Texas Department of Housing and Community Affairs
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2002 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules

The 2002 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules (QAP) was approved by the TDHCA Board on November 14, 2001. The QAP was filed in the office of the Secretary of State and will be published in the November 30, 2001 issue of the Texas Register. The QAP is subject to, and will become effective upon the approval, rejection or modification and approval by the Governor which may not be later than December 1, 2001 in accordance with Section 2306.6724(c) of the Texas Government Code. Attached is the 2002 QAP.

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§49.1 Scope.

(a) Purpose. The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of certain low income housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Department was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan (QAP) which is set forth in §§49.1 through 49.18 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of the low income housing tax credit, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

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

(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state and to promote maximum utilization of the available tax credit amount. The criteria utilized to realize this goal is described in §49.7 (a) through (f) of this title.

(d) Utilization of Historically Underutilized Businesses. It is the policy of the Department to encourage the use of Historically Underutilized Businesses (HUBs) in the tax credit program as developers, general partners and members of a development team. In response to this policy, all Applicants are required to make a good faith effort to ensure maximum HUB participation in the program. The Department will require the Applicant to identify the HUBs that will be used in the development and/or continuous operation of the Development. The Department will also request information pertaining to the use of HUBs in the actual development of the Development at the time of final allocation of tax credits, pursuant to §49.11(f) of this title.

(e) Coordination with Rural Agencies. To assure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to achieve increased sharing of information, reduction of processing procedures, and fulfillment of Development compliance requirements in rural areas, the Department:

(1) has entered into a Memorandum of Understanding (MOU) with the Rural Development services of the United States Department of Agriculture serving the State of Texas (TxRD-USDA) to coordinate on existing, rehabilitated, and new construction housing Developments financed by TxRD-USDA; and

(2) will jointly administer the Rural Set-Aside with the Texas Office of Rural Community Affairs (ORCA). Upon its creation, and once it has become operational, ORCA will assist in developing all Threshold, Selection and Underwriting Criteria applied to Applications eligible for the Rural Set-Aside. The Criteria will be approved by that Agency. To ensure that the Rural Set-Aside receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts.

(f) Memorandum of Understanding (MOU) with the United States Department of Housing and Urban Development (HUD) regarding the 911 Subsidy Layering Review. The Department and HUD shall enter into a MOU regarding the Subsidy Layering Review of the sources and uses of funds in Developments receiving tax credits and HUD Housing Assistance.

§49.2. Definitions.

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

(1) Adaptive Reuse Development – A Development such as a hotel or dormitory that is proposed for conversion as permanent housing under the tax credit program.

(2) Administrative Deficiencies - The absence of information or documents from the Application which are essential to a thorough review and scoring of the Development. If an Application contains deficiencies which, in the determination of the Department staff, represent the need for clarification of information submitted at the time of the Application, the Department staff shall request correction of such Administrative Deficiencies. The Department staff shall provide this request in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. Potential Administrative Deficiencies which may be corrected include, but are not limited to, incorrect calculation of the Development's unit mix, gross and net rentable areas, or the submission of exhibits that contain incomplete or conflicting information. If such Administrative Deficiencies are not corrected to the satisfaction of the Department within three business days of the deficiency notice date, then five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains uncorrected. If such deficiencies are not corrected within five business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The correction of Administrative Deficiencies may not include changes in the Development Team, the Development configuration, or any other matters affecting the evaluation of the Application under §49.7(e) of this title.

(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, and specifically shall include parents or subsidiaries.

(4) Agreement and Election Statement - A document in which the Development Owner elects, irrevocably, to fix the applicable credit percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Development Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

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

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

(A) the current applicable percentage, or

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

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

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

(9) Application Acceptance Period - That period of time during which Applications for either a Housing Credit Allocation from the State Housing Credit Ceiling or a Determination Notice for Tax Exempt Bond Developments may be submitted to the Department as more fully described in §49.14 of this title.

(10) Application Log – A form containing at least the information required by §49.12(b) of this title.

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

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

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

(14) At-Risk Development – a development that:

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

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

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

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

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

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

(vi) Sections 514, 515, 516, and 538 Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); and

(B) is subject to the following conditions:

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

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

(15) Beneficial Owner - A "Beneficial Owner" means:

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

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

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

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

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

(i) through the exercise of any option warrant or right,

(ii) through the conversion of a security,

(iii) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or

(iv) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement.

(D) Provided, however, that any Person who acquires a security or power specified in clauses (i), (ii) or (iii) of subparagraph (C) of this paragraph, with the purpose or effect of changing or influencing the control of any other

Person, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition is deemed to be the Beneficial Owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to options, warrants, rights or conversion privileges as deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such Person but are not deemed to be outstanding for the purpose of computing the percentage of the class by any other Person.

(16) Board - The governing Board of Directors of the Department.

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

(18) Carryover Allocation Document - A document issued by the Department to a Development Owner pursuant to §49.4(n) of this title.

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

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

(21) Colonia -An unincorporated community located within 150 miles of the Texas-Mexico border, or a city or town within said 150 mile region with a population of less than 10,000 according to the latest U.S. Census, that has a majority population composed of individuals and families of low and very low income, who lack safe, sanitary and sound housing, together with basic services such as potable water, adequate sewage systems, drainage, streets and utilities, all as determined by the Department.

(22) Commitment Notice - A notice issued by the Department to a Development Owner pursuant to §49.4(i) of this title and also referred to as the "commitment."

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

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

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

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

(27) Department - The Texas Department of Housing and Community Affairs, a public and official governmental Department of the State of Texas created and organized under the Texas Department of Housing and Community Affairs Act, Texas Government Code, Chapter 2306 and Texas Civil Statutes, Article 4413(501) as amended by the 73rd Legislature, Chapter 725 and 141.

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

(29) Development – A proposed qualified low income housing Development, for purposes of the Code, §42(g), that consists of one or more buildings containing multiple Units, and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

(A) located on a single site or contiguous site; or

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

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

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

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

(33) Economically Distressed Area - An area in which the water supply or wastewater systems are inadequate to meet minimal state standards; the financial resources are inadequate to provide services to meet those needs; and there was an established residential subdivision on June 1, 1989, as defined by the Texas Water Development Board.

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

(35) Executive Award and Review Advisory Committee ("The Committee") – A Departmental committee that will make funding and allocation recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in §2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities. The Committee will be composed of the executive director, the administrator of each of the Department's programs, and one representative from each of the Department's planning, underwriting, and compliance functions.

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

(37) General Contractor - One who contracts for the construction, or rehabilitation of an entire building or Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the said subcontractors. This party may also be referred to as the "contractor."

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

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

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

(41) Highrise Urban Infill Development – a Development comprised of three or more stories that is located within a central business district or its immediate environs or in inner-city neighborhoods characterized by documented higher than average land costs and higher density. For a building or buildings with more than three stories, an elevator must be included in the construction of any building within such Development.

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

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

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

(45) Housing Credit Allocation - An allocation by the Department to a Development Owner of low income housing tax credit in accordance with §49.11 of this title.

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

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

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

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

(A) Hospitals, nursing homes, trailer parks and dormitories (or other buildings that will be predominantly occupied by Students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §§42(i)(3)(B)(iii) and

(iv) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for credits if the Development involves the conversion of the building to a non-transient multifamily residential development.

(B) Single family detached housing, duplexes, and triplexes shall not be included in tax credit developments. The only exceptions to this definition are:

(i) Any Building comprised of less than four residential Units, regardless of employee or owner occupied Units and satisfying either of the requirements listed in subclauses (I) and (II) of this clause shall not be considered to include an Ineligible Building Type.

(I) Developments with 36 units or less that are located within a city or county with a population of not more than 20,000 or 50,000, respectively; or

(II) Developments receiving a financial contribution from the local governing entity in an amount equal to or exceeding seven percent of the construction hard costs. The financial contribution can be either a capital contribution, in-kind services to the Development, or a combination of capital contribution and in-kind services. The in-kind services must be above and beyond services typically provided to similar developments and must be fully documented in the form of proof of application at the time of Application, and proof of firm commitment by June 1, 2002.

(ii) An existing Rural Development that is federally assisted within the meaning of the Code, §42(d)(6)(B) and is under common ownership, management and Control shall not be considered to include an Ineligible Building Type. For qualifying federally assisted Rural Developments, construction cannot include the construction of new residential units. Rural Developments purchased from HUD will qualify as federally assisted.

(C) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor.

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

(51) Land Use Restriction Agreement (LURA) - An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this title and the requirements of the Code, §42.

(52)Material Deficiencies - Deficiencies that are not eligible to be remedied pursuant to paragraph (2) of this subsection. Deficiencies caused by the omission of Threshold Criteria documentation specifically required by §49.7(e) of this title shall automatically be considered Material Deficiencies and shall be cause for termination.

(53) Material Non-Compliance - A property will be classified by the Department as being in material non-compliance status if the non-compliance score for such property is equal to or exceeds 30 points in accordance with the provisions of §49.5(b)(6) and under the methodology and point system set forth in §49.10 of this title.

(54) 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.

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

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

(57) Persons with Disabilities - A person who:

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

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

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

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

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

(58) Pre-Application – A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in §49.7(a) of this title.

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

(60) Prison Community – A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison as set forth in the Reference Manual.

(61) 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.

(62) Qualified Allocation Plan (QAP) – A plan adopted by the Board, and approved by the Governor, under this title, and as provided in the Code, Section 42(m)(1) (specifically including preference for Developments located in Qualified Census Tracts and the development of which contributes to a concerted community revitalization plan) and as further provided in Sections 49.1 through 49.18 of this title, that:

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

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

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

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

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

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

(64) Qualified Census Tract - Any census tract which is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, either in which 50% or more of the households have an income which is less than 60% of the area median family income for such year or which has a poverty rate of at least 25%.

(65) Qualified Elderly Development – A Development which meets the requirements of the federal Fair Housing Act and:

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

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

(66) Qualified Market Analyst - A real estate appraiser certified or licensed by the Texas Appraiser or Licensing and Certification Board or a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's experience and educational background will provide the general basis for determining competency as a Market Analyst. Such determination will be at the sole discretion of the Department. The Qualified Market Analyst must not be related to or an Affiliate of the Development Owner, Development Consultant, or the CPA which provides documentation required for the Carryover Allocation Procedures Manual or Cost Certification Procedures Manual.

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

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

(69) Real Estate Owned (REO) Developments - Any existing Residential Development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), federally chartered bank, savings bank, savings and loan association, Federal Home Loan Bank or a federally approved mortgage company or any other federal agency.

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

(71) Related Party – As defined,

(A) The following individuals or entities:

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

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

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

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

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

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

(iv) a grantor and fiduciary of any trust;

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

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

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

(I) the trust; or

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

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

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

(I) 50 percent of the outstanding stock of the corporation; and

(II) 50 percent of the capital interest or the profits' interest in the partnership or joint venture;

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

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

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

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

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

(72) Residential Development - Any Development that is comprised of at least one "Unit" as such term is defined in paragraph (85) of this subsection.

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

(74) Rural Area – An area that is located:

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

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 20,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for funding by TxRD-USDA.

(75) Rural Development Agency – the state agency designated by the Legislature as primarily responsible for rural area development in the state. Such agency is currently ORCA.

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

(77) Selection Criteria - Criteria used to determine housing priorities of the State under the Low Income Housing Tax Credit Program as specifically defined in §49.7(f) of this title.

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

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

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

(A) by an individual who is:

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

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

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

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

(ii) married and file a joint return."

(81) Sustaining Occupancy - The figure at which occupancy income is equal to all operating expenses and mandatory debt service requirements for a Development.

(82) Tax Exempt Bond Development - A Development which receives a portion of its financing from the proceeds of tax exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4)(B).

(83) Threshold Criteria - Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration established in this title.

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

(85) Town Home - Each Town Home living unit is one of a group of no less than four units that are adjoined by common walls. Town Homes shall not have more than two walls in common with adjacent units. Town Homes shall not have other units above or below another unit. Town Homes shall not share a common back wall. Town Homes shall have individual exterior entries.

(86) TxRD-USDA - The Rural Development (RD) services of the United States Department of Agriculture (USDA) serving the State of Texas (formerly known as TxFmHA) or its successor.

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

§49.3. State Housing Credit Ceiling.

(a) The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C).

(b) The Department shall publish each such determination in the Texas Register within 30 days after notification by the Internal Revenue Service.

(c) The aggregate amount of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. Housing Credit Allocations made to Tax Exempt Bond Developments are not included in the State Housing Credit Ceiling.

§49.4. Application Submission; Pre-Application Submission; Unacceptable Applications; Availability of Pre-Application and Application; Confidential Information; Required Application Notifications and Receipt of Public Comment; Board Recommendations; Board Decisions; Commitment Notices and Determination Notices; Board Reevaluation; Appeals Process; Waiting List; Agreements and Election Statement; Cost Certification and Carryover Filings; LURA.

(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application to the Department during the Application Acceptance Period. A complete Application may be submitted at any time during the Application Acceptance Period, and is not limited to submission after the close of the Pre-Application Cycle. However, a complete Application received during the Pre-Application Cycle will initially only be reviewed for Pre-Application Criteria. The remainder of the Application will be reviewed once the results of the Pre-Application Cycle have been announced. Only one Application may be submitted for each site. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application along with the required Application fee. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency. An Applicant may not change or supplement an Application in any manner after the filing deadline, except as it relates to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.2(2) of this title or to the amendment of an application after an allocation of tax credits as further described in §49.7(k) of this title.

(b) Pre-Application Submission. Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period. A complete Application may be submitted at any time during the Application Acceptance Period, and is not limited to submission after the close of the Pre-Application Cycle. However, a complete Application received during the Pre-Application Cycle will initially only be

reviewed for Pre-Application Criteria. The remainder of the Application will be reviewed once the results of the Pre-Application Cycle have been announced. Only one Pre-Application may be submitted by an Applicant for each site. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application along with the required Pre-Application Fee. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be an Administrative Deficiency. The Department shall reject and return to the Applicant any Pre-Application assessed by the Department that fails to satisfy the Pre-Application Threshold Criteria required by the Board in the Qualified Allocation Plan. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(c) Unacceptable Applications. Applications involving Ineligible Building Types will not be considered for allocation of tax credits under this QAP and the Rules. Applications that show Material Deficiencies (which are not corrected within the applicable correction period) will be terminated, and the Applicant may only re-apply if the Application Acceptance Period is still open. An Application that does not fulfill the requirements of this Qualified Allocation Plan and Rules and the current Application Submission Procedures Manual will be deemed not to have been timely filed and the Department shall not be deemed to have accepted the Application.

(d) Availability of Pre-Application and Application. Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Exhibit 109, will be made available for public disclosure immediately after the Pre-Application and Application periods close, respectively. The content of Exhibit 109 may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) provide the application scores to the Board;

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

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

(10) Notice of Selection Criteria Scoring. When all Applications have been scored, the Department shall publish the results of the scoring on its web site.

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

(g) Board Recommendations. After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. This Committee will develop funding priorities and shall make allocation recommendations to the Board. Such recommendation and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will include at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all evaluation factors provided in §49.7(c) of this title that were used in making this determination. The Board shall issue commitments for available housing tax credits based on the application evaluation process identified in §49.7 of this title. Concurrently with the initial issuance of commitments for housing tax credits, the Board shall establish a waiting list of additional Applications ranked by score in descending order of priority based on Set Aside categories and regional allocation goals. On awarding tax credit allocations, the Board shall document the reasons for each Development's selection, including an explanation of all discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, an allocation decision that conflicts with the recommendations of Department staff.

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

(2) A Commitment Notice shall not be issued with respect to any Development in violation of subsection §49.9(b) of this title, unless the Committee makes a recommendation to the Board based on the need to fulfill the goals of the Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

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

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

(1) In making a determination to allocate tax credits, the Department staff and Board shall be authorized not to rely solely on the number of points scored by an Applicant. They shall in addition, be entitled to take into account, as appropriate, the factors described in §49.7(b) through (d) of this title. If the Board disapproves or fails to act upon the

Application, the Department shall issue to the Development Owner a written notice stating the reason(s) for the Board's disapproval or failure to act.

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

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

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

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

(B) state the Department's commitment to make a Housing Credit Allocation to the Applicant in a specified amount, subject to the feasibility determination described at §49.11(b) of this title, compliance by the Development Owner with the remaining requirements of this chapter, and any other conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee specified in §49.13 of this title, and satisfies any other conditions set forth therein by the Department. A Development Owner may request an extension of the Commitment Notice expiration date by submitting extension request and associated extension fee as described in §49.13(j) of this title. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

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

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

(B) state the Department's commitment to issue IRS Form(s) 8609 to the Applicant in a specified amount, subject to the requirements set forth at §49.7(i) of this title, compliance by the Development Owner with all applicable requirements of this title, and any other conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §49.13 of this title. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department within the applicable time period.

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

(j) Board Reevaluation. Regardless of project stage, the Board must reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the meaning of this subsection, substantial change shall be those items identified in §49.7(k)(4) of this title. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

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

(1) The decisions that may be appealed are identified in subparagraphs (A) through (C) of this paragraph.

(A) a determination regarding the Application's satisfaction of:

(i) Pre-Application or Application Threshold Criteria;

(ii) Underwriting Criteria;

(B) the scoring of the Application under the Pre-Application or Application Selection Criteria; and

(C) a recommendation as to the amount of housing tax credits to be allocated to the Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.

(3) An Applicant must file its appeal in writing, with the Department not later than the seventh day after the date the Department publishes the results of the Application evaluation process identified in §49.7 of this title. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of housing tax credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

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

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

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

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

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

(l) Waiting List. If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate a waiting list. All such waiting list Applications will be weighed one against the other and a priority list shall be developed by the Board. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list in order of priority subject to the amount of returned credits, the regional allocation goals and the Set Aside categories, including the 10% Nonprofit Set-Aside allocation required under the Code, §42(h)(5). In the event that the Department makes a Commitment Notice or offers a commitment within the last month of the calendar year, it will require immediate action by the Applicant to assure that an allocation or Carryover Allocation can be issued before the end of that same calendar year. At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated, unless the Department shall determine to retain or act upon such Applications as provided in §49.17 of this title. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(m) Agreement and Election Statement. Together with or following the Development Owner's acceptance of the commitment or determination, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the applicable credit percentage for the Development as that for the month in which the commitment was accepted (or the month the bonds were issued for Tax Exempt Bond Developments), as provided in the Code, §42(b)(2). For non Tax Exempt Bond Developments, the Agreement and Election Statement shall be executed by the Development Owner no later than five days after the end of the month in which the offer of commitment was accepted. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the applicable credit percentage for a Development, the Commitment Notice must be executed by the Department and the Development Owner in the same month. The Department staff will cooperate with a Development Owner, as needed, to assure that the Commitment Notice can be so executed.

(n) Cost Certification or Carryover Filings. Developments that will be placed in service and request IRS Forms 8609 in the year the Commitment Notice was issued must submit the required Cost Certification documentation and the compliance and monitoring fee to the Department by the second Friday in November of that same year. All other Developments which received a Commitment Notice, must submit the Carryover documentation to the Department no later than the second Friday in October of the year in which the Commitment Notice is issued. The Carryover Allocation must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual. All complete Carryover filings will be reviewed and executed by the Department no later than 90 days from the date of receipt of the Carryover documentation. The Department will issue IRS Forms 8609 no later than 90 days from the date of receipt of the Cost Certification documentation, so long as all subsequent documentation requested by the Department related to the processing of the Cost Certification documentation has been provided on or before the seventy-fifth day from the date of receipt of the original Cost Certification documentation. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator.

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

§49.5. Ineligible and Disqualified Applications; Debarment from Program Participation.

(a) An Application will be ineligible if a member of the Development Team has been or is:

(1) Barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or,

(2) convicted of, under indictment for, or on probation for a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses; or,

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

(b) Additionally, the Department will disqualify, and may disbar, an Application if it is determined by the Department that those issues identified in paragraphs (1) through (9) exist. A person debarred by the Department from participation in the program may appeal the person's debarment to the Board. The Department shall debar a person for the longer of, one year from the date of debarment, or until the violation causing the debarment has been remedied.

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

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

(A) a member of the Board; or

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

(3) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property in the state of Texas who received an allocation of tax credits in the 2001 Application Round but did not close the construction loan as required under the Carryover Allocation (including any extension period granted by the Board) except for reasons beyond the control of the Applicant as determined by the Department; or,

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

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

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

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

(6) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing property in the state of Texas funded by the Department that is in Material Non-Compliance with the LURA (or any other document containing an Extended Low Income Housing Commitment) or the program rules in effect for such property on the date the Pre-Application Acceptance Period opens or upon the date of filing Volume I of the Application for a Tax Exempt Bond Development. Any corrective action documentation affecting the Material Non-Compliance status score for Applicant's competing in the 2002 Application Round must be received by the Department no later than November 15, 2001. The Department may take into consideration the representations of the Applicant regarding compliance violations described in §49.7(e)(7)(C) and (D) of this title; however, the records of the Department are controlling; or,

(7) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing tax credit property outside of the state of Texas has incidence of non-compliance with the LURA or the program rules in effect for such tax credit property as reported on Exhibits 105C and 105D and/or as determined by the state regulatory authority for such state and such non-compliance is determined to be Material Non-Compliance by the Department; or,

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

(9) the Applicant or a Related Party, or any person who is active in the construction, rehabilitation, ownership, or control of the Development including a general partner or general contractor and their respective principals or affiliates,

or person employed as a lobbyist or in another capacity on behalf of the Development, communicates with any Board member or member of the Committee with respect to the Development during the period of time starting with the time an Application is submitted until the time the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application.

(c) Notwithstanding any other provision of this section, the Department may not allocate tax credits to a Development proposed by an Applicant unless the Department first determines that:

(1) the housing development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford;

(2) the housing sponsor undertaking the proposed housing development will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income;

(3) the housing sponsor is financially responsible;

(4) the housing sponsor is not, or will not enter into a contract for the proposed housing development with, a housing developer that:

(A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) breached a contract with a public agency; or

(C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the agency;

(5) the financing of the housing development is a public purpose and will provide a public benefit; and

(6) the housing development will be undertaken within the authority granted by this chapter to the housing finance division and the housing sponsor.

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

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

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

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

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

§49.6. Regional Allocation Formula and Set-Asides.

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

(b) Set-Asides. The regional credit distribution amounts are additionally subject to the factors presented in paragraphs (1) through (5) of this subsection:

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

(2) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which meet the Rural Development definition or are located in Prison Communities. Rural Developments applying for

greater than 76 Units will be ineligible for the Rural Set-Aside. Of this 15% allocation, 25% will be set-aside for projects financed through Rural Development (TxRD-USDA). Projects financed through TxRD-USDA's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion. Should there not be sufficient qualified applications submitted for the TxRD-USDA set-aside, then the credits would revert to projects that meet the Rural Project definition or are located in Prison Communities.

(3) At least 15% of the State Housing Credit Ceiling will be allocated to the At-Risk Development Set-Aside. Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of developments designated as At-Risk Developments as defined in §49.2(14) of this title and in both urban and rural communities in approximate proportion to the housing needs of each uniform state service region.

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

(5) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Elderly Developments. Qualified Elderly Developments will not constitute an additional exclusive set-aside; however at least 15% of Developments allocated through the set-asides identified in paragraphs (1) through (4) of this subsection will also be Qualified Elderly Developments. Prior to making recommendations to the Board with respect to Applications which, if funded in accordance with such recommendations, would total, taking into account all Commitment Notices previously issued during the calendar year, at least 85% of the State Housing Credit Ceiling for such year, the Committee shall advise the Board as to the percentage of Qualified Elderly Developments which have received commitments or are recommended to receive commitments for the year.

(c) If any amount of housing tax credits remain after the initial allocation of housing tax credits among the regions and set-asides, the Department may redistribute the credits amongst the different regions and set asides depending on the quality of Applications submitted as evaluated under the factors described in §49.7(c) and (d) of this title and the level of demand exhibited in the regions during the Allocation Round. However as described in paragraph (1) of this subsection, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a region which does not have enough qualified applications to meet its regional credit distribution amount, then those credits will be apportioned to the other regions based on oversubscription in the other regions and the quality of the Applications. If forward commitments are approved by the Board, they shall be distributed with regard to the relative regional percentages established by the regional distribution formula. The Department will provide for the reallocation of tax credits as described in this subsection if any Commitment Notice is terminated.

§49.7. Pre-Application Evaluation Process and Criteria; Application Evaluation Process; Evaluation Factors; Tie Breaker Criteria; Threshold Criteria; Selection Criteria; Credit Amount; Limitations on the Size of Developments; Tax Exempt Bond Financed Developments; Adherence to Obligations; Amendment of Applications; Housing Tax Credit and Ownership Transfers.

(a) Pre-Application Evaluation Process and Criteria. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria, Pre-Application Selection Criteria, and as requested, adherence to the Subsection §49.9(b) of this title, in accordance with this section of the QAP and the Rules. Applications that have new TxRD-USDA financing for either new construction or rehabilitation, as evidenced by confirmation from the state office of TxRD, are exempted from the Pre-Application Evaluation Process and are not eligible to receive points for submission of a Pre-Application. Applications for rehabilitation of TxRD properties that do not have new financing from TxRD-USDA are not exempt from the Pre-Application Evaluation Process and are eligible to receive points for submission of a Pre-Application.

(1) Pre-Application Threshold Criteria and Review. Applicants submitting a Pre-Application will be required to submit information demonstrating their satisfaction of the Pre-Application Threshold Criteria. The Pre-Applications not meeting the Pre-Application Threshold Criteria will be returned to the Applicant without further review and with a written notice to the effect that the Pre-Application Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Pre-Application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-Application Threshold Criteria shall not confer upon the Applicant any rights to which it would not other wise be entitled. The Pre-Application Threshold Criteria include:

(A) Submission of the Uniform Application and any other supporting forms required by the Department;

(B)Evidence of site control and site depiction as evidenced by the documentation required under Sections 49.7(e)(5)(A) and 49.7(e)(3)(H)(i) of this title;

(C) Evidence of appropriate zoning or steps toward zoning as evidenced by the documentation required under Section 49.7(e)(5)(B) of this title; and

(D) Evidence of notification to public officials as evidenced by the documentation required under Section 49.7(e)(6)(B).

(2) Pre-Application Selection Criteria and Review. Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in paragraph (1) of this subsection and for which the Applicant has been found to be in compliance, will be reviewed according to the points scored under the Pre-Application Selection

Criteria, which include all of the Selection Criteria, and supporting documentation to justify that Criteria, identified in §49.7(f) of this title.

(3) While not required, an Applicant submitting a Pre-Application may also submit a Market Study, in accordance with Exhibit 49.7(e)(12)(B), if they would like the Department to review the Development as it relates to §49.9(b) of this title.

(4) Pre-Application Results and Rules. After the Pre-Applications have been reviewed for Pre-Application Threshold Criteria and Pre-Application Selection Criteria, the Developments having satisfied the requirements of the Pre-Application Threshold Criteria will be released with their Pre-Application Selection Criteria scores, sorted by region. The order and scores of those Developments released on the Pre-Application 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 Log. Inclusion of a Development on the Pre-Application Log does not ensure that an Applicant will receive Bonus Points for a Pre-Application. To receive Bonus Points an Applicant must meet the requirements of §49.7(f)(10) of this title.

(b) Application Evaluation Process. After eligible Applications have been evaluated, ranked and underwritten in accordance with this section of the QAP and the Rules, an application may be eligible for a recommendation to the Board as described in §49.4(g) of this title.

(1) Threshold Criteria Review. Applications will be initially evaluated against the Threshold Criteria. Applications not meeting Threshold Criteria will be terminated, unless the Department determines that the failure to meet the Threshold Criteria is the result of correctable deficiencies, in which event the Applicant shall be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria will be rejected and will be returned to the Applicant without further review with a written notice to the effect that the Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Applications will also be reviewed to ensure that they are not in violation of §49.9(b) of this title, relating to concentration.

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

(3) Underwriting Evaluation and Criteria. After the Application is scored under the Selection Criteria, the Department will assign the Development for evaluation of compliance status by the Department's compliance division and financial feasibility by the Department's credit underwriting division.

(A) The Department will evaluate compliance status and underwrite the Applications ranked under paragraph (2) of this subsection beginning with the Applications with the highest scores in each region and in each Set Aside identified in §49.6 of this title. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and Set Aside categories. To enable the Board to establish a Waiting List, the Department shall underwrite as many additional Applications as the Committee and Board consider necessary to ensure that all available housing tax credits are allocated within the period required by law.

(B) Underwriting of the Development will include a determination by the Department, pursuant to the Code, §42, that the amount of credits recommended for allocation to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified low income housing property. In making this determination, the Department will use the guidelines identified in §49.8 of this title and take into account:

(i) the Development's total development costs;

(ii) actual or Development's operating expenses and reserves for replacement;

(iii) Development's sources of financing;

(iv) proceeds from the syndication of the tax credits;

(v) the Development's debt coverage ratio; and

(vi) the Development's overall conformance with the Department's underwriting guidelines as described in §49.8 of this title.

(C) The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate, consistent with the guidelines outlined in §49.8 of this title. The expense of any third party underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(4) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by Department staff. Such inspection will evaluate the site based on the Site Evaluation form provided in the Application and provide a site evaluation of "Excellent," "Acceptable," "Poor" or "Unacceptable". The evaluations shall be based on condition of the surrounding neighborhood and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's visibility to prospective tenants and accessibility of the site via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites would include a non-mitigable environmental factor that would impact the health and safety of the residents.

(c) Evaluation Factors. The Committee and Board may choose to evaluate the recommendations of credits for factors other than scoring for one or more of the following reasons:

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

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

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

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

(d) Tie Breaker Criteria. In the event that two or more Applications receive the same number of points in any given set-aside category and region and compare equally under the factors described in subsection (c) of this section, the Department will utilize the factors in paragraphs (1) through (9) of this subsection, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment. As described by these paragraphs, preference in recommending credits for allocation will be given to Developments which are practicable and economically feasible, and which:

(1) serve persons with the lowest percentage of area median family income;

(2) serve low income tenants for the longest period of time, in the form of a longer Compliance Period and/or extended low income use period (as set forth in the LURA);

(3) is located in a Qualified Census Tract, the development of which contributes to a concerted community revitalization plan;

(4) has substantial community support as evidenced by the commitment of local public funds toward the construction, rehabilitation and acquisition and subsequent rehabilitation of the Development or use other funding sources to minimize the amount of subsidy needed to complete the Development;

(5) provides for the most efficient usage of the low income housing tax credit on a per Unit basis;

(6) has a Unit composition that provides the highest percentage of three bedrooms or greater sized Units;

(7) provides integrated, affordable accessible housing for individuals and families with different levels of income;

(8) provides the greatest number of quality residential units; or

(9) in the case of Applications involving preservation, support or approval by an association of residents of the multifamily housing development will be considered.

(e) Threshold Criteria. The following Threshold Criteria listed in paragraphs (1) through (12) of this subsection are mandatory requirements at the time of Application submission:

(1) Completion and submission of the Application provided in the Application Submission Procedures Manual, which includes the Uniform Application and any other supplemental forms which may be required by the Department. The Application, at a minimum, will include the names, company names, company contact persons, address and telephone number of any Persons, including Affiliates of those Persons and Related Parties, providing developmental or operations services to the Development including a Development Owner, an architect, an attorney, a tax professional, a property management company, a consultant, a market analyst, a tenant service provider, a syndicator, a real estate broker or agent or a person receiving a fee in connection with services usually provided by a real estate broker or agent, the owners of the property on which the Development is located at the time the Application is submitted, a developer, and a builder or general contractor.

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

(3) Exhibit 101. Certifications and Design Items. The “Certification Form” provided in the Application Submission Procedures Manual and supporting documents. This exhibit will provide:

(A) A description of the type of amenities proposed for the development. If fees in addition to rent are charged for amenities reserved for an individual tenant's use (i.e. covered parking, storage, etc.), then the amenity may not be included among those provided to complete this exhibit. Developments with more than 36 units must provide at least four of the amenities provided in clauses (i) through (viii) of this subparagraph. Developments with 36 Units or less, Developments receiving funding from TxRD-USDA, and Preservation Developments must provide at least two of the amenities provided in clauses (i) through (viii) of this subparagraph. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a

decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

(i) Full perimeter fencing with controlled gate access;

(ii) designated playground and equipment;

(iii) community laundry room and/or laundry hook-ups in Units (no hook-up fees of any kind may be charged to a tenant for use of the hook-ups);

(iv) furnished community room;

(v) recreation facilities;

(vi) public telephone(s) available to tenants 24 hours a day;

(vii) on-site day care, senior center, or community meals room; or

(viii) computer facilities.

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

(C) A certification that the Applicant is in compliance with with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.)

(D) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit at least once in each 90-day period following the date of the Commitment Notice a report, in a format proscribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses.

(E) A certification that the Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C. This includes that for all Developments, a minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for persons with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS), meets this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for persons with hearing or visions impairments. Additionally, for Developments designed as Townhomes or other two-story dwelling Units, the Applicant must include one bedroom and one bathroom on the ground level of 20% of all Units for each Unit type, include a bathroom with at least a toilet and a sink on the ground level of all Units, and meet Fair Housing standards. At the construction loan closing a certification from an accredited architect will be required stating that the Development was designed in conformance with these standards and that all features have been or will be installed to make the Unit accessible for persons with mobility impairments or persons with hearing or vision impairments. A similar certification will also be required after the Development is completed.

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

(i) Wall insulation at a minimum of R-15. Ceiling insulation at a minimum of R-30. Roof decking to have radiant barriers;

(ii) Energy Star rated heating and cooling systems, or in dry climates an evaporative cooling system may replace the Energy Star cooling system;

(iii) All appliances installed, including water heaters, to be Energy Star rated;

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

(v) If used, natural gas heating systems must have a minimum energy factor of 0.85; and

(vi) If recessed lighting is used, it must use either compact fluorescent lights or fluorescent tube lights.

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

(H) All of the architectural drawings identified in clauses (i) through (vi) of this subparagraph. If documentation for clause (i) was already submitted as part of a Pre-Application, and no alterations have been made to the document, then the Applicant is not required to submit this documentation in the Application. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions:

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

(ii) a site plan which:

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

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

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

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

(iv) floor plans and elevations for each type of common area building;

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

(vi) elevations of residential and common area buildings which include a percentage estimate of the exterior composition, i.e. 50% brick, 50% siding.

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

(4) Exhibit 102. Evidence of the Development's development costs and corresponding credit request and syndication information as described in subparagraphs (A) through (G) of this paragraph.

(A) Exhibit 102A. A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, and rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application.

(B) Exhibit 102B. All Developments must submit the "Development Cost Schedule" provided in the Application Submission Procedures Manual. This exhibit must have been prepared and executed not more than 90 days prior to the close of the Application Acceptance Period.

(C) Exhibit 102C. "Cost of Syndication" Worksheet. A syndicator or financial consultant of the Applicant must provide an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of housing tax credits requested for allocation to the applicant, including pay-in schedules, syndicator consulting fees and other syndication costs. If syndication costs are included in the eligible basis, a justification of the syndication costs for each cost category by an attorney or accountant specializing in tax matters must also be provided.

(D) Exhibit 102D. For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD and qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual.

(E) Exhibit 102E. Rehabilitation Developments must also submit the "Proposed Work Write Up for Rehabilitation Developments" provided in the Application Submission Procedures Manual. This form must be prepared and certified by a third party registered architect, professional engineer or general Contractor. Rehabilitation Developments must establish that the rehabilitation will be substantial and will involve at least $6,000 per unit in direct hard costs.

(F) Exhibit 102F. If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(G) Exhibit 102G. If projected site work costs include unusual or extraordinary items or exceed $6,500 per unit, then the Applicant must provide a detailed cost breakdown prepared by a third party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in eligible basis and which ones are ineligible.

(5) Exhibit 103. Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) through (E) of this paragraph:

(A) Exhibit 103A. Evidence of site control in the name of the ownership entity, or entities which comprise the Applicant. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. If this documentation was already submitted as part of a Pre-Application, and no alterations have been made to the documents, then the Applicant is not required to submit this documentation in the Application. One of the following items described in clauses (i) through (iii) of this subparagraph must be provided:

(i) a recorded warranty deed; or

(ii) a contract for sale or lease (the minimum term of the lease must be at least 45 years) which is valid through July 31, 2002 or at least 90 days, whichever is greater; or

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

(B) Exhibit 103B. Evidence from the appropriate local municipal authority that satisfies one of clauses (i) through (iii) of this subparagraph. Documentation must have been prepared and executed not more than 90 days prior to the close of the Application Acceptance Period. If this documentation was already submitted as part of a Pre-Application, and no alterations have been made to the documents, then the Applicant is not required to submit this documentation in the Application.

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

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

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

(II) the Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied.

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

(I) a detailed narrative of the nature of non-conformance;

(II) the applicable destruction threshold;

(III) owner's rights to reconstruct in the event of damage; and

(IV) penalties for noncompliance.

(C) Exhibit 103C. This Exhibit is required for New Construction only. Evidence of the availability of all necessary utilities/services to the development site. Necessary utilities include natural gas (if it will be utilized by the Development), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the developer. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the address of the proposed site If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(D) Exhibit 103D. Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) through (iv) of this subparagraph:

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

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

(iii) any Federal, State or locally subsidized gap financing of soft debt must be identified at the time of application. At a minimum, evidence from the lending agency that an application for funding has been made and a term sheet which clearly describes the amount and terms of the funding must be submitted. While evidence of application for funding from another TDHCA program is not required (as these funds will be presented to the Board concurrently with the recommendation for tax credits), the Applicant must clearly indicate that such an application has been filed as required by the Application Submission Procedures Manual. If the necessary financing has not been committed by the applicable lending agency, the Commitment Notice, Housing Credit Allocation or Determination Notice, as the case may be, will be conditioned upon Applicant obtaining a commitment for the required financing by a date certain; or

(iv) if the Development will be financed through Development Owner contributions, provide a letter from an independent CPA verifying the capacity of the Applicant to provide the proposed financing with funds that are

not otherwise committed together with a letter from the Applicant's bank or banks confirming that sufficient funds are available to the Applicant. Documentation must have been prepared and executed not more than 90 days prior to the close of the Application Acceptance Period.

(E) Exhibit 103E. A copy of the full legal description and either of the documents described in clauses (i) and (ii) of this subparagraph, and satisfying the requirements of clause (iii), if applicable:

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

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

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

(6) Exhibit 104. Evidence of all of the notifications described in subparagraphs (A) through (D) of this paragraph. Such notices must be prepared in accordance with "Exhibit 104, Pre-Application Public Notifications" provided in the Application Submission Procedures Manual.

(A) Exhibit 104A. A copy of the public notice published in a widely circulated newspaper in the area in which the proposed Development will be located. Such notice must run at least twice within a thirty day period. The notice should not run on holidays or weekends. Such notice must be published prior to the submission of the Application to the Department and can not be older than three months from the first day of the Application Acceptance Period. In communities located in close proximity to a larger metropolitan area and whose citizens may subscribe to a local newspaper as well as a widely circulated metropolitan newspaper, the notice should be published in both newspapers.

(B) Exhibit 104B. Evidence of notification of the local chief executive officer(s) (i.e., mayor and county judge), state senator, and state representative of the locality of the Development. Evidence of such notification shall include a letter which at a minimum contains a copy of the public notice sent to the official and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said official. Proof of notification should not be older than three months from the first day of the Application Acceptance Period. If this documentation was already submitted as part of a Pre-Application, and no alterations have been made to the documents, then the Applicant is not required to submit this documentation in the Application.

(C) Exhibit 104C. If any of the units in the Development are occupied at the time of application, then the Applicant must post a copy of the public notice in a prominent location at the Development throughout the period of time the Application is under review by the Department. A picture of this posted notice must be provided with this exhibit. When the Department's public hearing schedule for comment on submitted applications becomes available, a copy of the schedule must also be posted until such hearings are completed. Compliance with these requirements shall be confirmed during the Department's site inspection.

(D) Exhibit 104D. Public Housing Waiting List. Evidence that the Development Owner has committed in writing to the local public housing authority (PHA) the availability of Units and that the Development Owner agrees to consider households on the PHA's waiting list as potential tenants and that the Property is available to Section 8 certificate or voucher holders. Evidence of this commitment must include a copy of the Development Owner's letter to the PHA and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said PHA. Proof of notification should not be older than three months from the first day of the Application Acceptance Period. If no PHA is within the locality of the Development, the Development Owner must utilize the nearest authority or office responsible for administering Section 8 programs.

(7) Exhibit 105. Evidence of the Development's ownership structure and the Applicant's previous experience as described in subparagraphs (A) through (E) of this paragraph. The 2002 versions of these forms must be submitted.

(A) Exhibit 105A. A chart which clearly illustrates the complete organizational structure of the Development Owner. This chart should provide the names and ownership percentages of Persons with an ownership interest in the Development. The percentage ownership of all Persons in Control of these entities and sub-entities must also be clearly defined.

(B) Exhibit 105B. The Applicant, General Partner (or Managing Member) and all Persons with an ownership interest in the General Partner (or the Managing Member) of these entities and sub-entities must also provide documentation of standing to include the following documentation as applicable under clauses (i) through (iii) of this subclause.

(i) For entities that are not yet formed:

(I) a certificate of reservation of the entity name from the Texas Secretary of State; and

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

(ii) For existing entities:

(I) if the entity has been formed for three months or longer, a copy of the Certificate of Good Standing from the State Comptroller showing good standing; if the entity has been formed for less than three months, a certificate of reservation of the entity name from the Texas Secretary of State,

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

(iii) the Applicant must provide evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control of the Applicant, and that those persons constitute all persons required to sign or submit such documents.

(C) Exhibit 105C. A copy of the completed and executed "Exhibit 105C, Previous Participation and Background Certification Form," which is provided in the Application Submission Procedures Manual must be submitted for each Person owning an interest in the general partner (or, if Applicant is to be a limited liability company, the managing member) of the Applicant. If the developer of the Development is receiving more than 10% of the developer fee, he/she will also be required to submit documents for this exhibit.

(D) Exhibit 105D. Evidence that each Person owning an interest in the general partner (or if Applicant is to be a limited liability company, the managing member) of the Applicant has sent "Exhibit 105D, National Previous Participation and Background Certification Form," to the appropriate Housing Credit Agency for each state in which they have developed or operated affordable housing. This form is only necessary when the Developments involved are outside of the state of Texas. An original form is not required. Evidence of such notification shall be a copy of the form sent to the agency and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said agency.

(E) Exhibit 105E. Evidence that the Development Owner's general partner, partner (or if Applicant is to be a limited liability company, the managing member) General Contractor or their principals have a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel) in the capacity of owner, general partner, managing member or General Contractor. If the General Contractor's experience is being claimed for this exhibit, then the Development Owner must request the Department's approval prior to replacing the General Contractor. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least $6,000 of direct hard cost per unit.

(i) The term "successfully" is defined as acting in a capacity as the general contractor or developer of:

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

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

(ii) Evidence must be one of the following documents:

(I) A certification from the Department that the Person with the experience satisfies this exhibit. Applicants who have previously applied for a Tax Credit Allocation must request this certification at least seven days prior to the beginning of the Application Acceptance Period. Applicants should ensure that the individual whose name is on the certification appears in the organizational chart provided in Exhibit 105A. If the certification is for the General Contractor, then this should be clearly indicated on the document.

(II) If the Department has not previously certified that the experience of the Development Owner, general partner, managing member or General Contractor qualifies for this exhibit, then one of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other appropriate documentation verifying that the general partner, General Contractor or their principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

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

(-b-) that the names on the forms and agreements tie back to the ownership entity, general partner, general contractor and their respective principals as listed in the Application; and

(-c-) the number of units completed or substantially completed.

(8) Exhibit 106. Evidence of the Development's projected income and operating expenses as described in subparagraphs (A) through (D) of this paragraph:

(A) All Developments must provide a 15-year proforma estimate of operating expenses and supporting documentation used to generate projections (excerpts from the market study, operating statements from comparable properties, etc).

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement.

(C) Applicant must provide documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

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

(i) If the current property owner is unwilling to provide the required documentation, then a signed statement as to their unwillingness to do so is required.

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

(II) a rent roll not more than 90 days old as of the day the Application Acceptance Period closes, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

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

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

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

(9) Exhibit 107. Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.

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

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

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

(iii) "Exhibit 107A, Nonprofit Participation Exhibit"; and

(B) Additionally, all Applicants applying under the Nonprofit Set-Aside, as defined by the Code, §42(h)(5), must also provide the following information with respect to each Development Owner and each general partner of a Development Owner, as described in clauses (i) through (vii) of this subparagraph.

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

(ii) evidence that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(iii) a third-party legal opinion stating that the nonprofit organization is not affiliated with or controlled by a for-profit organization and the basis for that opinion;

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

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

(vi) a third-party legal opinion stating that the nonprofit organization is eligible, as further described, for a housing tax credit allocation from the nonprofit set-aside and the basis for that opinion. Eligibility is contingent upon the non-profit organization controlling a majority of the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, be the managing partner (or Managing Member); and otherwise meet the requirements of the Code, §42(h)(5); and

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

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

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

(10) Exhibit 108. Applicants applying for acquisition credits or affiliated with the seller must provide all of the documentation described in subparagraphs (A) through (C) of this paragraph. Applicants applying for acquisition credits

must also provide the items described in subparagraph (D) of this paragraph and as provided in the Application Submission Procedures Manual.

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

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

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

(D) "Exhibit 108D, Acquisition of Existing Buildings Form."

(11) Exhibit 109. Evidence of the Applicant's, or any person with an ownership interest in the General Partner (or Managing Member), financial status as provided by both documents described in subparagraphs (A) and (B) of this paragraph and as provided in the Application Submission Procedures Manual. If the developer of the Development is receiving a development fee of 10% or more of total development costs, he/she will also be required to submit documents for this exhibit. Such evidence must be filed separately from the volume containing the Threshold Criteria and placed in a large envelope labeled as Exhibit 109, as instructed in the Application Submission Procedures Manual.

(A) Exhibit 109A. A Personal Financial and Credit Statement completed and signed by each Person with a general partner (or if Applicant is to be a Limited Liability Company, managing member) interest in the Applicant. Applicant's statement must not be older than 90 days from the first day of the Application Acceptance Period. If submitting partnership and corporate financials in addition to the individual statements, the certified financial statements should not be older than 12 months. This document is required for an entity even if the entity is wholly-owned by a person who has submitted this document as an individual.

(B) Exhibit 109B. Authorization to Release Credit Information must be completed by all Persons with an ownership interest in the Applicant.

(12) Supplemental Threshold Reports. Documents under subparagraph (A) and (B) must be submitted as further clarified in subparagraph (C) and (D) of this paragraph and §49.9 of this title.

(A) Exhibit 110. A Phase I Environmental Site Assessment (ESA) on the subject Property, dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is older than 12 months as of the day the Application Acceptance Period closes, the Development Owner must supply the Department with an update letter from the Person or organization which prepared the initial assessment; provided however, that the Department will not accept any Phase I Environmental Site Assessment which is more than 24 months old as of the day the Application Acceptance Period closes. The ESA must be prepared in accordance with the policies provided in §49.9 of this title. The ESA must contain a FEMA panel with the site precisely superimposed on the map and a copy of the cover of the FEMA map panel, showing the panel number. If the Development is identified as being in a flood plain, the Applicant must also provide a written explanation of what portion of the Development will be located in the flood plain (i.e., filled, used as parking, used as green space).

(B) Exhibit 111. A comprehensive Market Study prepared at the developer's expense by a disinterested Qualified Market Analyst in accordance with the Market Analysis and Appraisal Policy provided in §49.9 of this title. In the event that a Market Study on the Development is older than 6 months as of the day the Application Acceptance Period closes, the Development Owner must supply the Department with an updated Market Study from the Person or organization which prepared the initial report; provided however, that the Department will not accept any Market Study which is more than 12 months old as of the day the Application Acceptance Period closes. The Market Study should be prepared for and addressed to the Department.

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

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

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

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

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

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than March 29, 2002. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, March 29, 2002. If the entire exhibit is not received by that time, the Application will be terminated for a Material Deficiency and will be removed from consideration.

(f) Selection Criteria. All Applications will be ranked according to the Selection Criteria listed in paragraphs (1) through (11) of this subsection. If this documentation was already submitted as part of a Pre-Application, and no alterations have been made to the documents, then the Applicant is not required to submit this documentation in the Application.

(1) Exhibit 201, Development Location Characteristics. Evidence, not more than 90 days old from the date of the Application Acceptance Period, that the subject Property is located within one of the geographical areas described in subparagraphs (A) through (E) of this paragraph. Areas qualifying under any one of the subparagraphs (A) through (E) of this paragraph will receive 5 points. A Development may only receive points under one of the subparagraphs (A) through (E) of this paragraph. A Development may receive points pursuant to subparagraph (F) in addition to any points awarded in subparagraphs (A) through (E).

(A) A geographical area which is:

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

(ii) a Colonia.

(B) a designated state or federal empowerment/enterprise zone, urban enterprise community, or urban enhanced enterprise community. Such Developments must submit a letter and a map from a city/county official verifying that the proposed Development is located within such a designated zone. Letter should be no older than 90 days from the first day of Application Acceptance Period; or

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

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

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

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

(D) a Development which is located in a QCT or a "Difficult Development Area" as specifically designated by the Secretary of HUD, and contributes to a concerted community revitalization plan. To qualify for these points, the Development Owner, in addition to submitting Exhibit 102 (B), must also submit a letter from a city/county official which verifies that the Development is located in a Qualified Census Tract as defined by HUD, effective January 1, 2002, or a DDA, and provides a detailed description of the revitalization plan under way in the community, including how the Development contributes to such concerted revitalization efforts.

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

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

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

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

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

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

(2) Housing Needs Characteristics. Each Development, dependent on the city or county where it is located, will yield a score based on the Uniform Housing Needs Scoring Component. If a Development is in an

incorporated city, the city score will be used. If a Development is outside the boundaries of an incorporated city, then the county score will be used. The listing of those scores by city and county will be published in the Reference Manual. (20 points maximum).

(3) Exhibit 202. Support and Consistency with Local Planning. All documents must not be older than 90 days from the first day of the Application Acceptance Period.

(A) Evidence from the local municipal authority stating that the Development fulfills a need for additional affordable rental housing as evidenced in a local consolidated plan, comprehensive plan, or other local planning document. If the municipality does not have such a planning document, then a letter from the local municipal authority stating that there is no local plan and that the city supports the Development must be submitted (6 points).

(B) Community Support. Points will be awarded based on the written statements of support from local and state elected officials representing constituents in areas that include the location of the Development. Letters of support must identify the specific Development and must specifically state the officials support of the Development at the proposed location. This documentation must be provided as part of the Application. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit. Letters of support received after the close of the Application Acceptance Period will not be accepted for this Exhibit. Points can be awarded for letters of support as identified in clauses (i) and (ii) of this subparagraph (maximum 4 points):

(i) from State of Texas Representative or Senate Member (1 point each, maximum of 2 points); and

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

(C) Points will be awarded based on the written statements of support from neighborhood and/or community civic organizations for areas that encompass the location of the Development. Letters of support must identify the specific Development and must specifically state the organization's support of the Development at the proposed location. This documentation must be provided as part of the Application. Letters of support from organizations that are not active in the area including the location of the Development will not qualify for points under this Exhibit. Letters of support received after the close of the Application Acceptance Period will not be accepted for this Exhibit. (1 point each, maximum of 2 points.)

(4) Development Characteristics. Developments may receive points under as many of the following subparagraphs as are applicable. This minimum requirement does not apply to Developments involving rehabilitation or Developments receiving funding from TxRD-USDA. To qualify for points under subparagraphs (D) through (H) of this paragraph, the Development must first meet the minimum requirements identified under subparagraph (A) of this paragraph.

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

(i) 500 square feet for an efficiency unit;

(ii)750 square feet for a non-elderly one bedroom unit; 550 square feet for an elderly one bedroom unit;

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

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

(v) 1,100 square feet for a four bedroom unit.

(B) Exhibit 203. Evidence that the Development to be purchased qualifies as a federally assisted building within the meaning of the Code, §42(d)(6)(B), and is in danger of having the mortgage assigned to HUD, TxRD-USDA, or creating a claim on a federal mortgage insurance fund (such evidence must be a letter from the institution to which the Development is in danger of being assigned); OR evidence that the Applicant is purchasing(ed) a Property owned by HUD, an insured depository institution in default, or a receiver or conservator of such an institution, or is an REO Property or other existing Property which is being rehabilitated as part of a community revitalization plan. Such evidence must be in the form of a binding contract to purchase from such federal or other entity as described in this subparagraph, closing statements, or recorded warranty deed, not more than 6 months old from the first day of the Application Acceptance Period. For an existing Development which is part of a community revitalization plan, documentation must include a letter from the city/county which verifies that the Development is part of a community revitalization plan and provides a detailed description of the contribution to the revitalization plan (5 points).

(C) Exhibit 204. Evidence that the Development is an At-Risk Development. Applicant shall also provide a statement as to its willingness to maintain low-income use restrictions for the period applicable to the type of HUD assistance involved, and the actions taken or required by it in order to assure that the HUD assistance will continue to be provided to the Development (8 points).

(D) Development provides Units for housing individuals with children. To qualify for these points, these Units must have at least 2 bathrooms and no fewer than three bedrooms and at least 1000 square feet of net rentable area for three bedroom Units or 1200 square feet of net rentable area for four bedroom Units; these Unit size and bathroom

requirements are not required for Developments involving rehabilitation to be eligible for the points below. Unless the building is served by an elevator, 3 or 4 bedroom Units located above the building's second floor will not qualify for these points. If the Development is a mixed-income development, only tax credit Units will be used in computing the percentage of qualified Units for this selection item.

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

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

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

(F) Exhibit 205. Unit Amenities and Quality. Developments providing specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) through (xiv) of this subparagraph, not to exceed 10 points in total. Developments involving rehabilitation will double the points listed for each item, not to exceed 10 points in total.

(i) Lighting Package: Includes heat light and vent fans in all bathrooms and all rooms have ceiling fixtures with accessible wall switches (1 point);

(ii) Kitchen Amenity Package: Includes microwave, disposal, dish washer, range/oven, fan/hood, and refrigerator (1 point);

(iii) Covered entries (1 point);

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

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

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

(vii) laundry connections (1 point);

(viii) storage area (1 point);

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

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

(xi) Covered patios or balconies (1 point);

(xii) Covered parking (2 points);

(xiii) Garages (3 points);

(xiv) Greater than 75% masonry on exterior (3 points);

(G) The proposed Development provides housing density of no more than 42 Units per acre for multi-story elderly or urban infill Developments and no more than 24 Units per acre for all other Developments, as follows: (i) 34 Units per acre or less for multi-story elderly or urban infill developments, or 16 Units or less per acre for all other Developments (6 points); or

(ii) 35 to 38 Units per acre for multi-story elderly or urban infill developments, or 17 to 20 Units per acre for all other Developments (4 points); or

(iii) 39 to 42 Units per acres for multi-story elderly or urban infill developments, 21 to 24 Units per acre for all other Developments (2 points).

(H) Exhibit 206. The Development is an existing Residential Development without maximum rent limitations or set-asides for affordable housing. If maximum rent limitations had existed previously, then the restrictions must have expired at least one year prior to the date of Application to the Department (4 points).

(I) The Development is a mixed-income development comprised of both market rate Units and qualified tax credit Units. To qualify for these points, the project must be located in a submarket where the average rents based on the number of bedrooms for comparable market rate units are at least 10% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. Additionally, excluding 4-bedroom Units, the proposed rents for the market rate units in the project must be at least 5% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. The Market Study required by subsection (e)(12)(B) of this section must provide an analysis of these requirements for each bedroom type shown in proposed unit mix. Points will be awarded to Development's with a Unit based Applicable Fraction which is no greater than:

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

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

(iii) 90% (4 points); or

(iv) 95% (2 points).

(J) Exhibit 207. Evidence that the proposed historic Residential Development has received an historic property designation by a federal, state or local Governmental Entity. Such evidence must be in the form of a letter from the designating entity identifying the Development by name and address and stating that the Development is:

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

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

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

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

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

(L) Exhibit 208. Evidence that the proposed Development is partially funded by a HOPE VI, Section 202 or Section 811 grant from HUD. The Project must have already received the commitment from HUD. Submission of a HOPE VI, Section 202 or Section 811 grant application to HUD does not qualify a Development for these points. Evidence shall include a copy of the commitment letter from HUD indicating the HOPE VI, Section 202 or Section 811 grant terms and grant award amount (5 points).

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

(A) Exhibit 209. Evidence that a HUB, as certified by the Texas Building and Procurement Commission (formerly General Services Commission), has an ownership interest in and materially participates in the development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Building and Procurement Commission (formerly General Services Commission) that the Person is a HUB and is valid through July 31, 2002 and renewable after that date.

(B) Exhibit 210. Joint Ventures with Qualified Nonprofit Organizations. Evidence that the Development involves a joint venture between a for profit organization and a Qualified Nonprofit Organization. The Qualified Nonprofit Organization must be materially participating in the Development as one of the General Partners (or Managing Members), but is not required to have Control, to receive these points. However, Developments without Control will not be eligible for the nonprofit set-aside.

(6) Exhibit 211. Development Provides Supportive Services to Tenants. Evidence that the Development Owner has an executed agreement with a for profit organization or a tax-exempt entity for the provision of special supportive services for the tenants. The service provider must be an existing organization qualified by the Internal Revenue Service or other governmental entity. The provision of supportive services will be included in the LURA (up to 7 points, depending upon the services committed in accordance with subparagraph (B) of this paragraph, plus two additional points pursuant to clause (vi) of subparagraph (B) of this paragraph). Acceptable services are described in subparagraphs (C) through (E) of this paragraph.

(A) Both documents described in clauses (i) and (ii) of this subparagraph must be submitted for the service provider to be considered under this exhibit.

(i) A fully executed contract, not more than 6 months old from the first day of the Application Acceptance Period between the service provider and the Applicant that establishes that the services offered provide a benefit that would not be readily available to the tenants if they were not residing in the Development.

(ii) A copy of the service provider's Articles of Incorporation or comparable chartering document.

(B) The supportive services contract will be evaluated using the criteria described in clauses (i) through (vi) of this subparagraph. The contract must clearly state the:

(i) Cost of Services to the Development Owner. The cost shown in the contract must also be included in the Development's operating budget and proforma. The costs must be reasonable for the benefit derived by the tenants. Services for which the Development Owner does not pay, will not receive a point for this item, except in the event that a supportive service provider is able to provide services with funds they receive from other sources. Evidence of the provider's other funding source(s) enabling the provision of service to the tenants of the proposed Development must be provided (1 point).

(ii) Availability of Services - The services must be provided on site or with transportation provided to offsite locations (1 point).

(iii) Duration of Contract - A commitment to provide the services for not less than five years or an option to renew the contract annually for not less than five years must be provided (1 point).

(iv) Experience of Service Provider - The Department will evaluate the experience of the organization as well as the professional and educational qualifications of the individuals delivering the services (1 point).

(v) Appropriateness - Services must be appropriate and provide a tangible benefit in enhancing the standard of living of a majority of low-income tenants (1 point).

(vi) Coordination with tenant services provided through housing programs – An extra two points will be awarded for services that are provided through state workforce development and welfare programs as evidenced by execution of a Tenant Supportive Services Certification (2 points).

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

(D) any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§ 601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(E) any other services approved in writing by the Department.

(7) Tenant Characteristics – Populations with Special Needs Housing & Rent and Income Levels. Developments may receive points under as many of the subparagraphs as apply, in accordance with the terms of those subparagraphs.

(A) This criterion applies to elderly Developments which provide significant facilities and services specifically designed to meet the physical and social needs of the residents. Significant services may include congregate dining facilities, social and recreation programs, continuing education, welfare information and counseling, referral services, transportation and recreation. Other attributes of such Developments include providing hand rails along steps and interior hallways, grab bars in bathrooms, routes that allow for barrier-free travel, lever type doorknobs and single lever faucets. All multistory buildings (two or more floors) must be served by an elevator. Individual Units shall not be multistory. Elderly Developments must not contain any Units with three or more bedrooms. Such a Development must conform to the Federal Fair Housing Act and must be a Development which meets the definition of Qualified Elderly Development (8 points).

(B) Exhibit 212. Evidence that the Development is designed solely for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist tenants in locating and retaining permanent housing. For the purpose of this exhibit, homeless persons are individuals or families that lack a fixed, regular, and adequate nighttime residence as more fully defined in 24 Code of Federal Regulations, §91.5, and as may be amended from time to time. All of the items described in clauses (i) through (v) of this subparagraph must be submitted:

(i) a detailed narrative describing the type of proposed housing;

(ii) a referral agreement, not more than 12 months old from the first day of the Application Acceptance Period, with an established organization which provides services to the homeless;

(iii) a marketing plan designed to attract qualified tenants and housing providers;

(iv) a list of supportive services; and

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

(C) Low Income Targeting Points. Applications are eligible to receive points under subclauses (I),(II) and (III) of clause (iv) of this subparagraph. To qualify for these points, the rents for the rent-restricted Units must not be higher than the allowable tax credit rents at the rent-restricted AMGI level. For Section 8 residents, or other rental assistance tenants, the tenant paid rent plus the utility allowance is compared to the rent limit to determine compliance. The Development Owner, upon making selections for this exhibit will set aside Units at the rent-restricted levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. For the purposes of this subparagraph (maintaining the promised percentage of Units at the selected levels of AMGI), if at re-certification the tenant's household income exceeds the specified limit, then the Unit remains as a Unit restricted at the specified level of AMGI until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the Unit exceeding the specified AMGI level is replaced, then the rent for the previously qualified Unit at the specified level of AMGI may be increased over the LIHTC requirements. Rent increases, if any, should comply with lease provisions and local tenant-landlord laws.

(i) To qualify for points for Units set aside for tenants at or below 30% of AMGI, an Applicant must provide evidence of a commitment of funds that specifies the amount of funds committed, terms of the commitment and the number of Units targeted at the AMGI level.

(ii) Notwithstanding anything to the contrary contained herein, Applicants may not elect to set aside Units at 30%, 40% or 50% of AMGI for points hereunder to the extent the deferred developers fee as determined by staff at underwriting exceeds 50% of the entire developer fee.

(iii) If local HOME funds are to be used for Units set aside for tenants at 30%, 40% or 50% of AMGI, the Applicant shall have proof of application for these local funds to receive the points; however, if a firm commitment

for local HOME funds is not received by the Department prior to 30 days preceding the meeting where allocation recommendations will be made, the points shall be deducted.

(iv) For purposes of calculating percentages of units, all figures should be rounded down to the nearest whole number. No Unit may be counted twice in determining point eligibility.

(I) Development owners selecting to set aside units for individuals and families earning less than 50% of AMGI shall receive the corresponding points:

(-a-) 1% to 9% of tax credit Units set aside for 50% or less of AMGI (4 points)
(-b-) 10% to 19% of tax credit Units set aside for 50% or less of AMGI (8 points)
(-c-) 20% to 29% of tax credit Units set aside for 50% or less AMGI (12 points)
(-d-) 30% to 39% of tax credit Units set aside for 50% or less AMGI (16 points)
(-e-) 40% or more of tax credit Units set aside for 50% of less AMGI(20 points)

(II) Development owners selecting to set aside units for individuals and families earning less than 40% of AMGI shall receive the corresponding points listed below:

(-a-) 1% to 9% of tax credit Units set aside for 40% or less of AMGI (6 points)
(-b-) 10% to 19% of tax credit Units set aside for 40% or less of AMGI (10 points)
(-c-) 20% to 29% of tax credit Units set aside for 40% or less AMGI (14 points)
(-d-) 30% to 39% of tax credit Units set aside for 40% or less AMGI (18 points)
(-e-) 40% or more of tax credit Units set aside for 40% or less AMGI (22 points)

(III) Development owners selecting to set aside units for individuals and families earning less than 30% of AMGI shall receive the corresponding points listed below:

(-a-) 1% to 9% of tax credit Units set aside for 30% or less of AMGI (8 points)
(-b-) 10% to 19% of tax credit Units set aside for 30% or less of AMGI (12 points)
(-c-) 20% to 29% of tax credit Units set aside for 30% or less AMGI (16 points)
(-d-) 30% to 39% of tax credit Units set aside for 30% or less AMGI (20 points)
(-e-) 40% or more of tax credit Units set aside for 30% or less AMGI (24 points).

(8) Exhibit 213. Length of Compliance Period. The initial compliance period for a development is fifteen years. In accordance with Code, developments are required to adhere to an extended low income use period for an additional 15 years. To receive points the Development Owner elects, in the Application, to extend the compliance period beyond the extended low income use period. The period commences with the first year of the Credit Period.

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

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

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

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

(9) Exhibit 214. Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department; and either an individual tenant with respect to a single family building; or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms (5 points).

(A) Upon the earlier to occur of:

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

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

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

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

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

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

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

(C) After the later to occur of:

(i) the end of the Compliance Period; or

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

the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

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

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

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

(10) Pre-Application Points. Developments which submit a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph shall receive 15 points. To be eligible for these points, the proposed development in the Pre-Application must:

(A) be for the identical site and unit mix as the proposed development in the Application;

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

(C) be serving the same target population in the Application in the same set-aside; and

(D) not have altered the documentation for the Pre-Application Selection Criteria.

(11) Point Reductions. Penalties will be imposed on Applicants or Affiliates who have requested extensions of Department deadlines, and did not meet the original submission deadlines, relating to developments receiving a housing tax credit allocation made in the application round preceding the current round. Extensions that will receive penalties include all types of extensions identified in Section 49.13 of this title, including Projects whose extensions were authorized by the Board. The schedule of penalties to Applicants or Affiliates requesting extensions is as follows:

(A) First extension request - $2,500 extension penalty fee plus 2 point deduction;

(B) Second extension request - $25//Unit plus 2 point deduction; and

(C) Third extension request - $35/Unit plus 2 point deduction.

(g) Credit Amount. The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department. The Department will limit the allocation of tax credits to no more than $1.2 million per Development. The allocation of tax credits shall also be limited to not more than $1.6 million per Applicant per year. These limitations will

apply to any Applicant or Related Party unless otherwise provided for by the Board. Tax Exempt Bond Development Applications are not subject to the per Development and per Applicant or Related Party credit limitations, and Tax Exempt Bond Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply:

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

(2) to the provision by an entity of "qualified commercial financing" within the meaning of the Code, §49(a)(1)(D)(ii) (without regard to the 80% limitation thereof);

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

(4) to a Development Consultant with respect to the provision of consulting services.

(h) Limitations on the Size of Developments.

(1) The minimum Development size will be limited to 16 units unless otherwise provided for under the Ineligible Building Types definition.

(2) Rural Developments involving new construction will be limited to 76 Units unless the Market Study clearly documents that larger developments are consistent with the comparables in the community and that there is a significant demand for additional units. Rural Developments exceeding 76 Units based on the Market Study will be ineligible for the Rural Set-Aside. All other Developments involving new construction will be limited to 250 units. These maximum unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum unit restrictions. For those developments which are a second phase or are otherwise adjacent to an existing tax credit development unless such proposed development is being constructed to replace previously existing affordable multifamily units on its site, the combined Unit total for the developments may not exceed the maximum allowable Development size, unless the first phase has been completed and stabilized for at least six months.

(3) Tax Exempt Bond Developments will be limited to 280 Units.

(i) Tax Exempt Bond Financed Developments.

(1) Tax Exempt Bond Development Applications are also subject to evaluation under the QAP and Rules and the requirements and underwriting review criteria described in the Application Submission Procedures Manual. Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in subsection (e) of this section. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. Tax Exempt Bond Financed Developments are not subject to the Selection Criteria set forth in subsection (f) of this section and are not required to submit documentation relating thereto.

(2)Tax Exempt Bond Development Applications will be evaluated under the factors set forth at paragraphs (2) and (4) of subsection (c) of this section. With respect to paragraph (3) of subsection (b) of this section, Developments determined to be infeasible by the Department will not receive a Determination Notice. With respect to paragraph (3) of section 49.9(b) of this title, Developments determined by the Department to result in an excessive concentration of affordable housing developments within a particular market area will not receive a Determination Notice. With respect to paragraph (2) of subsection (c) of this section, Developments determined by the Department to be located on an "Unacceptable" site will not receive a Determination Notice. For purposes of paragraph (4) of subsection (c) of this section, Developments must demonstrate the Development's consistency with the bond issuer's consolidated plan or other similar planning document. Consistency with the local municipality's consolidated plan or similar planning document must also be demonstrated in those instances where the city or county has a consolidated plan.

(3) Tax Exempt Bond Developments may not include Ineligible Building Types unless the Department determines that it is in the best interests of the particular Development, its market area and the tax credit program to permit a particular building type to be included in the Development.

(4) Tax Exempt Bond Developments are subject to the requirements and restrictions set forth in §49.5 of this title.

(5) Tax Exempt Bond Development Applications are not subject to the limitations on amount of tax credits per Applicant or per Development set forth in subsection (g) of this section.

(6) Tax Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of these services will be included in the LURA. Acceptable services as described in subparagraphs (A) through (C) of this paragraph include:

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

(B) any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§ 601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(C) any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(7) Code §42(m)(2)(D) required the bond issuer (if other than the Department) to make sure that a Tax Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Department's underwriting guidelines; or delegate, by agreement, that function to the Department. If the issuer underwrites the Development, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this paragraph, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service

(8) If the Department staff determines that all requirements of subsection (i) of this section have been met, the Board, shall authorize the Department to issue a Determination Notice to the Applicant that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

(j) Adherence to Obligations. All representations, undertakings and commitments made by an Applicant in the applications process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform as stated in the representation and enforcement by inclusion in deed restrictions to which the Department is a party.

(k) Amendment of Application Subsequent to Allocation by Board.

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

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with §49.10 of this title shall also provide to the Board an analysis and written recommendation regarding the amendment.

(3) The Board must vote on whether to approve the amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of housing tax credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

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

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of three percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of the Development of at least five percent; and

(G) any other modification considered significant by the Board.

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

(A) reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) preventable by the Applicant.

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

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

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

§49.8. Underwriting Guidelines.

(a) The Department will award, as computed during the underwriting review, the lesser amount calculated by the eligible basis method, equity gap method, or the amount requested by the Applicant as further described in paragraphs (1) through (3) of this subsection.

(1) Eligible Basis Method. Based upon calculation of eligible basis after applying all cost containment measures and limits on profit, overhead, general requirements and developer fees. The Applicable Percentage will be used in the Eligible Basis Method as defined in Section 49.2(6) of this title.

(2) Equity Gap Method. The amount of credits needed to fill the gap created by total Development cost less total debt. In making this determination, the Department will consider the percentage of the total Development that will be financed by proceeds of the tax credits and reserve the right to adjust the permanent loan amount as necessary.

(3) The amount requested by the Applicant will be used if it is lower than the Department's determination of eligible basis except as related to adjustments made to the applicable percentage.

(b) Construction Standards. The cost basis is defined using Average quality as defined by Marshall & Swift Residential Cost Handbook. If the Development contains amenities not included in the Average quality standard, the Department will take into account the costs of the amenities as designed in the Development If the Development will contain single family buildings as permitted under the "Ineligible Building Type" definition in §49.2(49) of this title, then the cost basis should be consistent with single family Average quality as defined by Marshall & Swift Residential Cost Handbook.

(c) Development Costs. The Department's estimate of the Development's cost will be based on the use of Marshall and Swift cost evaluation data. Total Housing Development Costs include all costs associated with the construction of the Development including common space, and as defined under §49.2(84) of this title. The Applicant's cost estimate will be compared against the Department's and the Total Housing Development Cost and corresponding credit allocation will be adjusted accordingly. Exceptions may be made at the Department's discretion but only if they are well documented by the Applicant at the time of Application submission. The underwriting staff will evaluate rehabilitation Developments for comprehensiveness of the third party work write-up and will determine if additional information is needed. The Applicant must provide their best estimate of how much it would cost to develop the Development. Adjustments will be made with respect to assisted living, congregate care, or elderly projects which may require larger common areas. The Department is also aware that differences in land costs may account for significant cost variations among Developments. Hard construction costs include contractor profit, overhead and general requirements.

(d) For Acquisition Developments. The proposed acquisition price verified in the site control document will be compared to the unsubsidized as-is market value conclusion of the Appraiser whose appraisal is consistent with the Department's Market analysis and Appraisal Policy and USPAP Guidelines. For Developments where an identity of interest exists between the buyer and seller the original acquisition cost of the Development to the seller along with

holding costs and capitalized improvements will also be considered. Holding costs may include a rate of return consistent with the historical return of similar risk on any equity position in the Development. The Department will also consider exit taxes that may be required as a result of the transfer of ownership if they are detailed and well documented and certified to by the owners CPA. The ultimate credit amount may be reduced to meet the rehabilitation need after all available reserves have been expended.

(e) Site Work. If Project site work costs exceed $6,500 per Unit, the Applicant must submit a detailed cost breakdown prepared by a third party engineer or architect, and a letter from a certified public accountant properly allocating which portions of those site costs should be included in eligible basis and which ones are ineligible, in keeping with the holding of the Internal Revenue Service Technical Advice Memoranda.

(f) Operating Reserves. The Department will utilize the terms proposed by the syndicator or lender or 4 to 6 months of operating expenses plus debt service. These reserves must be included in Exhibit 102B, Project Cost Schedule, of the application.

(g) Fee Limits. The development cost associated with general requirements cannot exceed 6% of the eligible basis associated with onsite sitework and construction hard costs. The development cost associated with contractor overhead cannot exceed 2% of the eligible basis associated with onsite sitework and construction hard costs. For Developments also receiving financing from TxRD-USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or TxRD-USDA requirements. The development cost associated with contractor profit cannot exceed 6% of the eligible basis associated with onsite sitework and construction hard costs. The development cost associated with developer's Fees cannot exceed 15% of the project's Total Eligible Basis (adjusted for the reduction of federal grants, below market rate loans, historic credits, etc.), as defined in §49.2(34), not inclusive of the developer fees themselves. The 15% can be divided between overhead and fee as desired but the sum of both items must not exceed 15%. The Developer Fee may be earned on non-eligible basis activities, but only 15% of eligible basis items may be included in basis for the purpose of calculating a project's credit amount.

(h) Income and Expenses. Financial feasibility will be tested by adding rental income to miscellaneous income, and subtracting vacancy and expenses to achieve a net operating income. The net operating income will be divided by the yearly debt service to achieve the debt coverage ratio. These figures will be calculated using the methods identified in paragraphs (1) through (5) of this subsection.

(1) Rental Income. LIHTC rent restricted rates less utility allowances and market rent rates (if the project is not 100% LIHTC) will be utilized in calculating the rental income. If the market rate rents are lower than the net LIHTC program rents, then the market rents will be utilized. The Department will always use the HUD Rental and Income Limits that are most current.

(2) Miscellaneous Income. A range of $5 to $15 per unit which will encompass any and all income from application fees, late fees, laundry, storage, garage rentals, or any other ancillary income. Exceptions may be made for special uses, such as congregate care, elderly and child care facilities or where comparables within the submarket are realizing higher miscellaneous income. The exemptions will be evaluated on a case by case basis. Applicants must submit documentation that explains their projected miscellaneous income.

(3) Vacancy: Typically the greater of the market vacancy rate or 7.5% (5% vacancy plus 2.5% for collection loss) will be utilized by the Department to underwrite the development.

(4) Expenses: Applicants should provide an estimate of their expected expenses based on their own research (internal historical operating data, IREM, etc.) For new developments, the expenses must include at least $200 per unit in reserve for replacement. For rehabilitation developments, the expenses must include at least $300 per unit in reserve for replacement. CHDOs must identify if they will be obtaining a property tax exemption or not. If they indicate that they will have an exemption, they must provide reasonable proof that the exemption can be attained. If no reasonable proof is provided, the Development will be underwritten under the assumption that property taxes must be paid. The Applicant's expenses will be compared against the most current information contained in the Department's database and expenses submitted by other comparable projects. The underwriter will analyze the development based on the current TDHCA operating database, the project's existing historical performance, if any, the application proforma, the market study and any additional documentation provided for consideration. A line by line review by expense category will on a project-by-project basis determine the appropriate anticipated operating expense for each project.

(5) Debt Coverage Ratio (DCR). The DCR will be sized at a minimum of 1.10 by the first year of stabilized rents and be restricted to not more than 1.25. The projects DCR should remain above 1.10 over the life of the project estimated in the proforma using a 3% income growth factor and a 4% expense growth factor. Projects in rural areas and projects which fulfill special needs may be allowed a DCR below this level but must maintain a positive net cash flow once stabilized occupancy levels have been reached. A recommendation for increasing or decreasing the development's serviceable debt may be made by the Department should the DCR exceed or fall below the above stated range.

§49.9. Market Study Requirements; Concentration; and Environmental Site Assessment Guidelines.

(a) Market Study Requirements.

(1) Market Analyst Qualifications. The qualifications of each Report Provider are determined and approved on a case-by-case basis by the chief underwriter or the review appraiser, based upon the quality of the report, itself and the experience and educational background of the report provider as a market analyst, as set forth in a Statement of Qualifications appended to the Report. The Department will maintain a list of approved Market Analysts. Such determination will be at the discretion of the Department. Generally, a qualified Market Analyst will be:

(A) a real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board; or,

(B) a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality, written report.

(2) A market study prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The study must determine the feasibility of the subject property and state conclusions as to the impact of the property with respect to the determined housing needs. The market study should be self-contained and must describe in sufficient detail and with adequate data, such conclusions. Any third party reports relied upon in the market study must be verified directly by the market analyst as to the validity of the data and the conclusions.

(3) The market study must contain sufficient data and analysis to allow the reader to understand the market data presented, the analysis of the data, and the conclusion(s) of such analysis and its relationship to the subject property. The complexity of this requirement will vary in direct proportion with the complexity of the real estate and the real estate market being analyzed. The study should lead the reader to the same or similar conclusion(s) reached by the market analyst.

(4) The primary market or submarket will be defined on a case-by-case basis by the market analyst engaged by the Applicant to provide a market study for the Development. The market study should contain a map defining the market and submarket and a narrative of the salient features that helped the analyst make such a determination. As a general guide for the market analyst, the Department encourages the use of natural political/geographical boundaries whenever possible. Furthermore, the primary or submarket for a project chosen by the market analyst will generally be most informative if it contains between 50,000 and 250,000 persons, though a sub-market with fewer or more residents may be indicated at the discretion of the market analyst where political/geographic boundaries indicate doing so.

(5) An acceptable market study must also include at the minimum in quantitative as well as narrative form the information required under subparagraphs (A) through (C) of this paragraph. The Department reserves the right to require the Report Provider to address such other issues as may be relevant to the Department's evaluation of the need for the subject property and the provisions of the particular program guidelines. All Applicants shall acknowledge by virtue of filing an Application that the Department shall not be bound by any such opinion or market study, and may substitute its own analysis and underwriting conclusions for those submitted by the report provider.

(A) a comprehensive evaluation of the existing supply of comparable multifamily or single family subdivision property(ies) as appropriate in the same market and submarket area as the Development. The study should include census data documenting the amount and condition of local housing stock as well as information on building permits since the census data was collected. The study should evaluate existing market rate housing as well as existing subsidized housing to include local housing authority units and any and all other rent or income restricted units with respect to:

(i) rental rates including an attribute adjustment matrix for the most comparable Units to the Units proposed in the Development;

(ii) affordability analysis of the comparable unrestricted units;

(iii) current physical condition of the comparable property based upon a cursory exterior inspection evidenced by photographs;

(iv) occupancy rates of each of the comparable properties and occupancy trends by property class;

(v) annual turnover rates of each of the comparable properties and turnover trends by property class;

(vi) historic, current and anticipated absorption rates taking into account all other new or proposed development and the availability of other comparable sites;

(vii) an analysis of the number of existing or proposed units being set-aside or constructed for persons with disabilities; and

(viii) an itemization of all LIHTC Program Units within the defined submarket.

(B) a comprehensive evaluation of the demand for the housing the subject is proposed to provide. The study must include an analysis of the need for market and affordable housing within the Development's market and submarket area using the most current census and demographic data available, with copies of such source data included in the report or in the report addenda. The demand for housing should be quantified, well reasoned and should be segmented to include only relevant income and age eligible targets of the subject. Each segment should be addressed independently

and overlapping segments should be minimized and clearly identified when required. The final quantified demand calculation may include demand due to:

(i) documented population and household growth trends for targeted income-eligible rental households;

(ii) documented turnover of existing income-eligible targeted rental households;

(iii) confirmed new employment growth for targeted income-eligible rental households; and

(iv) other well reasoned and documented sources of demand determined by the market analyst.

(C) a comprehensive evaluation of the Development in terms of:

(i) correlation of market and submarket demographics of housing demand to the current and proposed supply of housing and the need for the Development;

(ii) rental rate conclusion for each unit type and rental restriction category. Conclusions of rental rates below the maximum net rent limit rents must be well reasoned, documented and consistent with the market data and should address any inconsistencies with the conclusions of the demand for the units. Alternative market acceptable rent for each rent restricted unit should also be included to evaluate the potential to achieve increases in the restricted rents as allowable increases occur;

(iii) absorption projections for the subject until a sustaining occupancy level has been achieved (if absorption projections for the subject differ significantly from historic data, an explanation of such should be included);

(iv) appropriateness of unit mix and unit sizes especially in regard to the income eligible targeted demand and existing or proposed supply for any proposed three and four bedroom units;

(v) appropriateness of interior and exterior physical amenities including appliance package;

(vi) location of the subject in relationship to employment centers, retail businesses, public transportation, schools, etc.; and

(ix) the capture rate for the Development defined as the sum of the proposed units for a given project plus any previously approved but not yet stabilized new units in the sub-market divided by the total income-eligible targeted renter demand identified by the market analysis for a specific Development's primary market or submarket. The Department defines comparable units as units that are dedicated to the same household type as the proposed subject property using the classifications of family, elderly or transitional as housing types. The Department defines a stabilized project as one that has maintained a 90% occupancy level for at least 12 consecutive months. The Department will independently verify the number of affordable multifamily units included in the market study and will ensure that all projects previously allocated funds through the Department are included in the final analysis.

(b) Concentration. The Department intends to limit the approval of funds to new multifamily housing projects requesting funds where the anticipated capture rate is in excess of 25% for the primary or sub-market unless the market is a rural market. In rural markets, the Department intends to limit the approval of funds to new multifamily housing projects requesting funds from the Department where the anticipated capture rate is in excess of 100% of the qualified demand. Affordable housing which replaces previously existing substandard affordable housing within the same sub-market on a Unit for Unit basis, and which gives the displaced tenants of the previously existing affordable housing a leasing preference, is excepted from these concentration restrictions. The documentation needed to support decisions relating to concentration are identified in subsection (a) of this section.

(c) Environmental Site Assessment Guidelines. The environmental assessment required under Section 50.7(e) of this title should be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM) and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The environmental assessment shall be conducted by an environmental or professional engineer and be prepared at the expense of the Development Owner.

(1) The report must include, but is not limited to:

(A) a review of records, interviews with people knowledgeable about the property;

(B) a certification that the environmental engineer has conducted an inspection of the property, the building(s), and adjoining properties, as well as any other industry standards concerning the preparation of this type of environmental assessment;

(C) a noise study is recommended for developments located in close proximity to industrial zones, major highways, active rail lines and civil and military airfields;

(D) a copy of the current FEMA Flood Map encompassing the site and a determination of the flood risk for the proposed Development;

(E) the report should include a statement that clearly states that the person or company preparing the environmental assessment will not materially benefit from the Development in any other way than receiving a fee for the environmental assessment; and

(2) if the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Development Owner must act on such a recommendation or provide either a plan for the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(3) Developments which have had a Phase II Environmental Assessment performed and hazards identified, the Development Owner is required to maintain a copy of said assessment on site available for review by all persons which either occupy the Development or are applying for tenancy.

(4) Developments whose funds have been obligated by TxRD will not be required to supply this information; however, the Development Owners of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(5) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms with the requirements of this subsection.

§49.10. Compliance Monitoring and Material Non-Compliance.

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

(b) The Department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements the entire construction phase associated with any Development under this title. The monitoring level for each Development must be based on the amount of risk associated with the Development. The Department shall use the division responsible for credit underwriting matters and the division responsible for compliance matters to determine the amount of risk associated with each Development. After completion of a Development's construction phase, the Department shall periodically review the performance of the Development to confirm the accuracy of the Department's initial compliance evaluation during the construction phase. Developments having financing from TxRD-USDA will be exempt from these inspections, provided that the Applicant provides the Department with copies of all inspections made by TxRD-USDA throughout the construction of the Development within fifteen days of the date the inspection occurred.

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

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

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

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

(1) the total number of residential rental Units in the building (including the number of bedrooms and the size in square feet of each residential rental Unit);

(2) the percentage of residential rental Units in the building that are low income Units;

(3) the rent charged for each residential rental Unit in the building including, with respect to low income Units, documentation to support the utility allowance applicable to such Unit;

(4) the number of occupants in each low income Unit;

(5) the low income Unit vacancies in the building and information that shows when, and to whom, all available Units were rented;

(6) the annual income certification of each tenant of a low income Unit, in the form designated by the Department in the Compliance Manual, as may be modified from time to time;

(7) documentation to support each low income tenant's income certification, consistent with the verification procedures required by HUD under Section 8 of the United States Housing Act of 1937 ("Section 8"). In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the Development Owner declaring that the tenant's income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Manual;

(8) the Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period;

(9) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under the Code, §42(d), (e.g. whether tenant facilities are available on a comparable basis to all tenants; whether any fee is charged for use of the facilities; whether facilities are reasonably required by the Development); and

(10) any additional information as required by the Department.

(g) The Development Owner will deliver to the Department within 90 days after the end of each calendar year, the current financial statements, in form and content satisfactory to the Department, itemizing the income and expenses of the Development.

(h) Specifically, to evidence compliance with the requirements of the Code, Section 42(h)(6)(B)(iv) which requires that the LURA prohibit Development Owners of all tax credit Developments placed in service after August 10, 1993 from refusing to lease to persons holding Section 8 vouchers or certificates because of their status as holders of such Section 8 voucher or certificate, Development Owners must:

(1) maintain a written management plan that is available for review upon request. Such management plan must state an intention of the Development Owner to comply with state and federal fair housing and anti-discrimination laws. Owners and managers of all tax credit Developments placed in service after August 10, 1993, are prohibited from having policies, practices, procedures and/or screening criteria which exclude applicants solely because they have a Section 8 voucher or certificate. Such management plan must also clearly state the objectives identified in subparagraphs (A) through (C) of this paragraph. Failure to have the required objectives set forth clearly in the management plan or failure to follow such required objectives in the operation of the Development will be treated by the Department as noncompliance with the LURA.

(A) prospective applicants who hold Section 8 vouchers or certificates are welcome to apply and will be provided the same consideration for occupancy as any other applicant;

(B) any minimum income requirements for Section 8 voucher and certificate holders will only be applied to the portion of the rent the prospective tenant would pay, provided, however, that if Section 8 pays 100% of the rent for the Unit, the Development Owner may establish other reasonable minimum income requirements to ensure that the tenant has the financial resources to meet daily living expenses. Minimum income requirements for Section 8 voucher and certificate holders will not exceed 2.5 times the portion of rent the tenant pays; and

(C) all other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) must be applied to applicants uniformly and in a manner consistent with the Texas and federal Fair Housing Acts and with Department and Code requirements;

(2) post Fair Housing logos and the Fair Housing poster in the leasing office;

(3) approve and distribute a written Affirmative Marketing Plan to the property management and on-site staff.

(4) communicate annually during the first quarter of each year in writing with the director of each Section 8 program which has jurisdiction within the geographic area where the Development is located. Such communication will include information on the unit characteristics and rents and will advise the administrating agency that the property accepts Section 8 vouchers and certificates and will treat referrals in a fair and equal manner. Copies of such correspondence must be available during on-site reviews conducted by the Department.

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

(j) Certification and Review.

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

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

(B) there was no change in the Applicable Fraction of any building in the Development, or that there was a change, and a description of the change;

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

(D) each low income Unit in the Development was rent-restricted under the Code, §42(g)(2) and Treasury Regulation §1.42-10 regarding utility allowances;

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

(F) No finding of discrimination under the Fair Housing Act,42 U.S.C. 3601-3619, has occurred for the Development. A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680,

an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or and adverse judgement from a federal court;

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

(H) either there was no change in the Eligible Basis (as defined in the Code, §42(d)) of any building in the Development, or that there has been a change, and the nature of the change;

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

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

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

(L) a LURA including an Extended Low Income Housing Commitment as described in the Code, §42(h)(6)(B), was in effect for buildings subject to the Revenue Reconciliation Act of 1989, §7106(c)(1) (generally any building receiving an allocation after 1989), including the requirement under the Code, §42(h)(6)(B)(iv) that a Development Owner cannot refuse to lease a Unit in the Development to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8, and the Development Owner has not refused to lease a Unit to an applicant because of his or her status as a holder of a Section 8 voucher nor is the Development out of compliance with the provisions, including any special provisions, outlined in the Extended Low Income Housing Commitment;

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

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

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

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

(Q) all low income Units in the Development were used on a nontransient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) of the Code or single-room-occupancy units rented on a month-by-month basis under §42(i)(3)(B)(iv) of the Code; and

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

(2) Review.

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

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

(C) The Department will perform on site monitoring reviews at least once every three years on low income housing Developments. A monitoring review will include an inspection of the income certification, the documentation the Development Owner has received to support that certification, the rent record for each low income tenant, and a property

inspection including individual Units and any additional information that the Department deems necessary, for at least 20% of the low income Units in those Developments.

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

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

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

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

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

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

(n) Notice to the IRS.

(1) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner, but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance or has otherwise responded to the Department's findings.

(2) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain the certification and records described in §49.10 of this title for three years from the end of the calendar year the Department receives the certifications and records.

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

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

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

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

(p) Liability. Compliance with the requirements of the Code, §42 is the sole responsibility of the Development Owner of the building for which the credit is allowable. By monitoring for compliance, the Department in no way

assumes any liability whatsoever for any action or failure to act by the Development Owner including the Development Owner's noncompliance with the Code, §42.

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

(r) Material Non-Compliance. In accordance with §49.5(b)(6), the Department will disqualify an Application for funding if the Applicant or other Persons, general partner, general contractor, and their respective principals or Affiliates active in the ownership or control of low income housing located in the State of Texas is determined by the Department to be in Material Non-Compliance on the date the Pre-Application Round opens. The Department will classify a property as being in Material Non-Compliance when such property has a Non-Compliance score that is equal to or exceeds 30 points in accordance with the methodology and point system set forth in this subsection.

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

(2) Uncorrected non-compliance will carry the maximum number of points until the non-compliance event has been reported corrected by the Department. Once reported corrected by the Department the score will reduce to the "corrected value" in paragraph (4) of this subsection. Corrected non-compliance will no longer be included in the project score three years after the date the non-compliance was reported corrected by the Department. Non-compliance events that occurred and were identified by the Department through the issuance of the IRS form 8823 prior to January 1, 1998 are assigned corrected point values to each non-compliance event. The score for these events will no longer be included in the project's score three years after the date the form 8823 was executed. For Applicants under this QAP, a non-compliance report will be run by the Department's Compliance Division on the date the Pre-Application Round opens. Any corrective action documentation affecting this compliance status score must be received by the Department no later than November 15, 2001.

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

(4) Each type of non-compliance is assigned a point value. The point value for non-compliance is reduced upon correction of the non-compliance. The scoring point system and values are as described in subparagraphs (A) and (B) of this paragraph. The point system weighs certain types of non-compliance more heavily than others; therefore certain non-compliance events carry a sufficient number of points to automatically place the property in Material Non-Compliance. However other types of non-compliance by themselves do not warrant the classification of Material Non-Compliance. Multiple occurrences of these types of non-compliance events may produce enough points to cause the property to be in Material Non-Compliance.

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

(i) Major property condition violations. Project displays major violations of health and safety standards documented by the city. Uncorrected is 30 points. Corrected is 20 points.

(ii) Failure to meet minimum low-income occupancy levels. Project failed to meet required minimum low-income occupancy levels of 20/50 (20% of the units occupied by tenants with household incomes of less than or equal to 50% of area median gross income) or 40/60. Uncorrected is 20 points. Corrected is 10 points.

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

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

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

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

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

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

(ix) Changes in eligible basis. Changes occur when common areas become commercial; fees are charged for facilities, etc. Uncorrected is 3 points. Corrected is 1 point.

(x) LURA not in effect. The LURA was not executed within the required time period. Uncorrected is 3 points. Corrected is 1 point.

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

(xii) Failure to submit annual, monthly, or quarterly reports. Uncorrected is 3 points. Corrected is 1 point.

(xiii) Pattern of minor property condition violations. Project displays a pattern of property violations. However those violations do not impair essential services and safeguards for tenants. Uncorrected is 3 points. Corrected is 1 point.

(xiv) Owner failed to make available or maintain management plan. Uncorrected is 10 points. Corrected is 3 point.

(xv) Owner failed to post Fair Housing Logo and/or poster in leasing offices. Uncorrected is 10 points. Corrected is 3 point.

(xvi) Owner failed to approve and distribute Affirmative Marketing Plan. Uncorrected is 10 points. Corrected is 3 point.

(xvii) Owner failed to provide required annual notification to local administering agency for the Section 8 program. Uncorrected is 10 points. Corrected is 3 point.

(xviii) Project is out of compliance and never expected to comply. Uncorrected is 30 points. Not correctable.

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

(i) Unit not leased to Low Income Household. Project has units that are leased to households that do not meet the income requirements. Uncorrected is 3 points. Corrected is 1 point.

(ii) Unit(s) occupied by students. Project has units leased to non-qualified students. Typically, full-time students are non-qualified. Uncorrected is 3 points. Corrected is 1 point.

(iii) Units used on transient basis. Project has units that are leased for less than six months. Uncorrected is 3 points. Corrected is 1 point.

(iv) Unit not available to general public. Uncorrected is 3 points. Corrected is 1 point.

(v) Income of household increased above the re-certification limit and unit not replaced. Uncorrected is 3 points. Corrected is 1 point.

(vi) Rent exceeds rent limit. Project has units in which the rent exceeds the allowable program limits. Uncorrected is 3 points. Corrected is 1 point.

(vii) Utility allowance not calculated properly or not available for review. Uncorrected is 3 points. Corrected is 1 point.

(viii) Income not certified or documentation not maintained. Project management has not maintained tenant income certifications or supporting documentation. Uncorrected is 3 points. Corrected is 1 point.

(ix) Failure to annually inspect HOME units. Project has failed to inspect units as required by the HOME program. Uncorrected is 3 points. Corrected is 1 point.

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

§49.11. Housing Credit Allocations.

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

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

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

(d) All Carryover Allocations will be contingent upon the following:

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

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

(3) Attendance of the Development Owner and Development architect at eight hours of Fair Housing training.

(4) the Development Owner's closing of the construction loan shall occur not later than the second Friday in June of the year after the execution of the Carryover Allocation Document with the possibility of a one-time 30 day extension as described in §49.13 of this title. Copies of the closing documents must be submitted to the Department within two weeks after the closing. At the time of submission of Construction Closing documentation, the Development Owner must also submit a Management Plan and a Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. The Carryover Allocation will automatically be revoked if the Development Owner fails to meet the aforementioned closing deadline, and all credits previously allocated to that Development will be returned to the general pool for reallocation.

(5) the Development Owner must commence and continue substantial construction activities not later than the second Friday in November of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §49.13(j) of this title. Substantial construction activities for new Developments will generally be defined as post foundation construction activities. Evidence of such activity shall be provided in a format prescribed by the Department in the LIHTC Progress Report – Commencement of Construction which will document progress towards placing the Development in service in an expeditious manner.

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

(f) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.13 of this title, have been received by the Department. For Tax Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The manual will require, in addition to other items, that a self-evaluation form for compliance with Americans with Disabilities Act, Fair Housing Act and Section 504 of the Rehabilitation Act has been completed by the Owner. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for low income housing tax credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification requests. A separate housing credit allocation shall be made with respect to each building within a Development which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a

Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings.

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

(h) Development inspections shall be required to show that the Development is built or rehabilitated according to required plans and specifications. At a minimum, all Development inspections must include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent, third party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §49.13(g) of this title.

(i) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. A newly constructed or rehabilitated building is not placed in service until all units in such building have been completed and certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development, therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the new construction or rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Applicant does not fulfill all representations made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609 or may withhold issuance of the IRS Form 8609s until these representations are met.

§49.12. Department Records; Certain Required Filings.

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

(1) the cumulative amount of the State Housing Credit Ceiling that has been reserved pursuant to reservation notices during such calendar year;

(2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(3) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(4) the cumulative amount of housing credit allocations made during such calendar year; and

(5) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

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

(1) the names of the Applicant and Related Parties, the owner contact name and phone number, and full contact information for all members of the Development Team;

(2) the name, physical location, and address of the Development, including the relevant region of the state;

(3) the number of Units and the amount of housing tax credits requested for allocation by the Department to the Applicant;

(4) any set-aside category under which the Application is filed;

(5) the requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;

(6) any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate housing tax credits to the Development;

(7) the names of persons making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;

(8) the amount of housing tax credits allocated to the Development; and

(9) a dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.

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

§49.13. Program Fees and Extensions.

(a) Pre-Application Fee. Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of $15 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a cashiers check will not be accepted. Community Housing Development Organizations (CHDOs) will receive a discount of 10% off the calculated Pre-Application fee.

(b) Application Fee. Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be $5 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be $20 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a cashiers check will not be accepted. Community Housing Development Organizations will receive a discount of 10% off the calculated Application fee.

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

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

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

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

(g) Building Inspection Fee. Development Owners must pay for any inspections that the Department requires, whether during construction or after completion, and estimated charges for all such inspections may be aggregated and distributed among the Developments according to Development size, cost or other criteria. All outstanding building inspection fees must be received by the Department prior to the release of the IRS Form 8609.

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

(i) Amendment of Fees by the Department and Notification of Fees. All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish not later

than July 1 of each year a schedule of Application fees that specifies the amount to be charged at each stage of the application process.

(j) Extension Requests. All extension requests relating to the Commitment Notice, Carryover, Closing of Construction Loan, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a non-refundable extension fee in the form of a cashier's check in the amount of $2,500. Such requests must be submitted to the Department at least ten business days prior to the date for which an extension is being requested. The extension request shall specify a requested extension date and the reason why such an extension is required. The Department, in its sole discretion, may consider and grant such extension requests for all items except for the Closing of Construction Loan and Substantial Construction Commencement. The Board may grant extensions, for the Closing of Construction Loan and Substantial Construction Commencement. The Board may waive related fees.

§49.14. Manner and Place of Filing Applications and Other Required Documentation.

(a) An Application or Pre-Application for a Housing Credit Allocation from the State Housing Credit Ceiling and the required Application or Pre-Application fee as described in §49.13(a) and (b) of this title must be filed during the Application Acceptance Periods published periodically in the Texas Register.

(b) Applications for a Determination Notice for a Tax Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2002 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application per the requirements of §49.7(h) of this title not later than 60 days after the date of the TBRB lottery. Such filing must be accompanied by the Application fee described in §49.13(b) of this title.

(2) Applicants which receive advance notice of a Program Year 2002 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 of the Application prior to the Applicant's bond reservation date as assigned by the TBRB. The Application fee described in §49.13(b) of this title and any outstanding documentation required under §49.7(i) of this title must be submitted to the Department at least 45 days prior to the Board meeting at which the decision to issue a Determination Notice would be made.

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

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

§49.15. Withdrawals, Cancellations, Amendments.

(a) An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation.

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

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

(1) are consistent with the Code and the tax credit program;

(2) do not occur while the Development is under consideration for tax credits;

(3) do not involve a change in the number of points scored (unless the Development's ranking is adjusted because of such change);

(4) do not involve a change in the Development's site; or

(5) do not involve a change in the set-aside election.

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

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

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

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

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

§49.16. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules in cases of natural disasters such as fires, hurricanes, tornadoes, earthquakes, or other acts of nature as declared by Federal or State authorities.

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

§49.17. Forward Reservations; Binding Commitments.

(a) Anything in §49.4 of this title or elsewhere in this chapter to the contrary notwithstanding, the Department with approval of the Board may determine to issue commitments of tax credit authority with respect to Developments from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment"). The Department may make such forward commitments:

(1) with respect to Developments placed on a waiting list in any previous Application Round during the year; or

(2) pursuant to an additional Application Round.

(b) If the Department determines to make forward commitments pursuant to a new Application Round, it shall provide information concerning such round in the Texas Register. In inviting and evaluating Applications pursuant to an additional Allocation Round, the Department may waive or modify any of the set-asides set forth in §49.6 of this title and make such modifications as it determines appropriate in the Threshold Criteria, evaluation factors and Selection Criteria set forth in §49.7 of this title and in the dates and times by which actions are required to be performed under this chapter. The Department may also, in an additional Application Round, include Developments previously evaluated within the calendar year and rank such Developments together with those for which Applications are newly received.

(c) Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment or in the announcement of an Application Round for Developments seeking a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the anticipated allocation rather than in the calendar year of the forward commitment.

(d) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. No more than 15% of the per capita component of State Housing Credit Ceiling anticipated to be available in the State of Texas in a particular year shall be allocated pursuant to forward commitments to Development Applications carried forward without being ranked in the new Application Round pursuant to subsection (f) of this section. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

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

(f) In addition to or in lieu of making forward commitments pursuant to subsection (a) of this section, the Department may determine to carry forward Development Applications on a waiting list or otherwise received and ranked in any Application Round within a calendar year to the subsequent calendar year, requiring such additional information, Applications and/or fees, if any, as it determines appropriate. Development Applications carried forward may, within the

discretion of the Department, either be awarded credits in a separate allocation round on the basis of rankings previously assigned or may be ranked together with Development Applications invited and received in a new Application Round. The Department may determine in a particular calendar year to carry forward some Development Applications under the authority provided in this subsection, while issuing forward commitments pursuant to subsection (a) of this section with respect to others.

§49.18. Deadlines for Allocation of Low Income Housing Tax Credits.

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

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

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

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

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

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