

**TDHCA Board Approved *Draft* of the Qualified Allocation Plan**  
**Chapter 11 of the Texas Administrative Code**

Disclaimer

Attached is a draft of Chapter 11 – Qualified Allocation Plan that was approved by the TDHCA Governing Board on September 6, 2012. This draft incorporates changes resulting from the Board’s approval subject to inclusion of public comments that would constitute substantive changes to staff’s recommended draft. A Multifamily Division Update with a summary of these changes will be posted in the coming days at the following link: <http://www.tdhca.state.tx.us/multifamily/index.htm>.

The rules are scheduled to be published in the September 21 edition of the *Texas Register* and will constitute the official version for purposes of public comment. The version herein should not be relied upon as the basis for public comment. The public comment period shall be September 21 – October 22.

## State of Texas Qualified Allocation Plan

### §11.1. General.

(a) 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 and whereby the Department is authorized to make such allocations for the State of Texas pursuant to Texas Government Code, Chapter 2306, Subchapter DD. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) to establish the procedures and requirements relating to an allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or Application in Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application. Notwithstanding the fact that these rules along with other Department resources may not contemplate unforeseen situations that may arise, the Department will apply a reasonableness standard to the evaluation of Applications for Housing Tax Credits.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all documents are legible, properly organized and tabbed, and that digital media is fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

### §11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided, however, that the Applicant has requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

Deadline	Documentation Required
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Deadline	Documentation Required
12/17/2012	Application Acceptance Period Begins.
12/17/2012	Pre-application Neighborhood Organization Request Date.
01/08/2013	Pre-Application Final Delivery Date.
01/18/2013	Full Application Neighborhood Organization Request Date.
03/01/2013	Full Application Delivery Date.
03/01/2013	Quantifiable Community Participation (QCP) Delivery Date.
03/01/2013	Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable)).
04/01/2013	Final Input from State Representative or State Senator Delivery Date.
04/01/2013	Market Analysis and Civil Engineer Feasibility Study Delivery Date.
04/01/2013	Resolutions Delivery Date.
05/15/2013	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/14/2013	Deadline for public comment to be included in a summary to the Board.
June	Release of Eligible Applications for Consideration for Award in July.
Late July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2013	Carryover Documentation Delivery Date.
07/01/2014	10 percent Test Documentation Delivery Date.
12/31/2015	Placement in Service.

Deadline	Documentation Required
Five (5) business days after the Deficiency Notice date (without incurring point loss)	Administrative Deficiency Response Deadline.

**§11.3. Housing De-Concentration Factors.**

(a) Two Mile Same Year Rule (Competitive HTC Only). (§2306.6711(f)) Staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. (§2306.6703(a)(4)) If the Development is located in 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 include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, referencing Texas Government Code, §2306.6703(A)(4), and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured by a straight line on a map) from another Development that meets all of the criteria in subparagraphs (A) – (C) of this paragraph shall be considered ineligible.

(A) The Development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The Development 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 Certificate of Reservation is issued); and

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

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county 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 paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Resolutions Delivery Date (for Tax Exempt Bond Developments the resolution must be submitted no later than 14 days prior to the Board meeting where the tax credits will be considered).

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 30 percent Housing Tax Credit Units per total households as established by the U.S. Census Bureau for the most recent Decennial Census shall be considered ineligible unless:

(1) the Development is in a Place whose population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll.

#### **§11.4. Tax Credit Request and Award Limits.**

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an amount greater than \$3 million in a single Application Round. All entities that share a Principal are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor 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 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments) to be paid or \$150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant’s request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will not recommend such an increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 30 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 30 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5)(C) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT;

(2) The Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph (pursuant to the authority granted by H.R. 3221):

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); or

(D) the Board may allow a boost for a non-Qualified Elderly Development not located in a QCT that is in a target area under a community revitalization plan.

**§11.5. Competitive HTC Set-Asides. (§2306.111(d))** This section identifies the statutorily-mandated set-asides which the Department is required to allocate. An Applicant may elect to compete in as many of the set-asides described in this section for which the proposed Development qualifies.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent 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 and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (e.g. greater than 50 percent ownership in the General Partner). 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. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this determination and/or not recommend credits for those unwilling to switch if insufficient Applications in the Nonprofit Set-Aside are received.

(2) USDA Set-Aside. (§2306.111(d)(2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. 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. Commitments of Competitive Housing Tax Credits issued by the

Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d)(2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent 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 allocation formula required under §11.6(a) of this chapter (relating to Competitive HTC Allocation Process). 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 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments funded with USDA.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5).

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702 will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of 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 the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments retaining public housing operating subsidies to qualify under the At-Risk Set-Aside, only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units.

(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 of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to an Application seeking to enable the Development to qualify as an At-Risk Development, that is submitted to the Department while the Application is under review will not be accepted.

**§11.6. Competitive HTC Allocation Process.** This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, 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.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from

which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the “national pool” after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made available within each of the sub-regions;

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (“Rural sub-region”) that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one “pool” and 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 sub-region’s allocation. This rural redistribution will continue until at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) – (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one “pool.” The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) – (F) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) – (F) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) – (F) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

**§11.7. Tie Breaker Factors.** In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or state collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications ranking higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development.

**§11.8. Pre-Application Requirements (Competitive HTC Only).**

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this chapter (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy to the Department in the form of a single file and individually bookmarked as presented in the order as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations,

restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be rejected unless they meet the threshold criteria described in paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation for Application Submission);

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) All issues requiring waivers necessary for the filing of an eligible Application; and

(I) Any community revitalization plan the Applicant anticipates using for points under §11.9(d)(6) of this chapter (relating to Competitive HTC Selection Criteria).

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) Neighborhood Organization Requests. The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site:

(i) No later than the Pre-application Neighborhood Organization Request Date identified in §11.2 of this chapter, the Applicant must e-mail, fax or mail with registered receipt a completed Neighborhood Organization Request letter as provided in the pre-application to the local elected official, as applicable, based on where the Development is proposed to be located. If the Development is located in an area that has district based locally elected officials, or both at-large and district based locally 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 its ETJ, 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) 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 date of pre-application submission.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph whose jurisdiction or boundaries include the Development Site. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt

for mail or courier delivery and confirmation of receipt by the recipient for fax and e-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;
- (iii) Presiding officer of the board of trustees of the school district;
- (iv) Mayor of the municipality;
- (v) All elected members of the Governing Body of the municipality;
- (vi) Presiding officer of the Governing Body of the county;
- (vii) All elected members of the Governing Body of the county; and
- (viii) State Senator and State Representative;

(C) Notice Requirements. The notification must include, at a minimum, all of the information described in clauses (i) – (vi) of this subparagraph:

- (i) the Applicant's name, address, an 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
- (vi) the approximate total number of Units and approximate total number of low-income Units.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) 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.

### **§11.9. Competitive HTC Selection Criteria.**

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsection (b) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation or fail to submit supporting documentation in good faith will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirement to provide supporting documentation in good faith.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fourteen (14) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (7 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

- (i) five-hundred-fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred-fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred-fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit Features (7 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 §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. §42(m)(1)(C)(iv) (2). An Application may qualify to receive points under subparagraph (A) or (B) of this paragraph.

(A) An Application may qualify to receive up to one (1) point provided the ownership structure meets one of the requirements described in clauses (i) – (iii) of this subparagraph:

(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph and each must have a Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection.

(ii) The ownership structure of the Development Owner includes a joint venture between an experienced Developer and an inexperienced owner. In order to qualify for this point, the inexperienced party must be unable to obtain an Experience Certificate under §10.204(5) of this title (relating to Required Documentation for Application Submission). In addition, the experienced Owner must own at least 30 percent interest in the General Partner and also own at least 50 percent interest in the General Partner of at least three (3) existing tax credit developments in Texas, none of which are in Material Non-Compliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this subparagraph and each must have a UPCS score of at least 85 based on their most recent inspection.

(iii) A HUB as certified by the Texas Comptroller of Public Accounts has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the Compliance Period, and will receive at least 20 percent of the cash flow from operations and at least 10 percent of the developer fee.

(B) An Application may qualify to receive up to three (3) points provided the ownership structure meets some combination of the requirements described in clauses (i) – (iii) of this subparagraph:

(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph, and each must have a

Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection. (2 points)

(ii) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partner of at least two (2) existing tax credit developments in Texas, none of which are in Material Non-Compliance. Both properties must be placed in service as of Full Application Delivery Date, and the IRS Form(s) 8609 must have been issued for at least one of the properties used for points under this subparagraph and must have a UPCS score of at least 85 based on their most recent inspection. (1 point)

(iii) A HUB as certified by the Texas Comptroller of Public Accounts has some combination of ownership interest, cash flow from operations, and developer fee which taken together equal at least 100 percent. For example, the HUB may have 20 percent ownership interest, 30 percent of the developer fee, and 50 percent of cash flow from operations. The HUB must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience relative to the housing industry. (1 point)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to fifteen (15) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (15 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (13 points); or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (15 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (13 points); or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(G)) An Application may qualify to receive up to eleven (11) points for rent and income restrictions of a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (11 points);

(B) At least 10 percent of all low income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low income Units at 30 percent or less of AMGI (9 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside may qualify to receive up to nine (9) points and all other Developments may receive up to eight (8) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be

provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. If the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in subparagraphs (A) – (E) of this paragraph. The Department will base poverty rate on data from the most recent 5-year American Community Survey as available on November 15. Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, but the elementary schools in which tenants may attend can have a rating below acceptable in order to qualify for points. An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary school are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency’s conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(A) Development targets the general population; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (7 points);

(B) Development targets the general population; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);

(C) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);

(D) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(E) Any Development, regardless of population served is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zone of a public school with an academic rating of recognized or exemplary (or comparable rating) by the Texas Education Agency, as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary, middle or high school (as applicable) are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency’s conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools’ ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools’ ratings. Also, in the case of a 9th grade

center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.

(A) Development is within the attendance zone of an elementary school, a middle school and a high school with an academic rating of recognized or exemplary (3 points); or

(B) Development is within the attendance zone of an elementary school and either a middle school or high school with an academic rating of recognized or exemplary (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to two (2) points for proposed Developments located in one of the areas in subparagraphs (A) – (D) of this paragraph. Points will be awarded based on the Development's Target Population as identified in subparagraph (E) or (F) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A municipality, or if outside of the boundaries of any municipality, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation serving the same Target Population.

(E) General or Supportive Housing Developments (2 points); or

(F) Qualified Elderly Developments (1 point).

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points for Developments in which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, 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. 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.

(d) Criteria promoting community support and engagement.

(1) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to sixteen (16) points for written statements from a Neighborhood Organization. The Neighborhood Organization must be on record with the Department or county in which the Development Site is located and whose boundaries contain the Development Site, and which has been in existence no later than the Pre-Application Final Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) for at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households; and

(iii) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if there is no Neighborhood Organization already on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization provided that no Neighborhood Organization exists.

(i) Technical assistance is limited to:

(I) the use of a facsimile, copy machine/copying, email and accommodations at public meetings; and

(II) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(ii) No person required to be listed in accordance with §2306.6707 may participate in any way in the deliberations of a Neighborhood Organization of the Development to which the Application requiring their listing relates. This does not preclude their ability to present information and respond to questions at a duly held meeting where such matter is considered;

(iii) For non-Identity of Interest Applications the seller or their agents could be a member of the Neighborhood Organization if the seller will maintain primary residence within the Neighborhood Organizations boundaries.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulated. Where more than one written statement is received for an Application, the averaged weight of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) sixteen (16) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement, that qualified as Quantifiable Community Participation, opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) fourteen (14) points for explicitly stated support from a Neighborhood Organization;

(iii) twelve (12) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement, that qualified as Quantifiable Community Participation, opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) ten (10) points for statements of neutrality from a Neighborhood Organization or statements not meeting all the explicit requirements of this section, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality;

(v) ten (10) points for areas where no Neighborhood Organization is in existence; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the challenger must declare the basis for the challenge. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any support for the accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination. The determination will be final and may not be waived or appealed.

(2) Community Input other than Quantifiable Community Participation. If there is no Neighborhood Organization on record, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive (2 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. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development is located including, but not limited to, a 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 awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities. Should an Applicant elect this option and the Application receives letters in opposition, then two (2) points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this subparagraph.

(B) An Application may receive (2) 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 the purpose of awarding points under paragraph (1) of this subsection.

(C) An Application may receive (2) points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

(D) 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. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(3) Commitment of Development Funding by Unit of General Local Government. (§2306.6710(b)(1)(E)) An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (B) of this paragraph).

(A) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development’s Rural or Urban Area designation is derived. For developments located outside a census designated place, the Department will use the population of the nearest place.

(i) twelve (12) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit and \$15,000 in funding per Low Income Unit;

(ii) eleven (11) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit and \$10,000 in funding per Low Income Unit;

(iii) ten (10) points for a commitment by a Unit of General Local Government of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit and \$5,000 in funding per Low Income Unit;

(iv) nine (9) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit and \$1,000 in funding per Low Income Unit; or

(v) eight (8) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit and \$500 in funding per Low Income Unit.

(B) One (1) point may be added to the points in subparagraph (A) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Unit of General Local Government in the Application.

(4) Community Support from State Representative or Senator. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to twelve (12) points or have deducted up to twelve (12) points for this scoring item. To qualify under this paragraph letters must be on the State Representative’s or State Senator’s letterhead, be signed by the State Representative or State Senator, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator and must be submitted no later than the Input from State Senator or Representative Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted earlier than the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives or Senators to be considered are those in office at the time the letter is submitted and whose district boundaries include the proposed Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. Points under this scoring item will be averaged. If one letter is received in support and one letter is received in opposition the score would be zero (0) points. A letter that does not directly express support but expresses it indirectly by inference, (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(5) Declared Disaster Area. (§2306.6710(b)(1)) An Application may qualify to receive up to eight (8) points for this scoring item. An Application will receive seven (7) points if at the time the complete Application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster under of the Texas Government Code, §418.014. An Application will receive eight (8) points if the disaster declaration, within the two-year period preceding the date of submission, is localized, in other words, if the disaster declaration does not apply to the entire state.

(6) Community Revitalization Plan.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the proposed Development is located in an area covered by a community revitalization plan and that meets the criteria described in subclauses (I) – (VII) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development is proposed to be located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors to be considered may include:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g., not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blighted structures;

(-c-) presence of inadequate transportation;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the presence, condition, and performance of public education; or

(-g-) the presence of local business providing employment opportunities.

(III) A municipality is not required to identify and address all of the factors identified in clause (i) of this subparagraph, but it must set forth in its plan those factors that it has identified and determined it will address.

(IV) The adopting municipality or county must have based its plan on the findings of the foregoing assessment and must have afforded the public an opportunity to provide input and comment on the proposed plan and the factors that it would address. To the extent that issues identified require coordination with other authorities, jurisdictions, or the like, such as school boards or hospitals, the adopting municipality should include coordination with such bodies in its plan and, to the extent feasible, secure their cooperation.

(V) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the community and address in a substantive and meaningful way the material factors identified. The adopted plan must specifically address how the providing of affordable rental housing fits into the overall plan and is a necessary component thereof.

(VI) The adopted plan must describe the planned sources and uses of funds to accomplish its purposes.

(VII) To be eligible for points under this item, the community revitalization plan must already be in place as of the Pre-Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a certification that:

(-a-) the plan was duly adopted with the required public comment processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive six (6) points if the community revitalization plan has a total budget or projected economic value of \$6,000,000 or greater;

(II-) Applications will receive four (4) points if the community revitalization plan has a total budget or projected economic value of at least \$4,000,000; or

(III) Applications will receive two (2) points if the community revitalization plan has a total budget or projected economic value of at least \$2,000,000.

(iii) At the time of the tax credit award the site and neighborhood of any Development must conform to the Department's rules regarding unacceptable sites.

(iv) It is recognized that municipalities and counties will need to devote time and effort to adopt a concerted revitalization plan that complies with the requirements of this scoring item. Therefore, for purposes of the 2013 Application Round only, the Department's Board may, in a public meeting, determine whether a revitalization plan substantively and meaningfully satisfies a revitalization effort, notwithstanding one or more of the factors in this subparagraph not having been satisfied. Such pre-clearance shall be prompted by a request from the Applicant pursuant to the waiver provisions in §10.207 of this title (relating to Waiver of Rules for Applications).

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that includes the meets the requirements of subclauses (I) - (V) of this clause. In order to qualify for points, the development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds and receive a HUD Site and Neighborhood Clearance with HUD review or approval of such clearance:

(I) the plan defines specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) the plan affirmatively addresses Fair Housing;

(III) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years;

(IV) the plan is in place prior to the Pre-Application Final Delivery Date; and

(V) the plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the pre-application.

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to six (6) points if the city, county, or state has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) - (IV) of this clause, or improvements to areas within a quarter mile of the Development Site, unless a different distance is otherwise identified. The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure. The project or infrastructure must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for four (4) points for one of the items described in subclauses (I) - (IV) of

this clause or six (6) points for at least two (2) of the items described in subclauses (I) – (IV) of this clause:

(I) Paved roadways or expansion of paved roadways by at least one lane;

(II) Water and/or wastewater service;

(III) Construction of a new police or fire station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(IV) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within five (5) miles of the Development Site and ambulance service to and from the hospital is available at the Development Site.

(ii) The Applicant must provide a letter from a government official with specific knowledge of the project. However, the Department staff may rely on other documentation that reasonably documents that the substance of this clause is met, in Department Staff's sole determination. A letter must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city or county approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year itemized pro forma that includes all projected income, operating expenses and debt service, and underlying growth assumptions, reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed construction or permanent Third Party lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost that is not included in Eligible Basis) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types. Structured parking costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking. The square footage used will be the 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 Development with one or more buildings any of which have elevators serving four or more floors (Elevator Served Development) the NRA will include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA will include elevator served interior corridors and 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.

(A) Each Application will be categorized as:

(i) Qualified Elderly and Elevator Served Development, more than 75 percent single family design, and Supportive Housing Developments; or

- (ii) All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse; or
- (iii) All other Applications proposing Rehabilitation.

(B) Within each category listed in subparagraph (A), points will be awarded as follows:

- (i) Within 8 percent and equal to or less than the mean cost per square foot (10 points);
- (ii) Within 5 percent and greater than the mean cost per square foot (10 points);
- (iii) Within 13 percent and equal to or less than the mean cost per square foot (9 points);
- (iv) Within 10 percent and greater than the mean cost per square foot (8 points);
- (v) Within 18 percent and equal to or less than the mean cost per square foot (7 points);
- (vi) Within 15 percent and greater than the mean cost per square foot (6 points); or
- (vii) Within 20 percent of the mean cost per square foot (5 points)

(C) Developments with Building Costs of less than \$80 per square foot shall receive no less than eight (8) points. Points under this subparagraph are not in addition to the points achieved under subparagraph (B) of this paragraph.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period and meets the requirements described in subparagraphs (A) – (I) of this paragraph:

- (A) The total number of Units does not increase by more than 10 percent from pre-application to Application;
- (B) The designation of the proposed Development as Rural or Urban remains the same;
- (C) The proposed Development serves the same Target Population;
- (D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);
- (E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;
- (F) All necessary waivers and pre-clearance were requested in the pre-application;
- (G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;
- (H) The pre-application met all applicable requirements; and
- (I) The community revitalization plan the Applicant used for points under subsection (d)(6) of this section was submitted at the time of pre-application.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5 percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) – (iv) of this subparagraph:

- (i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points); or
- (ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or
- (iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule and will be rounded to the nearest hundredth. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred.

(5) Extended Affordability or Historic Preservation. (§§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)) An Application may qualify to receive two (2) points for this scoring item.

(A) 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 agree to extend the affordability period for a Development to thirty-five (35) years total may receive the two (2) points; or

(B) An Application proposing the use of historic (rehabilitation) tax credits and providing documentation that an existing building that will be part of the Development will reasonably be able to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609 may qualify to receive two (2) points.

(6) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive one (1) point for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this chapter (relating to Right of First Refusal) and §10.408 of this chapter (relating to Qualified Contract Requirements).

(7) Development Size. An Application may qualify to receive one (1) point if the Development is proposed to be fifty (50) total HTC Units or less and the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of \$500,000 or less.

(f) Point Deductions.

(1) Any Applicant that elects points for a scoring item on their self score form and is unable to provide sufficient documentation for Department staff to award those points will receive a one (1) point deduction per scoring item in their final score. This penalty shall not be applied to these scoring items regardless of points elected: §11.9(d)(1), (4), and (6) and §11.9(e)(2) and (3).

(2) Staff will recommend to the Board a penalty of up to (5 points) for any of the items listed in subparagraph (A) of this paragraph, unless the person approving the extension (the Board or 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. Any such matter to be presented for final determination of penalties by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant penalties. (§2306.6710(b)(2))

(A) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(B) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(C) No penalty points 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 USDA as a lender if the Applicant is not determined to be at fault for not meeting the deadline.

(D) Any penalties assessed by the Board for subparagraph (A) or (B) of this paragraph based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

#### **§11.10. Challenges of Competitive HTC Applications.**

Challenges. The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process shall be as stated in paragraphs (1) - (12) of this section. A matter, even if raised as a challenge, that staff chooses to treat as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) The challenge must be received by the Department no later than the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, using that word in all capital letters at the top of the page, and it must state the specific identity of and contact information for the person making the challenge.

(3) Challengers must provide, at the time of filing the challenge, any briefing, documentation or other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge.

(4) Challenges to the financial feasibility of the proposed Development are premature and will not be accepted; as such issues will be addressed during the underwriting phase of the process.

(5) Challenges relating to undesirable area features as described in §10.101(a)(4) of this chapter (relating to Site and Development Requirements and Restrictions) will not be accepted unless they relate to a failure to disclose substantive issues not already disclosed.

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge on an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) business days of the challenge deadline;

(10) The Applicant must provide a response regarding the challenge within fifteen (15) business days of their receipt of the challenge; and

(11) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting.

(12) Staff determinations regarding all challenges will be reported to the Board as report items.