



*§1.1. Definitions for Housing Program Activities.*

The following definitions apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, and other Department programs as defined in this title. 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, this section, and repeated in the Tax Credit (Procedures) Manual.

(1) Adaptive Reuse--The change-in-use of an existing non-residential building (e.g., school, warehouse, office, hospital, hotel, etc.), into a residential building. Adaptive reuse does not include the demolition of the external walls of the existing building. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by the Department that is required to clarify or correct inconsistencies in an Application that in the Department's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person or Principal. All entities that share a Principal are Affiliates.

(4) Applicant--Any Person or Affiliate of a Person who files a pre-application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702)

(5) Application--A request for funds, housing tax credits or other financial assistance submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material. (§2306.6702)

(6) Appropriate Local Official--With respect to a municipality or area within an extraterritorial jurisdiction (ETJ), where applicable, means either the mayor, the city manager, or another official of the body operating under valid, written confirmation of authority signed by the mayor or city manager. With respect to an area not within the municipality or its ETJ, Appropriate Local Official means a county commissioner or another official authorized by the county commissioner to act.

(7) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

- (8) Board--The Governing Board of the Department.
- (9) Colonia--A geographic area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:
- (A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921, Texas Water Code; or
- (B) has the physical and economic characteristics of a colonia, as determined by the Department.
- (10) Commitment--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance will be made available.
- (11) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners. Controlling entities of a limited liability company include the managing members, and any members with 10% or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership. Multiple Persons may be deemed to simultaneously have control.
- (12) Department--The Texas Department of Housing and Community Affairs or any successor agency.
- (13) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of such fee, whether by subcontract or otherwise.
- (14) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.
- (15) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department. (§2306.6702)
- (16) Development Team--All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.
- (17) Efficiency Unit--A Unit without a separately enclosed bedroom.
- (18) Executive Award and Review Advisory Committee ("The Committee")--The Department committee created under Texas Government Code, §2306.112.
- (19) General Contractor--One who contracts for the construction or Rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. This party may also be referred to as the "contractor."

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

(21) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

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

(23) Governmental Instrumentality--A legal entity which is created by a Unit of General Local Government under statutory authority and which instrumentality is authorized to transact business for the Unit of General Local Government.

(24) Grant--Financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan.

(25) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(26) Historically Underutilized Businesses (HUB)--A business that is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51% of the business is owned, operated, and actively controlled and managed by a minority or woman in which the owner(s):

(A) have a proportionate interest and demonstrate active participation in the control, operation, and management of the entities' affairs; and

(B) are economically disadvantaged because of their identification as members of the following groups:

(i) Black Americans--Includes persons having origins in any of the Black racial groups of Africa;

(ii) Hispanic Americans--Includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) American Women--Includes all women of any ethnicity except those specified in clauses (i), (ii), (iv), and (v) of this subparagraph;

(iv) Asian Pacific Americans--Includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal; and

(v) Native Americans--Includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; and

(C) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph; or

(D) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person described by subparagraphs (A) and (B) of this paragraph; or

(E) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons who are described by subparagraphs (A) and (B) of this paragraph; or

(F) a joint venture in which each entity in the joint venture is a HUB under this subdivision; or

(G) a supplier contract between a HUB under this subdivision and a prime contractor/vendor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies; or

(H) a business other than described in subparagraphs (D), (F), and (G) of this paragraph, which is formed for the purpose of making a profit and is otherwise a legally recognized business organization under the laws of the State of Texas, provided that at least 51% of the assets and 51% of any classes of stock and equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph.

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

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

(29) Land Use Restriction Agreement or LURA--An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner's successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds.

(30) Low Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department.

(31) Managing General Partner--A general partner of a partnership that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(32) Material Deficiency--Any individual Application deficiency or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application.

(33) Material Noncompliance--Defined as:

(A) a Housing Tax Credit (HTC) Development located within the state of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of 30 points in accordance with the Material Noncompliance provisions, methodology, and point system in §60.121 of this title (relating to Material Noncompliance Methodology);

(B) non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a

threshold of 30 points. Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 50 points. Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 80 points;

(C) for all programs, a Development will be in Material Noncompliance if the noncompliance is stated in §60.121 of this title, to be Material Noncompliance.

(34) Minority Owned Business--A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734)

(35) Net Rentable Area (NRA)--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(36) New Construction--Any construction of a Development or a portion of a Development that does not meet the definition of Rehabilitation.

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

(38) Persons with Disabilities--With respect to an individual:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

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

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10% or more interest in the corporation and any individual Controlling such stock holder; and

(C) limited liability companies, Principals include all managing members, members having a 10% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(40) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(41) Qualified Allocation Plan--A plan adopted by the Board under this subchapter that:

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

(B) consistent with §2306.6710(e) of the Texas Government Code, gives preference in housing tax credit allocations to developments that, as compared to the other developments:

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

(ii) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program; and

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

(42) Qualified Elderly Development--A Development which meets the requirements of the federal Fair Housing Act, and

(A) provided under any state or federal program that the HUD Secretary determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or

(B) is intended for, and solely occupied by, individuals sixty-two (62) years of age or older; or

(C) is intended and operated for occupancy by at least one individual fifty-five (55) years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is fifty-five (55) years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals fifty-five (55) years of age or older. (42 U.S.C. §3607(b))

(43) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of Units or less on the Development Site.

(44) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse (§2306.004(26-a)). More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and

safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(45) Related Party--As defined, (§2306.6702)

(A) the following individuals or entities:

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

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

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

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

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

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

(iv) a grantor and fiduciary of any trust;

(v) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) a fiduciary of a trust and a beneficiary of the trust;

(vii) a fiduciary of a trust and a corporation if more than 50% of the outstanding stock of the corporation is owned by or for:

(I) the trust; or

(II) a person who is a grantor of the trust;

(viii) a person or organization and an organization that is tax-exempt under §501(a) of the Code, and that is controlled by that person or the person's family members or by that organization;

(ix) a corporation and a partnership or joint venture if the same persons own more than:

(I) fifty percent of the outstanding stock of the corporation; and

(II) fifty percent of the capital interest or the profits' interest in the partnership or joint venture;

(x) an S corporation and another S corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xi) an S corporation and a C corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xii) a partnership and a person or organization owning more than 50% of the capital interest or the profits' interest in that partnership; or

(xiii) two partnerships, if the same person or organization owns more than 50% of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(46) Rural Area--An area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(C) in an area that is eligible for funding by Texas Rural Development Office of the United States Department of Agriculture (TRDO-USDA), other than an area that is located in a municipality with a population of more than 50,000. (§2306.004)

(47) Selection Criteria--Criteria used to determine funding priorities of the State under the specific housing program as defined in the rules or funding notices of that program.

(48) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may be rented on a month-to-month basis.

(49) Site Control--Ownership or a current contract that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to require conveyance to the Applicant.

(50) Texas Department of Rural Affairs (TDRA)--As established by Chapter 487 of the Texas Government Code.

(51) Third Party--A Third Party is a Person who is not:

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

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

(C) anyone receiving any portion of the Developer fees from the Development.

(52) Total Housing Development Cost--The sum total of the Acquisition Cost, Hard Costs, Soft Costs, Developer Fee and Contractor Fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation and financing of the Development.

(53) TRDO-USDA--Texas Rural Development Office (TRDO) of the U.S. Department of Agriculture (USDA) serving the State of Texas.

(54) Unit of General Local Government--A city, town, county, village, tribal reservation or other general purpose political subdivision of the State.