the cost certification procedures identified in the Tax Credit (Procedures) Manual, including:
      - (i) Carryover Allocation Agreement/Determination Notice and Election Statement;
      - (ii) Owner's Statement of Certification;
      - (iii) Owner Summary;
      - (iv) Evidence of Nonprofit and CHDO Participation;
      - (v) Evidence of Historically Underutilized Business (HUB) Participation;
      - (vi) Development Summary;
      - (vii) As-Built Survey;
      - (viii) Closing Statement;
      - (ix) Title Policy;
      - (x) Evidence of Placement in Service;
      - (xi) Independent Auditor's Reports;
      - (xii) Total Development Cost Schedule;
      - (xiii) AIA Form G702 and G703, Application and Certificate for Payment;
      - (xiv) Rent Schedule;
      - (xv) Utility Allowance;
      - (xvi) Annual Estimated Operating Expenses and 15-Year Proforma;
      - (xvii) Current Annual Operating Statement and Rent Roll;
      - (xviii) Final Sources of Funds;
      - (xix) Executed Limited Partnership Agreement;
      - (xx) Loan Agreement or Firm Commitment;
      - (xxi) Architect's Certification of Fair Housing Requirements; and
      - (xxii) TDHCA Compliance Workshop Certificate;

- (C) Complied with the requirements set forth in the Cost Certification Procedures Manual;
- (D) Received written notice from the Department that all deficiencies noted during the final inspection have been resolved in accordance with Chapter 60 of this title;
- (E) Informed the Department of and received written approval for all Development amendments in accordance with §49.13(b) of this chapter (relating to Amendment of Application Subsequent to Allocation by Board);
- (F) Informed the Department of and received written approval for all ownership transfers in accordance with §49.13(d) of this chapter (relating to Housing Tax Credit and Ownership Transfers);
- (G) Submitted to the Department the LURA in accordance with subsection (h) of this section;
- (H) Paid all applicable Department fees; and
- (I) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject property, as described in Chapter 60 of this title.

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

- (a) 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 or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be based on those items identified in subsection (b)(4) of this section. The Board may revoke any Commitment or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.
- (b) **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 Housing Tax Credits, 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. Such request shall include a proposed form of amendment, if requested by the Department, and the applicable fee as identified in §49.14(l) of this chapter (relating to Extension and Amendment Fees). The amendment request will not be considered received unless accompanied with the corresponding fee.
  - (2) The Executive Director of the Department shall require appropriate Department staff to evaluate the amendment and provide a written analysis and recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with subsection (h) of this section shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments not requiring Board approval, the amendment will be deemed approved if the Executive Director does not approve or deny within thirty (30) days from the date on which the Department has acknowledged it has received all additional information that it has, in writing, requested of the Applicant to enable the Department to evaluate the amendment request. Amendment requests which require Board approval must be received by the Department at least forty-five (45) days prior to the Board meeting in which the amendment will be considered.
  - (3) The Board must vote whether to approve an amendment that is material. The Executive Director may administratively approve all non-material amendments. The Board may vote to reject an amendment request and if appropriate, rescind a Commitment or terminate the allocation of Housing Tax Credits and reallocate the credits to other Applicants on the waiting list. Amendment requests may be denied 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 3% 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 5%;
  - (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, Department staff shall consider whether the need for the proposed modification was:
  - (A) Reasonably foreseeable by the Applicant at the time the Application was submitted; or
  - (B) Preventable by the Applicant. Amendment requests will be denied if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.
- (6) This section shall be administered in a manner that is consistent with §42 of the Code.
- (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 website and the Applicant will be notified of the posting.
- (8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the Real Estate Analysis Report at the time of the Commitment Notice issuance, as approved by the Board, the following procedure will apply:
  - (A) For amendments that involve a reduction in the total number of Low-Income Units being served, or a reduction in the number of Low-Income Units at any level of AMGI, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development; and
  - (B) If it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.
- (c) **Extension Requests.** All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee as identified in §49.14(l) of this chapter. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than six (6) months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least fifteen (15)

business days prior to the Board meeting where the extension will be considered. 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 was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee as identified in §49.14 of this chapter (relating to Program Related Fees) must be received by the Department to qualify for issuance of Forms 8609.

- (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 including 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.
- (1) Transfers (other than an Affiliate included in the ownership structure) will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). 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.
  - (2) 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. 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.
  - (3) As it relates to the credit amount further described in §49.5(b) of this chapter (relating to Site and Development Restrictions), the credit amount will not be applied in the following circumstances:
    - (A) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or
    - (B) In cases where the General Partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.
- (e) **Sale of Certain Tax Credit Properties.** Consistent with §2306.6726, Texas Government Code, not later than two (2) years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §2306.6725(b)(1), 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 (HOME);

- (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.
- (2) Notwithstanding items for which points were received consistent with §49.9(a) of this chapter (relating to Selection Criteria), 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) of the Code, and the Department declines to purchase the Development.
- (f) **Withdrawals.** An Applicant may withdraw an Application prior to receiving a Commitment, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment 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) **Alternative Dispute Resolution (ADR) Policy.** In accordance with §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 2010, 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. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title (relating to Alternative Dispute Resolution and Negotiated Rulemaking).
- (h) **Compliance Monitoring and Material Noncompliance.** Section 42(m)(1)(B)(iii) of the Code, 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 §42 of the Code and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Chapter 60 of this title (relating to Compliance Administration).

#### §49.14. Program Related Fees.

- (a) **Timely Payment of Fees.** All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than ten (10) business days prior to the deadlines 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 \$10 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. (§2306.6716(d)) For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: \$1,000 (payable to TDHCA), \$2,000 (payable to Vinson & Elkins, Bond Counsel), and \$5,000 (payable to the Texas Bond Review Board).

- (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 \$20 per Unit. For Applicants not having submitted a pre-application, the Application fee will be \$30 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)) For Tax Exempt Bond Developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of \$30 per unit and bond application fee of \$10,000. Those Applications utilizing a local issuer only need to submit the tax credit application fee. For Tax-Exempt Bond Development refunding Applications, with the Department as the issuer, the Application Fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000.
- (d) **Refunds of Pre-application or Application Fees.** (§2306.6716(c)) Upon written request from the Applicant, 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 pre-applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. 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 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.
- (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 §49.7(h) of this chapter (relating to Application Process) 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 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 or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination Notice, a Commitment or Determination Fee equal to 5% of the annual Housing Credit Allocation amount. The Commitment or Determination Fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, 2011, the Development Owner may receive a refund of 50% of the Commitment Fee.

If a Development Owner of an Application awarded Housing Tax Credits associated with Tax-Exempt Bonds has paid a Determination Fee and is not able close on the bond transaction within ninety (90) days of the issuance date of the Determination Notice, the Development Owner may receive a refund of 50% of the Determination Fee. The Determination Fee will not be refundable after ninety (90) days of the issuance date of the Determination Notice.

- (g) **Compliance Monitoring Fee.** Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. For Tax-Exempt Bond Developments with the Department as the issuer, the annual tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to \$40/Unit beginning two (2) years from the first payment date of the bonds; the asset management fee, if applicable is paid in advance and is equal to \$25/Unit beginning two (2) years from the first payment date. Compliance fees may be adjusted from time to time by the Department.
- (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.
- (i) **Tax-Exempt Bond Credit Increase Request Fee.** As further described in §49.11 of this chapter (relating to Tax-Exempt Bond Developments), requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 5% of the amount of the credit increase for one (1) year.
- (j) **Public Information Requests.** Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.
- (k) **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.
- (l) **Extension and Amendment Fees.**
  - (1) All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of \$2,500. Such extension requests must be submitted to the Department in accordance with §49.13(c) of this chapter (relating to Board Reevaluation).
  - (2) Amendment requests must be submitted in accordance with §49.13(b) of this chapter and be accompanied by a mandatory non-refundable amendment fee in the form of a check in the amount of \$2,500.
  - (3) The Board may waive extension or amendment fees for good cause.

- (m) **Penalties.** Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of 8609's. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with §42, Internal Revenue Code. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Department will impose a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate of that Applicant for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Round immediately following the return of credits unless otherwise exempted in accordance with the Board's policy pursuant to the implementation of The Housing and Economic Recovery Act of 2008, H.R. 3221, in September 2008. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%.

#### **§49.15. Manner and Place of Filing All Required Documentation.**

- (a) All Applications, letters, documents, or other papers filed with the Department must 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 chapter 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, Texas 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this chapter 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, electronic submission 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 website to provide necessary data to the Department.

#### **§49.16. Waiver and Amendment of Rules.**

- (a) The Board, in its discretion, may waive any one or more of the rules provided herein if the Board finds that a 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 contained herein at any time in accordance with Chapter 2001, Texas Government Code.

**§49.17. Department Responsibilities.**

- (a) The Department shall make all required notifications pursuant to Chapter 2306 of the Texas Government Code.
- (b) In accordance with §§2306.6724, 2306.67022 and §42(m)(1) regarding the deadlines for allocating Housing Tax Credits the following shall apply:
  - (1) 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;
  - (2) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year;
  - (3) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year;
  - (4) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for Housing Tax Credits;
  - (5) Applications for Housing Tax Credits to be issued a Commitment during the Application Round in a calendar year must be submitted to the Department not later than March 1;
  - (6) 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; and
  - (7) The Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the QAP not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final Commitments for allocations of Housing Tax Credits each year in accordance with the QAP not later than September 30. Department staff will subsequently issue Commitments 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.
- (c) With respect to site demographics information, the general rule is for the Department to use current State Demographer information. If the State Demographer information is not available as of the date the Application Acceptance Period opens the Executive Director may approve the use of prior year site demographics.

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