

**QUALIFIED ALLOCATION PLAN AND
MULTIFAMILY RULES COMMITTEE BOOK
OF SEPTEMBER 6, 2017**



**Leo Vasquez, III, Chairman
Leslie Bingham Escareño, Member
Paul Braden, Member**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD
QUALIFIED ALLOCATION PLAN AND MULTIFAMILY RULES COMMITTEE**

AGENDA

2:00 P.M.
SEPTEMBER 6, 2017

JOHN H. REAGAN BUILDING
JHR 140, 105 WEST 15TH STREET
AUSTIN, TEXAS

LEO VASQUEZ, CHAIRMAN
LESLIE BINGHAM-ESCARREÑO, MEMBER
PAUL A. BRADEN, MEMBER

Call to Order

Roll Call

Leo Vasquez
Committee Chairman

Certification of Quorum

1) Presentation and discussion of the staff draft of the 2018 Qualified Allocation Plan

Marni Holloway
Director

2) Discussion of education as a threshold item resulting from recently enacted legislation

Marni Holloway
Director

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact the ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475- 3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512- 475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING PUBLIC/OPEN THE MEETING OF THIS COMMITTEE OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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QUALIFIED ALLOCATION PLAN AND MULTIFAMILY RULES COMMITTEE
COMMITTEE REPORT
SEPTEMBER 6, 2017

Presentation and discussion of the staff draft of the 2018 qualified allocation plan

Beginning in December of 2016, staff met with stakeholders six times to discuss the 2018 Qualified Allocation Plan ("QAP") and Uniform Multifamily Rules. The discussions included items such as dispersion and underserved area, equity pricing, opportunity areas, visitability, and financial feasibility. Staff also posted several items to the Department's Online Forum, where stakeholders were invited to comment on aspects of the QAP and Rules and new proposals from staff.

Staff has drawn on many fields of knowledge in creating the draft: the QAP Roundtables, staff's experiences in the most recent round of competitive applications, continual dialogue with our stakeholders, direction from recent Board decisions, and the stakeholder input we solicited for the purposes of this staff draft. Regarding the latter, staff published the 2018 Staff draft of the QAP on August 11, 2017. Stakeholders were invited to submit their input to staff by letter, email, or phone. Staff received input from many stakeholders, including the development community, advocates, and one government official.

The most recent staff draft of the QAP is attached, along with stakeholder input received by letter or email. It is important to note that some stakeholders also took the time to call staff and to discuss their ideas and concerns. Staff has taken into account all stakeholder input, and much of that informal stakeholder input is reflected in the 2018 Draft QAP, which has been published to the September 7, 2017, Board Book. Upon approval by the Board, the QAP will be posted to Texas Register, and the formal Comment Period will begin.

Staff Draft

2018 Qualified Allocation Plan

This is the staff draft of the 2018 Qualified Allocation Plan. This DRAFT document has been prepared by staff and has taken into account extensive input over the course of the year. It has NOT yet been reviewed with the Board nor had Board member input.

This staff draft reflects all revisions and edits made up through the morning of August 29, 2017.

PLEASE NOTE THAT THE STAFF DRAFT OF THE 2018 QAP PUBLISHED IN THE SEPTEMBER 7, 2017, BOARD BOOK MAY HAVE OTHER REVISIONS AND EDITS.

Housing Tax Credit Program Qualified Allocation Plan

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan ("QAP") and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Tex. Gov't Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual and Frequently Asked Questions website posting are not rules and are provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, **it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.** As provided by Tex. Gov't Code §2306.6715(c), an applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to 10 TAC §1.1. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the

assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. If an Applicant chooses, where permitted, to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

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

(e) ~~Census~~ Data. Where this chapter requires the use of ~~census or~~ American Community Survey data, the Department shall use the most current data available as of October 1, 2017~~6~~, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall ~~generally~~ be disregarded. Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1 but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days.

(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants should use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process, unless the missing documentation is determined to be a Material deficiency. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed development, financing structure, or other element of the Application. The sole purpose of this mandatory Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an

Administrative Deficiency must have been clearly established at the time of submission of the Application.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

| Deadline | Documentation Required |
|---------------------------------------|---|
| 01/05 4 /2017 8 | Application Acceptance Period Begins. |
| 01/09/2017 8 | Pre-Application Final Delivery Date (including waiver requests). |
| 02/17 6 /2017 8 | Deadline for submission of application for .ftp access if pre-application not submitted |
| 03/01/2017 8 | <p>Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).</p> <p>Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).</p> |
| 04/01 2 /2017 8 | Market Analysis Delivery Date pursuant to §10.205 of this title. |
| 05/01/2018 | <u>Third Party Request for Administrative Deficiency</u> |
| Mid-May | Final Scoring Notices Issued for Majority of Applications Considered "Competitive." |
| 06/01/2017 | Third Party Request for Administrative Deficiency |
| 06/23 2 /2017 8 | Public Comment to be included in the Board <u>materials relating to presentation for awards are due in accordance with 10 TAC §1.10.</u> |

| Deadline | Documentation Required |
|---|---|
| June | On or before June 30, publication of the list of Release of Eligible Applications for Consideration for Award in July. |
| July | Final Awards. |
| Mid-August | Commitments are Issued. |
| 11/01/2017 | Carryover Documentation Delivery Date. |
| 067/3001/20189 | 10 Percent Test Documentation Delivery Date. |
| 12/31/201920 | Placement in Service. |
| Five (5) business days after the date on the Deficiency Notice (without incurring point loss) | Administrative Deficiency Response Deadline (unless an extension has been granted). |

§11.3.Housing De-Concentration Factors. Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Tex. Gov't Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate this rule, the lower scoring application will be considered a non-priority application and will not be reviewed unless the higher scoring application is terminated or withdrawn.

(b) Twice the State Average Per Capita. As provided for in Tex. Gov't Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application ~~Round-Acceptance Period~~ begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins - at the time the Certificate of Reservation is issued by the Texas Bond Review Board), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the

Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

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

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

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

(B) The ~~d~~Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

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

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

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

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

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

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

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

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

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey ~~and the Development is in a Place that has a population greater than 100,000~~ shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

~~**(e) Additional Phase Proximity of Development Sites.** Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply. Additional phases of Developments or contiguous Development Sites will undergo further evaluation during the underwriting process by Real Estate Analysis to determine that existing units are stabilized and that the market can absorb more Housing Tax Credit units. If two or more Applications that are proposing Developments serving the same Target Population on contiguous sites are submitted in the same program year, the lower scoring Application, including consideration of tie-breaker factors if there are tied scores, will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.~~

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. ~~If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional allocation. Prior to July 1, an Applicant that has applications pending for more than \$3 million in credit may notify staff in writing or by email of the application(s) they will not pursue in order to bring their request within the \$3 million cap. If the Applicant has not made this self-selection by this date, staff may make the selection. The methodology for making this determination will be to assign first priority to an application that will enable the Department to comply with the state and federal non-profit set-asides and second to the highest scoring application, including consideration~~

of tie-breakers if there are tied scores. The application(s) that do not meet Department criteria will not be considered priority applications and will not be reviewed unless the Applicant withdraws a priority application. The non-priority application(s) will be terminated when the Department awards \$3 million to other applications. Any application terminated for this reason is subject to reinstatement if necessary to meet a required set-aside. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a ~~Development Consultant or advisor or Developer~~ that do not exceed ~~10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or~~ \$150,000, ~~whichever is greater.~~

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the ~~sub-region~~subregion based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the ~~F~~funding Rrequest of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will more than the amount of boost required to create the HTC rent-restricted units be allowed, as determined by the Real Estate Analysis division of TDHCA. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is

issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT; OR

(2) The Development is located in a Small Area Difficult Development Area (“SADDA”) (based on Small Area Fair Market Rents (“FMRs”) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; OR

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

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

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

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

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; or

(E) the Development is in an area covered by a concerted revitalization plan the Development and is not an Elderly Development and is not located in a QCT ~~that is in an area covered by a concerted revitalization plan~~. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9(3) of this chapter (related to Pre-Application Participation). Commitments of competitive HTCs issued by the Board in the current program year will be applied

to each set-aside, Rural regional allocation, Urban regional allocation, and/or USDA set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Tex. Gov't Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.i.e.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable ~~sub-region~~subregion unless the Application is receiving USDA Section 514 funding. ~~Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate.~~ Applications must also meet all requirements of Tex Gov't Code, §2306.111(d-2). All Applications that can score under the USDA set-aside will be considered Rural for all scoring items under this chapter. If a property receiving USDA financing is unable to score under the USDA Set-Aside and it is located in an Urban subregion, it will be scored as Urban.

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-Asides. (§2306.111(d-4)) A proposed or existing Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-Aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural area.

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

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the

preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet ~~all the following~~ requirements ~~of Tex Gov't Code, §2306.6702(a)(5)-:~~

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. For purposes of this subparagraph, Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(ii) ~~a~~Any stipulation to maintain affordability in the contract granting the subsidy pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(ii)(a), or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment ~~without penalty~~ or has been prepaid.

(iii) Developments with existing Department LURAs must have completed all applicable Right of First Refusal procedures prior to the Pre-Application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the following requirements:

(i) Units to be rehabilitated or reconstructed must have received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g) and must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code. To the extent that an Application is eligible under §2306.6702~~5~~(a)(5)(B)(ii)~~(b)~~ and the units being reconstructed were disposed of or demolished prior to the beginning of the Application Acceptance Period, the housing units must have been disposed of or demolished in the two-year period preceding the application for housing tax credits. The Application will be categorized as New Construction.

(ii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration ("RAD") program administered by the United States Department of Housing and Urban Development ("HUD"). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment ("CHAP")) that HUD has approved the units proposed for Rehabilitation or Reconstruction for participation in the RAD program.

(iii) Notwithstanding any other provision of law, an at-risk Development described by Tex. Gov't Code § 2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code § 2306.6714 (a-1)(2) are later converted under RAD.

(~~C~~D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred ~~to the Development Site (i.e. the site proposed in the tax credit Application)~~ with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.*, the Applicant may add market rate units); and

(iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) ~~;~~ OR

(iv) the local governing body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide a resolution from both local governing bodies.

(~~D~~E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, ~~or~~ renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years after the year in which the Application is made must be included with the application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(~~E~~F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the ~~Right of First Refusal~~. The application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the Pre-Application Final Delivery Date.

(FG) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

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

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("~~sub-region~~~~subregion~~") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code, §2306.1115. The process of awarding the funds made available within each ~~sub-region~~~~subregion~~ shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular ~~sub-region~~~~subregion~~ or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation ~~by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals based on the criteria described in §11.4(a) of this chapter.~~ Where sufficient credit becomes available to award an Application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline ~~and/or changes to the Application as necessary~~ to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation (~~not including credit returned and reallocated under force majeure provisions~~), the Department shall first return the credits to the ~~sub-region~~~~subregion~~ or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the ~~sub-region~~~~subregion~~ and be awarded in the collapse process to an Application in another region, ~~sub-region~~~~subregion~~ or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to ~~and any remaining credits and~~ awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application ~~as may be amended~~ after underwriting review.

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

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

or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

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

(C) Initial Application Selection in Each ~~Sub-RegionSubregion~~ (Step 3). The highest scoring Applications within each of the 26 ~~sub-regionsubregions~~ will then be selected provided there are sufficient funds within the ~~sub-regionsubregion~~ to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion

(ii) In accordance with Tex Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iv)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

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

(i) the ~~sub-regionsubregion~~ with no recommended At-Risk Applications from the same Application Round; and

(ii) the ~~sub-regionsubregion~~ that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any ~~sub-regionsubregion~~ in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most

underserved sub-region in the State compared to the amount originally made available in each sub-region. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

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

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested set-asides. This may cause some lower scoring applications to be selected instead of a higher scoring application. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met

to its satisfaction, be allocated separately from the current year's tax credit allocation, and ~~shall~~ not be subject to the requirements of paragraph (2) of this section. Requests to ~~separately~~ allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "*Force Majeure*" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a *Force Majeure* event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. *Force Majeure* events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by *Force Majeure*;

(C) A Development Owner claiming *Force Majeure* must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned;

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; ~~and~~

~~(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTC's.~~

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. All measurements will include the entire site, including ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved ~~sub-regions~~subregions in the rural or statewide collapse.

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) or Concerted Revitalization Plan under §11.9(d)(7) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

~~(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.~~

~~(4) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.~~

(3) Applications proposed to be located in a Place, or if located completely outside a Place, a county, that has the fewest HTC units per capita, as compared to another Application with the same score. The HTCs per capita measure (by Place or county) is located in the 2018 HTC Site Demographic Characteristics Report.

~~(5) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.~~

~~(6) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.~~

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

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

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), not later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

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

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the ~~p~~Pre-aApplication is more limited in scope than ~~an~~the Application, ~~p~~Pre-aApplications are subject to the same limitations, restrictions, or causes for disqualification or termination as ~~a full~~Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Tex Gov't Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

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

(A) Site Control meeting the requirements of §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

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

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

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

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Undesirable Neighborhood Characteristics under §10.101(a)(~~43~~):

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

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

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of

this subparagraph. Developments located in an ETJ of a city-municipality are required to notify both city-municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Public Notification Template provided in the pre-application Uniform 2018 Multifamily Application Template. The Applicant is encouraged-required to retain proof of delivery in the event the Department requires-requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city, and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(ii) Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;

(iii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(iv) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-Application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-Application Submission Log. Inclusion of a pre-Application on the Pre-Application Submission Log does not ensure that an Applicant will receive points for a pre-Application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex Gov't Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. All measurements will include the entire site, including ingress/egress requirements and any easements regardless of how they will be held. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements. ~~When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.~~

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

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

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets one of the following conditions: the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside. Any Application that includes a HUB must include a narrative description of the HUB's experience directly related to the housing industry.

(A) The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, ~~e~~Cash ~~f~~low from operations, and ~~d~~Developer ~~f~~ee which taken together equal at least ~~85~~0 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, ~~30~~25 percent of the ~~d~~Developer ~~f~~ee, and ~~30~~5 percent of ~~e~~Cash ~~f~~low from operations.

~~(B)~~ The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB or Qualified Nonprofit is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of

the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 points)

(B) The HUB or Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. Selecting this item because of the involvement of a Nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. (1 point)

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

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

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

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points);
or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

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

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points);
or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

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

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) Opportunity Index Points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located ~~in-entirely within~~ a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located ~~entirely within in-~~ a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~a~~ median household income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located ~~entirely within in-~~ a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

(B) An application that meets the foregoing criteria may qualify for additional points (for a maximum of seven (7) points) for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position of the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application deadline. All amenities must be operational or have started construction on Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the target population of the proposed Development. Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership but broken down to a monthly payment):

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set-Aside), an Application may qualify to receive points through a combination of requirements in clauses (I) through (XIII) of this subparagraph.

(I) The Development Site is located ~~less than 1/2 mile~~ on an accessible route that is less than 1/2 mile from the entrance to a public park with an accessible playground. The route and the playground both of which must meet 2010 ADA standards. (1 point)

(II) The Development Site is located ~~less than 1/2 mile~~ on an accessible route that is less than 1/2 mile from the entrance of a Public Transportation stop or station with a route schedule that provides regular service to employment and basic services. The route and the public transportation stop must meet 2010 ADA standards. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point)

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point for grocery stores and 1 point for pharmacies)

(IV) The Development is located within 3 miles of a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point)

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services ("DFPS") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VII) The development site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding (1 point)

(VIII) The Development Site is located within 5 miles of an accredited University or Community College campus, as confirmed by the Texas Higher Education Coordination Board ("THECB"). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. ~~The Universities and or Community Colleges~~ must have a physical location campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)

~~(X) Development site is within 2 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)~~

~~(XI) Development Site is within 1 mile of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)~~

~~(XII) Development Site is within 1 mile of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)~~

~~(XIII) Development Site is within 1 mile of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership) (1 point)~~

~~(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)~~

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in clauses (I) through (XII) of this subparagraph.

(I) The Development Site is located within 4 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point for grocery stores and 1 point for pharmacies)

(II) The Development is located within 4 miles of health-related facility, such a full service hospital, community health center, or minor emergency center. Physician offices and physician specialty offices are not considered in this category. (1 point)

(III) The Development Site is located within 4 miles of a center that is licensed by the Department of Family and Protective Services ("DFPS") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(V) The ~~d~~Development ~~s~~Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least 5 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding-(1 point)

~~(VI) The development site is located within 4 miles of a public park (1 point) The Development Site is located on an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards. (1 point)~~

(VII) The Development Site is located within 15 miles of an accredited University or Community College ~~campus~~, as confirmed by the Texas Higher Education Coordination Board ("THECB"). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. The University or Community College must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item.(1 point)

(VIII) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher ~~as tabulated by the 2010-2014 American Community Survey 5-year Estimate~~-(1 point)

~~(IX) Development site is within 4 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)~~

(IX) Development ~~s~~Site is within 3 miles of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XI) Development ~~s~~Site is within 3 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XII) Development ~~s~~Site is within 3 miles of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership) (1 point)

(XII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(5) Educational Quality.

~~In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. Except for Supportive Housing Developments, an Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A)–(E) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) or (B) of this paragraph, as determined by the Texas Education Agency. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~

~~(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (3 points);~~

~~(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2 points, or 1 point for a Supportive Housing Development); or~~

~~(C) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score.(1 point); or~~

~~(D) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or~~

~~(E) If the Development Site is able to score one or two points under clauses (B) through (D) above, one additional point may be added if one or more of the features described in subclause (1) – (4) is present:~~

~~(i) The Development Site is in the attendance zone of an elementary school that has Met Standard, and has earned at least one distinction designation by TEA (1 point);~~

~~(ii) The Development Site is located in the attendance zone of a general admission high school with a four-year longitudinal graduation rate in excess of the statewide four-year longitudinal graduation rate for all schools for the latest year available, based on the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at <http://tea.texas.gov/2016accountability.aspx>. (1 point)~~

~~(iii) The development is in the primary attendance zones for an elementary school that has met standard and offers an extended day Pre-K program. (1 point)~~

~~(iv) The development site within the attendance zone of an elementary school, a middle school and a high school that all have a Met Standard rating for the three years prior to application. (1 point)~~

~~(65) Underserved Area. (§§2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. The Application must include evidence that the Development Site meets the requirements.~~

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity

supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of An Economically Distressed Area (1 point);

(C) The Development Site is located entirely within a census tract that does not have a Development that is less than 30 years old according to the Department's property inventory tab of the Site Demographic Characteristics Report; A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years and continues to appear on the Department's inventory (3 points);

(D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that does not have a Development that is less than 15 years old according to the Department's property inventory tab of the Site Demographic Characteristics Report. For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA (or has received a tax credit award but not yet reached the point where its LURA must be recorded); (2 points);

(E) The Development Site is located entirely within a A census tract within the whose boundaries of are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts do not have a Development that is less than 15 years old according to the Department's property inventory tab of the Site Demographic Characteristics Report received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply in cities with a population of ~~300~~150,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

(76) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive ~~up to~~ two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (C) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), both of which pertain to the requirements of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") (10 TAC §8). If an Application cannot meet the requirements of subparagraphs (A) or (B), the Application may qualify for subparagraph (C).

(A) An Application that can use an existing Development to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") will do so in order to receive two (2) points. In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at minimum 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with 10 TAC §8.3, §8.4, and §8.5.

(B) Applications that do not meet the requirements of subparagraph (A) but still meet the requirements of 10 TAC 8.3 are eligible to receive two (2) points by committing units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Units in the proposed Development for participation in the Section 811 PRA Program unless. The same units cannot be used to qualify for points in more than one HTC Application.

(C) Applications proposing Developments that do not meet the requirements of subparagraphs (A) or (B) of this paragraph may qualify for two (2) points by meeting the requirements of this subparagraph, (C). In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(87) Proximity to the Urban Core. A Development in a City-Place, as defined by the US Census Bureau, with a population over 3200,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main City Hall facility municipal government administration building if the population of the city-Place is more than 500,000, or within 2 miles of the main City Hall facility municipal government administration building if the population of the city is 3200,000 - 500,000499,999. The main City Hall facility municipal government administration building will be determined by the location of regularly scheduled City Council, City Commission, or similar municipal governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (5 points)

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHA"ST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the

Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development

stating they will provide a loan, grant, reduced fees or contribution of other value that equals \$1,000 or more for the benefit of the Development. The letter must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if the Development Site is located in an area declared to be a disaster area under Tex. Gov't Code §418.014 at the time of Full Application Delivery Date submission or at any time within the two-year period preceding the Full Application Delivery Date of submission, the Development Site is located in an area declared to be a disaster area under the Tex Gov't Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence-current, valid existence with boundaries that contain the entire Development Site prior to as of the Pre-Application Final Delivery Date and its boundaries must contain the entire Development Site. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

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

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries, of the Neighborhood Organization; and

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

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

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

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

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

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

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

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

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2017~~8~~. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development ~~and clearly state support for or opposition to the specific Development, and express whether the letter conveys support, neutrality, or opposition.~~ This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. ~~Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website.~~ Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. ~~If the office is vacant, the Application will be considered to have received a neutral letter.~~ Neutral letters, ~~letters of opposition,~~ or letters that do not specifically refer to the Development ~~or specifically express support or opposition~~ will receive zero (0) points. ~~A letter that does not directly express support but expresses it indirectly by inference (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, and/or other applicable representatives of the community.~~

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph

for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status (e.g., a copy of its tax-exempt determination letter or its listing on a federal or state government website) and evidence it remains in good standing. An Organization must also provide evidence of its ~~and its existence and~~ participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The concerted revitalization plan, which may be a Tax Increment Reinvestment Zone (“TIRZ”) or Tax Increment Finance (“TIF”) or similar plan, that must meets the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-) attracting private sector development of housing and/or business;

(-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or

(-f-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(V) The plan must be current at the time of Application and must officially continue for a minimum of three years thereafter.

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan. The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the city municipality or county as contributing more than any other to the concerted revitalization efforts of the city-municipality or county (as applicable). A city municipality or county may only identify one single Development during each Application Round for the additional points under this subclause, unless the concerted revitalization plan includes more than one distinct area within the city or county, in which case a resolution may be provided for each Development in its respective area. The resolution from the Governing Body of the city-municipality or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan; and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that is currently has been leased at 85% or greater for the six months preceding Application by low income households and which was initially constructed prior to 1985/25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include units that cannot be occupied due to needed repairs, as confirmed by the PCA or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Undesirable Neighborhood Characteristics.

~~(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.~~

~~(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts. Applications may receive (2) points in addition to those under clause (i) of this subparagraph if the Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city) as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points; and~~

~~(iii~~v~~) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii)..~~

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

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

(2) Readiness-to-Proceed. If the Application indicates that the Applicant has firm commitments for all required equity and financing and commits that upon receipt of an award the Applicant will commence construction no later than the last business day of the year, the Applicant may request one (1) additional point for the competitive tax credit Application of their choice in the next cycle. The Application must include designation of the individual who will use the point in the next competitive cycle, and the additional point may not be transferred to other Applicants. In the current competitive cycle, an Applicant can receive at most one (1) point. In the next competitive cycle, Applications can use no more than one (1) point from this paragraph; points cannot be combined in one Application. Failure to commence construction prior to the last business day of the year will result in the Applicant being unable to request the point and this may not and will not be waived, altered, or extended under the waiver rule or otherwise.

(23) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this-scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

- (i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;
- (ii) the Development is more than 75 percent single family design;
- (iii) the Development is Supportive Housing; or
- (iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

- (i) The voluntary Eligible Building Cost per square foot is less than \$72.80 per square foot;
- (ii) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than \$93.60 per square foot;
or

(iv) The voluntary Eligible Hard Cost per square foot is less than \$104 per square foot,
and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven
(11) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than \$83.20 per square
foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than \$98.80 per square foot;
or

(iv) The voluntary Eligible Hard Cost per square foot is less than \$109.20 per square
foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10)
points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost is less than \$93.60 per square foot; or

(ii) The voluntary Eligible Hard Cost is less than \$114.40 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction)
will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus
acquisition costs included in Eligible Basis~~ that are less than ~~\$104 per square foot~~ 50 per
square foot, plus or minus \$1 per square foot for every 50 square feet above or below a
900 square feet unit;

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus
acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~ 60
per square foot, plus or minus \$1 per square foot for every 50 square feet above or
below a 900 square feet unit, located in an Urban Area, and that qualify for 5 or 7 points
under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs ~~plus
acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~ 60
per square foot, plus or minus \$1 per square foot for every 50 square feet above or
below a 900 square feet unit.

~~(34)~~ Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six
(6) points provided a pre-application was submitted ~~during by~~ the Pre-Application ~~Acceptance~~

PeriodFinal Delivery Date. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than ~~six-four~~ (64) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(43) that were not disclosed with the pre-application:

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(H) The pre-application met all applicable requirements.

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

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

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than nine (9) percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ten (10) percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the ~~sub-~~regionsubregion or set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

(f) Point Adjustments: Factors Affecting Eligibility in the 2019 Application Round

Staff will may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction of one (1) point for each submitted Application (Tex. Gov't Code 2306.6710(b)(2)) because it make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

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

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

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

(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board's takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. Information received after the RFAD deadline will not be considered by staff or presented to the Board.

Stakeholder Input

2018 Qualified Allocation Plan

August 17, 2017

TDHCA Board Members
Tim Irvine, Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701-2410

**RE: Support For Change To §11.9(c)(8) Of The 2018 Qualified Allocation Plan (“QAP”);
Permit Cities With Populations In Excess Of 200,000 To Qualify For “Urban Core” Points.**

Ladies and Gentlemen:

It has come to my attention that in the exceedingly competitive process of applying for 9% Housing Tax Credits, five (5) points could be claimed in 2017 by proposing a development site near the city’s “Urban Core” if the city has a population of more than 300,000 persons. Recently the TDHCA Staff has recommended that the population level for these points be changed to cities with more than 200,000 persons. I would like to register my support of this proposed change to §11.9(c)(8) of the QAP. If the Board does not support expanding the point item to include cities with populations of over 200,000, then I would encourage a smaller change to include cities with more than 250,000 persons.

“Proximity to the Urban Core” points are determined by establishing the linear distance between the development site and the main City Hall facility where regularly scheduled City Council, City Commission and similar governing body meetings take place. In cities with populations of more than 500,000, the development can be located within 4 miles of the City Hall facility. Currently, in cities with populations of 300,000 – 500,000, points can be awarded if the development is proposed to be within 2 miles of the City Hall facility.

The current draft QAP published by the TDHCA Staff provides that cities with populations of 200,000 – 499,999 can qualify for Urban Core points if located within 2 miles of the City Hall facility. This change would facilitate use of Housing Tax Credits to provide urban infill and redevelop the city centers of the 13 largest cities in Texas, instead of only the top 8 population centers. Having five points available in these instances should offset, to some extent, the scoring disadvantage that larger urban areas have due to an inability to qualify for Opportunity Index points provided in §11.9(c)(4) and Educational Quality points under §11.9(c)(5). Such point opportunities reward development sites in areas with higher incomes, lower poverty ratings and better schools - criteria which frequently do not correspond with the inner city areas of larger municipalities.

Thank you for your consideration of this request. I support the Housing Tax Credit Program administered by the TDHCA, and believe that the suggested change to the QAP will help to further the goal of providing affordable housing to Texas’ lower income households.

Sincerely,



Harry LaRosiliere
MAYOR

This is the staff Draft of the 2018 Qualified Allocation Plan. This DRAFT document has been prepared by staff and has taken into account extensive input over the course of the year. It has NOT been reviewed with the Board nor had Board member input.

TDHCA welcomes stakeholder input on this staff Draft. While this DRAFT creates an opportunity for discussion and stakeholder input, the input we receive will NOT be treated as “public comment” under the rulemaking provisions of the Administrative Procedures Act as it may or may not (depending on input) ultimately be the version of the rule presented to the Board for publication in the *Texas Register* for official public comment.

We anticipate that at the September Board meeting a proposed form of the QAP and Rules will be presented for consideration and possible action to approve publication in the *Texas Register*. That will establish the official public comment period.

Please direct all input to Patrick Russell at patrick.russell@tdhca.state.tx.us. Any input is requested to be provided by 5:00pm August 23, 2017, by 5:00pm. You should monitor the Department’s website on this matter because it is possible that, in response to input, staff may post one or more revisions as a way to further discussion and understanding.

Housing Tax Credit Program Qualified Allocation Plan

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan ~~(("QAP"))~~ and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Tex. Gov't Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual and Frequently Asked Questions website posting are not rules and are provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, **it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.** As provided by Tex. Gov't Code §2306.6715(c), an ~~applicant~~Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be triggered by the publication on the Department's website of the results of the evaluation process. ~~Individual Scoring notices or similar communications are a courtesy only.~~

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely, and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to 10 TAC §1.1. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the

assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. If an Applicant chooses, where permitted, to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

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

(e) Census Data. Where this chapter requires the use of ~~census or~~ American Community Survey data, the Department shall use the most current data available as of October 1, ~~2016~~2017, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall generally be disregarded. Where other data sources are specifically allowed, such as Neighborhoodscout, the data as published on October 1, 2017 will apply. Where data may change after October 1, Applicants are cautioned to retain evidence of the applicable data on that date.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days.

(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program. Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants should use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process, unless the missing documentation is determined to be a Material deficiency. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed development, financing structure, or other element of the Application. The sole purpose of this mandatory Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an

Administrative Deficiency must have been clearly established at the time of submission of the Application.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

| Deadline | Documentation Required |
|--------------------------------|--|
| 01/ 05 /201704/2018 | Application Acceptance Period Begins. |
| 01/ 09 /201708/2018 | Pre-Application Final Delivery Date (including waiver requests). |
| 02/ 17 /201716/2018 | Deadline for submission of application for .ftp access if pre-application not submitted |
| 03/01/ 2017 2018 | Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter). |
| 04/ 01 /201702/2018 | Market Analysis Delivery Date pursuant to §10.205 of this title. |
| 04/13/2018 | Third Party Request for Administrative Deficiency |
| Mid-May | Final Scoring Notices Issued for Majority of Applications Considered "Competitive." |
| 06/01/2017 | Third Party Request for Administrative Deficiency |
| 06/ 23 /201722/2018 | Public Comment to be included in the Board <u>materials relating to presentation for awards are due in accordance with 10 TAC §1.10.</u> |

| Deadline | Documentation Required |
|---|---|
| June | Release <u>On or before June 30, publication of the list</u> of Eligible Applications for Consideration for Award in July. |
| July | Final Awards. |
| Mid-August | Commitments are Issued. |
| 11/01/2017 | Carryover Documentation Delivery Date. |
| 06/30/2018 <u>07/01/2019</u> | 10 Percent Test Documentation Delivery Date. |
| 12/31/ 2019 <u>2020</u> | Placement in Service. |
| Five (5) business days after the date on the Deficiency Notice (without incurring point loss) | Administrative Deficiency Response Deadline (unless an extension has been granted). |

§11.3. Housing De-Concentration Factors. Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Tex. Gov't Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more applications are submitted that would violate this rule, the lower scoring application will be considered a non-priority application and will not be reviewed unless the higher scoring application is terminated or withdrawn. At the final award meeting, any such applications will be terminated.

(b) Twice the State Average Per Capita. As provided for in Tex. Gov't Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins ~~(or, The limitation applies for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the and for noncompetitive Tax Credit only applications, at the time of application submission.~~ The Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code,

§2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

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

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

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

(B) The ~~development~~Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

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

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

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

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

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

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

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

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

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey ~~and the Development is in a Place that has a population greater than 100,000~~ shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

~~**(e) Additional Phase.** Applications proposing an additional phase Proximity of an existing tax credit Development serving the same Target Population, or Applications proposing Sites. Additional phases of Developments that are adjacent to an existing tax credit or contiguous Development serving the same Target Population, or Applications Sites will undergo further evaluation during the underwriting process by Real Estate Analysis to determine that existing units are stabilized and that the market can absorb more Housing Tax Credit units. If two or more applications that are proposing a Development Developments serving the same Target Population on a contiguous site to another Application awarded sites are submitted in the same program year, shall the lower scoring application, including consideration of tie-breakers if there are tied scores, will be considered ineligible a non-priority application and will not be reviewed unless the other Developments higher scoring application is terminated or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in withdrawn. At the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply. final award meeting, any such applications will be terminated.~~

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. ~~If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional allocation. Prior to July 1, an Applicant that has applications pending for more than \$3 million in credit may notify staff in writing or by email of the application(s) they will not pursue in order to bring their request within the \$3 million cap. If the Applicant has not made this self-selection by this date, staff may make the selection. The methodology for making this determination will be to assign first priority to an application that will enable the Department to comply with the state and federal non-profit set-asides and second to the highest scoring application, including consideration of tie-breakers if there are tied scores. The application(s) that do not meet Department criteria will~~

Comment [CD1]: This is a good change

Comment [CD2]: It's difficult to conceive of a scenario where placing more affordable housing in a census tract that has this kind of LIHTC concentration results in a city AFFH. Does this exception get utilized much? I'd be inclined to remove it altogether. Does staff review these resolutions or are they accepted at face value?

Comment [CD3]: After looking at this year's awards and the downward trend that has occurred since 2014 in the # of LI units produced per tax credit awarded, I think staff needs to strongly consider some kind of cap (or maybe incentive/point item) regarding LI units per credit. There are some outliers in this year's awards that don't make sense. Region 7 is a great example, where one of the awards is producing nearly double the units for half the per unit subsidy in LIHTCs. How can this be justified when the deals are only a few miles apart? Maybe a cap based on the standard deviation for all full apps in a cycle would work so that it would "curve" to whatever the market conditions were in a particular year.

As a scoring item, maybe points could be awarded/removed for deals that fall below the mean, below 1SD, above the mean, above 1SD.

not be considered priority applications and will not be reviewed unless the Applicant withdraws a priority application. The non-priority application(s) will be terminated when the Department awards \$3 million to other applications. Any application terminated for this reason is subject to reinstatement if necessary to meet a required set-aside. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- ~~(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or \$150,000, whichever is greater.~~(4) receives fees as a consultant or advisor.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the ~~sub-region~~subregion based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will more than the amount of boost required to create the HTC rent-restricted units be allowed, as determined by the Real Estate Analysis division of TDHCA. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is

issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. ~~For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.~~ Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development is located in a Small Area Difficult Development Area ~~{“SADDA”}~~ (based on Small Area Fair Market Rents ~~{“FMRs”}~~) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

- (A) the Development is located in a Rural Area;
- (B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;
- (C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);
- (D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; or
- (E) the Development is not an Elderly Development and is not located in a QCT that is in an area covered by a concerted revitalization plan. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

Comment [CD4]: What is the logic behind not granting a basis boost for CRP deals, and behind (E) in general? Does this 'and' in the first line mean that an elderly deal in a non-CRP QCT can get a boost?

§11.5. Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9(3) of this chapter (related to Pre-Application Participation). Commitments of competitive HTCs issued by the Board in the current program year will be applied to each set-aside, Rural regional allocation, Urban regional allocation, and/or USDA set-aside for the current application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Tex. Gov't Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*i.e.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable ~~sub-region~~ subregion unless the Application is receiving USDA Section 514 funding. ~~Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate.~~ Applications must also meet all requirements of Tex Gov't Code, §2306.111(d-2). All applications submitted in the USDA set-aside will be considered Rural for all scoring items under this chapter.

(3) Eligibility of Certain Developments to Participate in the USDA or Rural Set-Asides. (§2306.111(d-4)) A proposed or existing Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-Aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural area.

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

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet ~~all~~ the following requirements :

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received a subsidy in the form of Tex. Gov't Code, §2306.6702(a)(5)-a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(ii)(a), or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment ~~without penalty. To the extent that an or has been prepaid. Developments with existing Department LURAs must have completed all applicable Right of First Refusal procedures prior to the Pre-Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and Final Delivery Date. Applications participating in the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.~~ At-Risk Set-Aside must include evidence of the qualifying subsidy.

~~(C)~~ An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet the following requirements:

(i) Units to be rehabilitated or reconstructed must have received assistance under § 9, United States Housing Act of 1937 (42 U.S.C. section 1437g) and must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code. To the extent that an Application is eligible under §2306.6702(a)(5)(B)(ii) and the units being reconstructed were disposed of or demolished prior to the beginning of the Application Acceptance Period, the housing units must have been disposed of or demolished in the two-year period preceding the application for housing tax credits. The Application will be categorized as New Construction.

(ii) To the extent that an application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration ("RAD") program administered by the United States Department of Housing and Urban Development ("HUD"). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment ("CHAP")) that HUD has approved the units proposed for Rehabilitation or Reconstruction for participation in the RAD program.

(iii) Notwithstanding any other provision of law, an at-risk Development described by Tex. Gov't Code § 2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code § 2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code, §2306.6702(a)(5) will not

qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

- (i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred ~~to~~with the Development Site (i.e. the site units proposed in the tax credit Application) for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;
- (ii) the Applicant seeking tax credits must propose the same number of restricted units (~~e.g.~~ the Applicant may add market rate units); and
- (iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR ~~(iv)~~ the local governing body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out one of its previously adopted plans. Development Sites that cross jurisdictional boundaries must provide a resolution from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain ~~or~~, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

- (i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years after the year in which the application is made must be included with the application.
- (ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first ~~years'~~ year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the ~~right of first refusal~~ Right of First Refusal. The application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the Pre-Application Final Delivery deadline.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

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

Comment [CD5]: This is too vague. It's not clear whether "Development" means a portion that may remain on site or the relocated units, which could end up at multiple sites conceivably. More importantly, "carry out one of its previously adopted plans" leaves open a lot of room for interpretation. I could interpret this to mean that a plan which calls for the displacement of the very PH units seeking LIHTCs would suffice here since that would allow the city/county to execute their plan (like for a road or stadium, for example). This would consider nothing about to where those units are relocated. Also acceptable under this language is the past adoption of any mediocre plan that has been shelved for a decade or more.

I'd rewrite this to refer to the requirements for CRPs under (d)(7).

Comment [CD6]: Might want to add "transferred to the proposed development" if that's what you mean

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("~~sub-region~~subregion") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code, §2306.1115. The process of awarding the funds made available within each ~~sub-region~~subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular ~~sub-region~~subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation ~~by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals based on the criteria described in §11.4(b) of this chapter.~~ Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and/or changes to the application as necessary to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, ~~(not including credits returned and reallocated under force majeure provisions),~~ the Department shall first return the credits to the ~~sub-region~~subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the ~~sub-region~~subregion and be awarded in the collapse process to an Application in another region, ~~sub-region~~subregion or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be ~~added to and~~ awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

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

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

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last

Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 ~~sub-regions~~subregions to award under the remaining steps, ~~but these funds would generally come from the statewide collapse;~~

(C) Initial Application Selection in Each ~~Sub-Region~~Subregion (Step 3). The highest scoring Applications within each of the 26 ~~sub-regions~~subregions will then be selected provided there are sufficient funds within the ~~sub-regions~~subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the ~~sub-regions~~subregions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion

(ii) In accordance with Tex Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iv)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

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

(i) the ~~sub-regions~~subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the ~~sub-regions~~subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any ~~sub-regions~~subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved ~~sub-regions~~subregion in the State compared to the amount originally made available in each ~~sub-regions~~subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are

insufficient to award the next highest scoring Application in the next most underserved ~~sub-region~~subregion. In the event that more than one ~~sub-region~~subregion is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved ~~sub-region~~subregion:

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

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

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or ~~sub-region~~subregion from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application ~~as may be amended~~ on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested set-asides. This may cause some lower scoring applications to be selected instead of a higher scoring application. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and ~~shall~~ not be subject to the requirements of paragraph (2) of this section. Requests to ~~separately~~ allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve

the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "*Force Majeure*" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a *Force Majeure* event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. *Force Majeure* events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by *Force Majeure*;

(C) A Development Owner claiming *Force Majeure* must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned;

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; ~~and~~

~~(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.~~

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. All measurements will include the entire site, including ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to

specifically address a tie between equally underserved ~~sub-regions~~subregions in the rural or statewide collapse.

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) ~~or Concerted Revitalization Plan under §11.9(d)(7)~~ of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

~~(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.~~

~~(4) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.~~

~~(5) (3)~~ Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

~~(6) (4) Applications proposed to be located in the most underserved area as compared to another Application with the same score. For the purposes of this paragraph, "underserved area" is determined according to the same methodology as §11.3(b), "Twice the State Average Per Capita," of this Chapter. The proposed Development located in a municipality, or if located completely outside a municipality, a county, that has the fewest HTC units per capita is located in the most underserved area. The HTCs per capita measure is located in the 2018 HTC Site Demographic Characteristics Report that has been submitted to the Board.~~

(5) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

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

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

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the full required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), not later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the full pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

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

Comment [CD7]: We disagree with having this as the first tiebreaker. There are other criteria more important to tenants found in the Opportunity Index or poverty rate than how close they are to City Hall.

Perhaps this could be a place for LIHTCs per unit criteria? The lowest credit cost per LI unit wins. It would encourage good behavior (I think, unless there's a consequence I haven't thought about) and it would be really effective at breaking ties because it would generate a number that would likely not be repeated (unlike urban core where everybody gets 5 points)

For the record: Sarah Anderson said she'd like to see poverty rate come back as the primary tiebreaker. I heard her say it to a room full of developers and Marni at TAAHP's Housing Conference. Just sayin.

Comment [CD8]: Won't this just have the effect of developers doing the bare minimum and stopping at 5-6 amenities to get their full HOA points? I don't understand the logic in removing this altogether.

Comment [CD9]: Is there a better way to determine need than this? Why encourage LI development in an area if the available rent is already at or near that of LIHTC units? If there's not a lot of LIHTCs in an area, that could be indicative of a slow market with already low rents and then we're just subsidizing new construction instead of providing relief from cost burden or other housing problems. There's a benefit to bringing new units to an area where the stock might be older, but should that be a priority? That's not the priority at the federal level, as I read the statute.

I think relying on something like CHAS data would be better, which better shows the need for affordable housing. You could calculate the percentage of renter households earning less than 50% AMHI that are cost burdened. In Austin, for example, that would be 32%. In Killeen, which I've heard is a fairly weak housing market at the moment, is 24%.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than ~~an~~the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as ~~a full Application~~Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Tex Gov't Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

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

(A) Site Control meeting the requirements of §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

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

(E) Total Number of Units proposed;

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

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

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Undesirable Neighborhood Characteristics under §10.101(a)(43):-

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

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

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the ~~entire~~ proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered

return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is ~~encouraged~~required to retain proof of delivery in the event the Department ~~requires~~requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city, and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

~~(ii) Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;~~

~~(iii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and~~

~~(iv) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.~~

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex Gov't Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. All measurements will include the entire site, including ingress/egress requirements and any easements regardless of how they will be held. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements. ~~When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.~~

Comment [CD10]: It would be great to require geographic coordinates of the site if there's not an address, and that these coordinates would be entered into the logs released by the TDHCA. Some of the site descriptions are not very good.. This is an extremely easy thing for applicants to get. Anyone with a smartphone can get them for the site, or even remotely using Google Maps.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

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

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive ~~one (1) point~~ up to two (2) points if the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or a Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside.

Comment [CD11]: There's a total of 3 points below this item. Was that intentional? Seems beneficial to allow applicants to go for all 3.

(A) The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least ~~80~~50 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, ~~30~~25 percent of the developer fee, and ~~30~~5 percent of cash flow from operations.

~~(B)~~ The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). The Application must include a narrative description of the HUB's experience directly related to the housing industry. (2 points)

(B) The HUB or Nonprofit Organization must be involved with the Development team or in the provision of on-site tenant services during the Development's compliance and extended-use periods. The Application must include a narrative description of the HUB's experience directly related to the housing industry. (1 point)

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

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

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

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points);
or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

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

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points);
or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

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

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) Opportunity Index Points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located ~~entirely within~~ a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located ~~entirely within~~ a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~and~~ median household income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located ~~entirely within~~ a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

(B) An application that meets the foregoing criteria may qualify for additional points (for a maximum of seven (7) points) for any one or more of the following factors. ~~Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits. Each facility or amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position of the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application deadline. All facilities must be operational or have started vertical construction at the Pre-Application deadline. Any age restrictions associated with an amenity must positively correspond to the target population of the proposed Development. Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership paid on but broken down to a monthly basis payment):~~

Comment [CD12]: How is this defined?

(i) For Developments located in an Urban Area, ~~(other than Applicants competing in the USDA Set-Aside)~~, an Application may qualify to receive points through a combination of requirements in clauses (I) through ~~(XIV)~~ of this subparagraph.

(I) The Development ~~site~~ is located ~~less than 1/2 mile~~ on an accessible route ~~that is less than 1/2 mile from the entrance to~~ a public park with an accessible playground. ~~The route and the playground both of which must~~ meet 2010 ADA standards. (1 point)

Comment [CD13]: This edited language could be interpreted to say that the route itself could be up to a 1/2 mile away from the amenity. I think the original language was clearer. Maybe "less than 1/2 mile via accessible route..."

(II) The Development Site is located ~~less than ½ mile~~ on an accessible route ~~that is less than ½ mile~~ from ~~Public Transportation~~the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The route and the public transportation stop must meet 2010 ADA standards. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service. (both Saturday and Sunday). (1 point)

(III) The Development ~~site~~Site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point for grocery stores and 1 point for pharmacies)

(IV) The Development is located within 3 miles of a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point)

Comment [CD14]: I'd reduce this to 2 miles to help decrease chances of tie scores. I looked these up in the major cities and at 3 miles I think this is a gimmie.

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services ("DFPS") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local ~~data sources~~law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

Comment [CD15]: How do you see this being executed? Geocoding raw crime data and calculating from those within the tract?

(VII) The development ~~site~~Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding (1 point)

(VIII) The Development Site is located within 5 miles of an accredited University or Community College ~~campus, as confirmed by the Texas Higher Education Coordination Board ("THECB").~~ To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. Universities and The University or Community Colleges must have a physical ~~location~~campus, where classes are regularly held for students pursuing their

Comment [CD16]: I'd reduce this to 3-4 miles to decrease ties. I think at 5 miles covers almost the entirety of most cities with colleges. It's a gimmie.

degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014/2011-2015 American Community Survey 5-year Estimate. (1 point)

~~(X) Development site is within 2 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)~~

~~(XI) Development siteSite is within 1 mile of an indoor recreation facility available to the public (1 point). Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)~~

(XII) Development siteSite is within 1 mile of an outdoor-, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XIII) Development siteSite is within 1 mile of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership) (1 point)

~~(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)~~

(ii) For Developments located in a Rural Area and any Application under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in clauses (I) through ~~(X)XIII~~ of this subparagraph.

(I) The Development siteSite is located within 4 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point for grocery stores and 1 point for pharmacies)

(II) The Development is located within 4 miles of health-related facility, such a full service hospital, community health center, or minor emergency center. Physician offices and physician specialty offices are not considered in this category. (1 point)

(III) The Development Site is within 4 miles of a center that is licensed by the Department of Family and Protective Services ("DFPS") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local data sources-law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(V) The ~~development site~~ Development Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(VI) The ~~development site~~ Development Site is located ~~within 4 miles of an~~ accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards. (1 point)

(VII) The Development Site is located within 15 miles of ~~a University or Community College campus~~ an accredited University or Community College, as confirmed by the Texas Higher Education Coordination Board ("THECB"). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. The University or Community College must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(VIII) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher ~~as tabulated by the 2010-2014 American Community Survey 5-year Estimate~~ (1 point) (1 point)

~~(IX) Development site is within 4 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value.~~ (1 point)

(X) Development ~~site~~ Site is within 3 miles of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XI) Development ~~site~~ Site is within 3 miles of an outdoor-dedicated, and permanent recreation facility available to the public. Examples include swimming pools or

splash pads, tennis courts, golf courses, softball fields or basketball courts. (1 point)

(XII) Development siteSite is within 3 miles of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership) (1 point)

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(5) Educational Quality:

~~In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. Except for Supportive Housing Developments, an Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A)–(E) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) or (B) of this paragraph, as determined by the Texas Education Agency. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~

~~(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (3 points);~~

Comment [CD17]: I hope that we can improve the threshold criteria beyond just "met standard".

~~(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2 points, or 1 point for a Supportive Housing Development); or~~

~~(C) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point); or~~

~~(D) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide. (1 point); or~~

~~(E) If the Development Site is able to score one or two points under clauses (B) through (D) above, one additional point may be added if one or more of the features described in subclause (1) – (4) is present:~~

~~(i) The Development Site is in the attendance zone of an elementary school that has Met Standard, and has earned at least one distinction designation by TEA. (1 point);~~

~~(ii) The Development Site is located in the attendance zone of a general admission high school with a four-year longitudinal graduation rate in excess of the statewide four-year longitudinal graduation rate for all schools for the latest year available, based on the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at <http://tea.texas.gov/2016accountability.aspx>. (1 point)~~

~~(iii) The development is in the primary attendance zones for an elementary school that has met standard and offers an extended day Pre-K program. (1 point)~~

~~(iv) The development site within the attendance zone of an elementary school, a middle school and a high school that all have a Met Standard rating for the three years prior to application. (1 point)~~

~~(6) [5] Underserved Area. (§§2306.6725(b)(2); 2306.127; [3]. 42(m)(1)(C)(iii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. The Application must include evidence that the Development Site meets the requirements.~~

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) ~~An~~ The Development Site is located entirely within the boundaries of an Economically Distressed Area (1 point);

~~(C) A census tract within the boundaries of an incorporated area~~The Development Site is located entirely within a census tract that does not have a Development subject to an active tax credit LURA that is in an extended compliance period (or has received a tax credit award but not yet reached the point where its LURA must be recorded); (3 points);

~~(D) For areas not scoring points for (C) above,~~ the Development Site is located entirely within a census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years ~~and continues to appear on the Department's inventory~~ (3, 2 points);

~~(D) For areas not scoring points for (C) above,~~ (E) The Development Site is located entirely within a census tract that does not have a Development subject to an active tax credit LURA (or has received a tax credit award but not yet reached the point where its LURA must be recorded); (2 points);

~~(E) A census tract within the~~whose boundaries ~~of are wholly within~~ an incorporated area and ~~all contiguous census tracts for~~ which neither the census tract ~~in which the Development is located itself nor the all its~~ contiguous census tracts have received an award or HTC allocation within the past 15 years ~~and continues to appear on the Department's inventory~~. This item will apply in cities with a population ~~of 300~~of 150,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Comment [CD18]: So does this mean that two deals could get awards in the same census tract in consecutive years?

~~(76)~~ Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive ~~up to~~ two (2) points by serving Tenants with Special Housing Needs. ~~Points will be awarded as described in subparagraphs (A) - (C) of this paragraph. If pursuing these points, Applicants must try to score first with (A), then (B), and lastly, (C).~~

~~(A) An Application that can use an existing Development to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") will do so in order to receive two (2) points. In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria.~~

~~(B) Applications that do not meet the requirements of (A) but meet all of the requirements in clauses (i) - (v) of this subparagraph, (B), are eligible to receive two (2) points by committing to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines and requirements limit the proposed Development to fewer than 10 Units. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria. In this case, staff may allow the Application to qualify for points by meeting the requirements of subparagraph (C) of this paragraph.~~

(i) The Development must not be an ineligible Elderly Development;

(ii) Unless the Development is also proposing to use any federal funding, the Development must not be originally constructed before 1978;

(iii) The Development has units available to be committed to the Section 811 PRA Program in the Development, meaning that those units do not have any other sources of project-based rental within 6 months of receiving 811 assistance and cannot have an existing restriction for persons with disabilities;

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(v) No new construction activities or projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (i) – (iii) of this subparagraph. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:

(I) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(II) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(III) Project structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

(C) Applications proposing Developments that do not meet the requirements of subparagraphs (A) or (B) of this paragraph may qualify for two (2) points by meeting the requirements of this subparagraph. (C). In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME

Comment [CD19]: HUD having funded a development in a floodplain doesn't justify continuing to put people in harm's way. We shouldn't use this state program to perpetuate the fed's mistakes. Just last year, a HUD-funded deal in Greenspoint (Houston) got massively flooded. This isn't the only deal in harm's way. We analyzed this a while back and there was a Chronicle piece on this problem after the flood.

funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(87) Proximity to the Urban Core. A Development in a City Place, as defined by the US Census Bureau, with a population over ~~300,000~~,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main City Hall facility if the population of the city is more than 500,000, or within 2 miles of the main City Hall facility if the population of the city is ~~300,000~~ - ~~500,000~~499,999. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to applications under the At-Risk Set-Aside. (5 points)

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHA ST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

Comment [CD20]: I like this

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development;
or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals \$1,000 or more for the benefit of the Development. The letter must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

~~(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if, at the time of Application submission~~ or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under ~~the~~ the ~~Tex-Gov't~~ Gov't Code, §418.014 at any time within the two-year period preceding the date of submission.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site prior to the Pre-Application Final Delivery Date ~~and its boundaries must contain the entire~~

~~Development Site.~~ In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

Comment [CD21]: I like this, too

Comment [CD22]: What is the logic for requiring direct submittal of QCP letters to staff but not for state reps? For Local govt support, it seems to be left more open to interpretation in this respect. Maybe some consistency is needed here, or is there a method to the madness?

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

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

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries, of the Neighborhood Organization; and

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

Comment [CD23]: Didn't there used to be wording about if a letter presented fair housing issues it could be rejected by staff? Does staff have the discretion to reject a QCP letter of opposition if they find the argument to be problematic?

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

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

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

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

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

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

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

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, ~~2017~~2018. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and ~~clearly state express whether the letter conveys support for, neutrality, or opposition to the specific Development.~~ This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters, letters of opposition, or letters that do not specifically refer to the Development ~~or specifically express support or opposition~~ will receive zero (0) points. A letter that does not directly express from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support but expresses it indirectly by inference (e.g. "the others, such as local jurisdiction supports the Development government officials, constituents, and I support the local jurisdiction") will be treated as a neutral letter./or other applicable representatives of the community.

Comment [CD24]: I like what you've done here.

Comment [CD25]: Did you mean "and letters of opposition that do not specifically refer...?"

Comment [CD26]: What prompted these changes? It's difficult to understand what it means. I think the old language was fine.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status and its existence and (e.g., a copy of its tax-exempt determination letter or its listing on a federal or state government

website) and evidence it remains in good standing. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets Tax Increment Reinvestment Zones or similar plans may qualify under this category if they meet the criteria described in subclauses (I) – (IV). The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The concerted revitalization plan must meet the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated the resolution of delegation

and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-) attracting private sector development of housing and/or business;

(-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or

(-f-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(V) The plan must be current at the time of Application and must officially continue for a minimum of three years thereafter.

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan. The letter must

Comment [CD27]: I think this is a good addition. If a plan is nearing its end and still can't qualify for HOA points or isn't sufficiently long enough to reasonably expect to do so, then I might call it a failure.

also discuss how the improvements will lead to an appropriate area for the placement of housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the city or county as contributing more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. If the concerted revitalization plan includes more than one distinct area within the city or county, a resolution may be provided for Developments in each area. The resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points, unless the resolutions address distinct areas described in the plan; and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that ~~is currently has been~~ leased at 85% or greater for the six months preceding application by low income households and which was initially constructed ~~prior to 1985~~ 25 years ago preceding application as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include units that cannot be occupied due to needed repairs. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.

~~(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.~~

~~(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause~~ subparagraph if the Development is explicitly identified in a ~~letter~~ resolution by the city (or county if the Development Site is completely outside of a city) as contributing more than any other ~~Development~~ to the concerted revitalization efforts of the city or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A city or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under

this subclause. ~~The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application.~~ If multiple Applications submit valid letters/resolutions under this subclause from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points. ~~A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts; and~~

(#viii) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

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

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of ~~eighteen (18)~~nineteen (19) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

~~(2) If the Application indicates that the Applicant has firm commitments for all required equity and financing and commits that upon receipt of an award the Applicant will commence construction not later than Carryover, the Applicant may request one (1) additional point for the competitive tax credit Application of their choice in the next cycle. The Application must include designation of the individual who will use the point in the next competitive cycle, and the additional point may not be transferred to other Applicants. Failure to commence construction prior to Carryover will result in the Applicant being unable to request the point and this may not and will not be waived, altered, or extended under the waiver rule or otherwise.~~

(3) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this-scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial

construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than \$72.80 per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than \$93.60 per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than \$104 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than \$83.20 per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than \$98.80 per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than \$109.20 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost is less than \$93.60 per square foot; or

(ii) The voluntary Eligible Hard Cost is less than \$114.40 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$104.50~~ per square foot, ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit~~;

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20~~ ~~60~~ per square foot, ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit~~, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20~~ ~~60~~ per square foot, ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit~~.

~~(34)~~ Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than ~~six (6)~~ ~~four (4)~~ points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application:

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(H) The pre-application met all applicable requirements.

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

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

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than nine (9) percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ten (10) percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to

extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the ~~sub-~~regionsubregion or set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

(f) Point Adjustments.Factors Affecting Eligibility in the 2019 Application Round

Staff ~~will~~may recommend to the Board and the Board may ~~make~~find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction of one (1) point for each submitted Application (Tex. Gov't Code 2306.6710(b)(2)) because it made a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

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

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

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

(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board's takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. -Information received after the RFAD deadline will not be considered by staff or presented to the Board.

DRAFT

This is the staff Draft of the 2018 Qualified Allocation Plan. This DRAFT document has been prepared by staff and has taken into account extensive input over the course of the year. It has NOT been reviewed with the Board nor had Board member input.

TDHCA welcomes stakeholder input on this staff Draft. While this DRAFT creates an opportunity for discussion and stakeholder input, the input we receive will NOT be treated as “public comment” under the rulemaking provisions of the Administrative Procedures Act as it may or may not (depending on input) ultimately be the version of the rule presented to the Board for publication in the *Texas Register* for official public comment.

We anticipate that at the September Board meeting a proposed form of the QAP and Rules will be presented for consideration and possible action to approve publication in the *Texas Register*. That will establish the official public comment period.

Please direct all input to Patrick Russell at patrick.russell@tdhca.state.tx.us. Any input is requested to be provided by 5:00pm August 23, 2017, by 5:00pm. You should monitor the Department’s website on this matter because it is possible that, in response to input, staff may post one or more revisions as a way to further discussion and understanding.

Housing Tax Credit Program Qualified Allocation Plan

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (~~the "QAP"~~) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Tex. Gov't Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual and Frequently Asked Questions website posting are not rules and are provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, **it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.** As provided by Tex. Gov't Code §2306.6715(c), an ~~applicant~~Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be triggered by the publication on the Department's website of the results of the evaluation process. ~~Individual Scoring notices or similar communications are a courtesy only.~~

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely, and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to 10 TAC §1.1. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the

assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. If an Applicant chooses, where permitted, to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

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

(e) Census Data. Where this chapter requires the use of ~~census or~~ American Community Survey data, the Department shall use the most current data available as of October 1, ~~2016~~2017, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall generally be disregarded. Where other data sources are specifically allowed called for, such as Neighborhoodscout, the data available as of published on October November 1, 2017 may be used, will apply. Where data may change after October 1, if Applicants are cautioned to retain evidence of the applicable data on that date.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days.

~~**(g) Documentation to Substantiate Items and Representations in an Application Transparency.** In order to ensure the appropriate level of transparency in this highly competitive program, Applications, and all correspondence and other as well as information relating to the review of each Applications, are posted on the Department's website and updated on a regular basis within five business days of receipt. Applicants should use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set asides, or meeting of threshold requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process, unless the missing documentation is determined to be a Material deficiency. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed development, financing structure, or other element of the Application. The sole purpose of this mandatory Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Although a responsive narrative will be created~~

Comment [LHA1]: As proposed, this language is problematic – specifically in the event that the earlier data shows a higher crime rate.

For example, on Oct 1st, Applicant A finds a Development Site they are interested in, but when they check neighborhoodscout (“NS”), they find that it’s located in a census tract that has a property crime rate of 26.2 /1000. Applicant A retains a copy of this crime report and moves on to a different site (assuming that without this item, they were unable to find enough opportunity index amenities to achieve the full 7 points).

On Nov 26th, NS updates their data set, and the same census tract now has a property crime rate of 25.9/1000. On Dec 1st, Applicant B finds a piece of property in this same census tract, checks NS and sees that the crime rate is below 26/1000. Applicant B has no way of knowing that the earlier report exists and shows a crime rate in excess of 26/1000.

Applicant B moves forward to full Application based on this crime report, but is then challenged by Applicant A who can prove that on Oct 1st, the crime rate exceeded the threshold for scoring.

To correct for this issue, we propose the suggested language to the left, and recommend that the date be November 1st (closer to when the QAP is in its final form).

Comment [LHA2]: We recommend moving this sentence (with a few edits) to 11.9(a). See 11.9(a) for edits.

Comment [LHA3]: Defined term – both words should be capitalized

Comment [LHA4]: We recommend deleting this sentence as it contradicts much of 11.9(a).

Comment [LHA5]: The “purpose” of the Administrative Deficiency process is already stated in 10.201(7).

after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

Comment [LHA6]: 11.9(a) already addresses this idea.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

| Deadline | Documentation Required |
|--------------------------------|--|
| 01/ 05 /201704/2018 | Application Acceptance Period Begins. |
| 01/ 09 /201708/2018 | Pre-Application Final Delivery Date (including waiver requests). |
| 02/ 17 /201716/2018 | Deadline for submission of application for to request .ftp access if pre-application not submitted |
| 03/01/ 2017 2018 | Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter). |
| 04/ 01 /201702/2018 | Market Analysis Delivery Date pursuant to §10.205 of this title. |
| 04/13/2018 | Third Party Request for Administrative Deficiency |
| Mid-May | Final Scoring Notices Issued for Majority of Applications Considered "Competitive." |
| 06/01/2017 | Third Party Request for Administrative Deficiency |

Comment [LHA7]: Monday is a bad day for an Application due date. If Applicants experience technical difficulties over the weekend, there is little time to have those issues addressed with a Monday deadline. We are not necessarily requesting an additional day be added to the Acceptance period, and would therefore be satisfied with shifting the opening date to the 5th as well.

Comment [LHA8]: This is before MOST of the Applications have been reviewed by staff. By having such an early date, the Department is essentially forcing Applicants to challenge ALL the Applications with whom they are competing. This is at a substantial cost which is over and above the cost identified in the Public Benefit/Cost Note (and Adverse Impact on Small or Micro-Business), particularly in larger subregions. In 2017, there were 19 Applications in Region 3 Urban, which would have amounted to \$9,000 in RFAD fees. If this early date is maintained, we request that the associated fee be substantially reduced (no more than \$100/RFAD) or eliminated altogether.

| Deadline | Documentation Required |
|---|--|
| 06/23/2017-22/2018 | Public Comment to be included in the Board <u>materials relating to presentation for awards are due in accordance with 10 TAC §1.10.</u> |
| June | <u>Release On or before June 30, publication of the list</u> of Eligible Applications for Consideration for Award in July. |
| July | Final Awards. |
| Mid-August | Commitments are Issued. |
| 11/01/2017 | Carryover Documentation Delivery Date. |
| 06/30/2018 07/01/2019 | 10 Percent Test Documentation Delivery Date. |
| 12/31/ 2019 2020 | Placement in Service. |
| Five (5) business days after the date on the Deficiency Notice (without incurring point loss) | Administrative Deficiency Response Deadline (unless an extension has been granted). |

§11.3.Housing De-Concentration Factors. Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Tex. Gov't Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. - If two or more Applications are submitted that would violate this rule, the lower scoring Application will be considered a non-priority application and will not be reviewed unless the higher scoring Application is terminated or withdrawn. At the final award meeting, any such applications will be terminated.

(b) Twice the State Average Per Capita. As provided for in Tex. Gov't Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins ~~(or, The limitation applies for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the and for noncompetitive Tax Credit only Applications, at the time of Application submission.~~ The Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development.

Comment [LHA9]: Although not a defined term in the MF Rule, Application is defined in statute, and therefore has been used as a capitalized term in the QAP for some time. We have recommended capitalized the term throughout this draft for consistency.

Comment [LHA10]: Just because an allocation is made to the higher scoring Application at the July meeting doesn't mean that deal will ultimately receive a Carryover Agreement. The higher scoring Application could fail to achieve zoning, or other Commitment conditions, in which case the lower scoring deal could then be awarded from the waiting list. Therefore, the Department can't terminate the lower scoring Application at the late July meeting.

Comment [LHA11]: This is now an incomplete sentence.

Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

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

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

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

(B) The ~~development~~Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

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

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

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

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

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

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

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

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

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation

must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey ~~and the Development is in a Place that has a population greater than 100,000~~ shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

~~**(e) Additional Phase.** Applications proposing an additional phase Proximity of an existing tax credit Development serving the same Target Population, or Applications proposing Sites. Additional phases of Developments that are adjacent to an existing tax credit or contiguous Development serving the same Target Population, or Applications Sites will undergo further evaluation during the underwriting process by Real Estate Analysis to determine that existing units are stabilized and that the market can absorb more Housing Tax Credit units. If two or more Applications that are proposing a Development Developments serving the same Target Population on a contiguous site to another Application awarded sites are submitted in the same program year, shall the lower scoring aApplication, including consideration of tie-breakers if there are tied scores, will be considered ineligible a non-priority aApplication and will not be reviewed unless the other Developments higher scoring aApplication is terminated or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in withdrawn. At the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply. final award meeting, any such aApplications will be terminated.~~

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. ~~if the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set aside priorities and are highest scoring in the regional allocation. Prior to July 1, an Applicant that has applications pending for more than \$3 million in credit may notify staff in writing or by email of the application(s) they will not pursue in order to bring their request within the \$3 million cap. If the Applicant has not made this self selection by this date, staff may make the selection. The methodology for making this determination will be to~~

Comment [LHA12]: Just because an allocation is made to the higher scoring Application at the July meeting doesn't mean that deal will ultimately receive a Carryover Agreement. The higher scoring Application could fail to achieve zoning, or other Commitment conditions, in which case the lower scoring deal could then be awarded from the waiting list. Therefore, the Department can't terminate the lower scoring Application at the late July meeting.

Comment [LHA13]: We recommend leaving the existing language in place. The suggested revisions appear to give staff the ability to bypass certain Applications as "non-priority" which seems far too subjective for a highly competitive program of this nature and would deny Applicants due process. Practically speaking, if an Applicant had a cap issue, they would withdraw the Application of their choice before letting TDHCA make that decision for them.

~~assign first priority to an application that will enable the Department to comply with the state and federal non-profit set-asides and second to the highest scoring application, including consideration of tie-breakers if there are tied scores. The application(s) that do not meet Department criteria will not be considered priority applications and will not be reviewed unless the Applicant withdraws a priority application. The non-priority application(s) will be terminated when the Department awards \$3 million to other applications. Any application terminated for this reason is subject to reinstatement if necessary to meet a required set-aside.~~ All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- ~~(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or \$150,000, whichever is greater.~~ (4) receives fees as a consultant or advisor.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the ~~sub-region~~subregion based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the ~~Funding Request~~ of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. ~~In no instance will more than the amount of boost required to create the HTC rent restricted units be allowed, as determined by the Real Estate Analysis division of TDHCA.~~ The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

- (1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a

Comment [LHA14]: We recommend striking this language, but if it remains, we have the same comment as above regarding terminating based on July awards that ultimately may or may not receive a Carryover.

Comment [LHA15]: We recommend reinstating the existing language. CALL PATRICK TO ASK WHY THIS CHANGE WAS MADE

Comment [LHA16]: Not a defined term.

Comment [LHA17]: We recommend striking this sentence because it is vague and subjective. The subsection already allows for a lesser amount of boost with the phrase "up to but not to exceed..." If this language is included in the QAP, there needs to be very clear underwriting criteria codified in 10.301 outlining how the boost will be determined.

30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation.

~~For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.~~

Comment [LHA18]: We recommend leaving this option for the boost specific to 4% transactions.

(2) The Development is located in a Small Area Difficult Development Area ~~{“SADDA”}~~ (based on Small Area Fair Market Rents ~~{“FMRs”}~~) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

- (A) the Development is located in a Rural Area;
- (B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;
- (C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);
- (D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; or
- (E) the Development is not an Elderly Development and is not located in a QCT that is in an area covered by a concerted revitalization plan. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9(3) of this chapter (related to Pre-Application Participation).

Commitments of competitive HTCs issued by the Board in the current program year will be applied to each set-aside, Rural regional allocation, Urban regional allocation, and/or USDA set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Tex. Gov't Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*i.e.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable ~~sub-regions~~subregion unless the Application is receiving USDA Section 514 funding. ~~Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate.~~ Applications must also meet all requirements of Tex Gov't Code, §2306.111(d-2). ~~All Applications submitted in the USDA set-aside will be considered Rural for all scoring items under this chapter.~~

(3) Eligibility of Certain Developments to Participate in the USDA or Rural Set-Asides. (§2306.111(d-4)) A proposed or existing Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-Aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural area.

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

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5

Comment [LHA19]: Should be bold.

percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet ~~all~~ the following requirements:-

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received a subsidy in the form of Tex. Gov't Code, §2306.6702(a)(5)-a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. For purposes of this subparagraph, Evidence of the qualifying subsidy must be submitted with the Application.

Comment [LHA20]: Can't have a (i) without a (ii)

(ii) Any stipulation to maintain affordability in the contract granting the subsidy, pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(ii)(a), or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment ~~without penalty. To the extent that an or has been prepaid.~~

(iii) Developments with existing Department LURAs must have completed all applicable Right of First Refusal procedures prior to the Pre-Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and Final Delivery Date. Applications participating in the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction. ~~At-Risk Set-Aside must include evidence of the qualifying subsidy.~~

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the following requirements:

(i) Units to be rehabilitated or reconstructed must have received assistance under § 9, United States Housing Act of 1937 (42 U.S.C. section 1437g) and must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code. To the extent that an Application is eligible under §2306.6702(a)(5)(B)(ii) and the units being reconstructed were disposed of or demolished prior to the beginning of the Application Acceptance Period, the housing units must have been disposed of or demolished in the two-year period preceding the application for housing tax credits. The Application will be categorized as New Construction.

(ii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration ("RAD") program administered by the United States Department of Housing and Urban Development ("HUD"). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment ("CHAP")) that HUD has approved the units proposed for Rehabilitation or Reconstruction for participation in the RAD program.

(iii) Notwithstanding any other provision of law, an at-risk Development described by Tex. Gov't Code § 2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code § 2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to with the Development Site (i.e. the site units) proposed in the tax credit Application for Rehabilitation or Reconstruction prior to the tax credit Carryover 10% Test deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (e.g., the Applicant may add market rate units); and

(iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR

(iv) the local governing body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out one of its previously adopted plans. Development Sites that cross jurisdictional boundaries must provide a resolution from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain ~~or~~, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years after the year in which of the Application submission is made must be included with the Application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years-year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original Application regarding the right of first refusal Right of First Refusal. The Application must also

Comment [LHA21]: This only contemplates 2 of the 3 options under 2306.6702(a)(5)(B):

“(B) a development that proposes to rehabilitate or reconstruct housing units that:

(i) ARE owned by a public housing authority and RECEIVE assistance under Section 9...; OR

(ii) RECEIVED (past tense) assistance under Section 9... and:

(a) ARE proposed to be disposed of or demolished by a public housing authority; OR
(b) HAVE BEEN disposed of or demolished by a public housing authority in the two-year period preceding the application for housing tax credits; OR

(iii) receive assistance or will receive assistance through the RAD program... if the application for assistance through the RAD program is included in the applicable public housing authority's annual plan...”

Option (ii) does NOT require ownership by a PHA, and is part of the statutory definition of at-risk. The QAP must include this option.

Comment [LHA22]: This deadline doesn't comport with how HUD approves these types of transfers. To receive this type of approval, the Applicant must submit a Mixed Finance Application to HUD, which can't be submitted until AFTER an allocation is made. This is also problematic for deals that may be awarded off the waiting list. A 10% Test deadline would solve these issues.

include evidence that any applicable Right of First Refusal procedures have been completed prior to the Pre-Application Final Delivery deadlineDate.

Comment [LHA23]: Calendar item title – should be capitalized

(FG) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

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

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("~~sub-region~~subregion") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code, §2306.1115. The process of awarding the funds made available within each ~~sub-region~~subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular ~~sub-region~~subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation ~~by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals based on the criteria described in §11.4(ab) of this chapter.~~ Where sufficient credit becomes available to award an ~~a~~Application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline ~~and/or changes to the aApplication as necessary~~ to ensure to the fullest extent feasible that available resources are allocated by December 31.

Comment [LHA24]: Incorrect reference.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, ~~(not including credit returned and reallocated under force majeure provisions),~~ the Department shall first return the credits to the ~~sub-region~~subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the ~~sub-region~~subregion and be awarded in the collapse process to an Application in another region, ~~sub-region~~subregion or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be ~~added to and~~ added to the remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application ~~as may be amended~~ after underwriting review.

Comment [LHA25]: Removing this would mean that JUST the national pool credits would go to the next App on the waiting list. We recommend the clarification to the left.

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

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

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

(C) Initial Application Selection in Each ~~Sub-Region~~Subregion (Step 3). The highest scoring Applications within each of the 26 ~~sub-regions~~subregions will then be selected provided there are sufficient funds within the ~~sub-region~~subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the ~~sub-regions~~subregions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion

(ii) In accordance with Tex Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iv)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

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

(i) the ~~sub-region~~subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the ~~sub-region~~subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any ~~sub-region~~subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved ~~sub-region~~subregion in the State compared to the amount originally made available in each ~~sub-region~~subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved ~~sub-region~~subregion. In the event that more than one ~~sub-region~~subregion is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved ~~sub-region~~subregion:

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

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

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or ~~sub-region~~subregion from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested set-asides. This may cause some lower scoring applications to be selected instead of a higher scoring application. (§2306.6710(a) - (f); §2306.111)

Comment [LHA26]: This is already accounted for in the rest of the QAP. The "higher scoring App" would initially be selected, reviewed, and if necessary, docked points, disqualified from a set-aside and/or terminated. All of this would trigger appeal rights. The second sentence is highly subjective and seems to give staff the ability to bypass other parts of the rule. This would seem to deny the "higher scoring" Applicant due process.

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and ~~shall~~ not be subject to the requirements of paragraph (2) of this section. Requests to ~~separately~~ allocate returned credit ~~separately~~ where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "*Force Majeure*" events that occurred after the start of construction and before issuance of Forms 8609. *Force Majeure* events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a *Force Majeure* event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. *Force Majeure* events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by *Force Majeure*;

(C) A Development Owner claiming *Force Majeure* must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned;

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; ~~and~~

~~(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.~~

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. All measurements will include the entire site, including ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved ~~sub-regions~~subregions in the rural or statewide collapse.

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) or Concerted Revitalization Plan under §11.9(d)(7) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

~~(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.~~

~~(4) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.~~

~~(5) (43) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.~~

~~(6) (43) Applications proposed to be located in the most underserved area as compared to another Application with the same score. For the purposes of this paragraph, "underserved area" is determined according to the same methodology as §11.3(b), "Twice the State Average Per Capita," of this Chapter. The proposed Development located in a municipalityPlace, or if located completely outside a municipalityPlace, a county, that has the fewest HTC units per capita is located in the most underserved area, as compared to another Application with the same score. The HTCs per capita measure (by Place or county) is located in the 2018 HTC Site Demographic Characteristics Report that has been submitted to the Board.~~

(5) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

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

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, ~~sub-regions~~subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the

Comment [LHA27]: We fully support this new tie-breaker, and offer this suggestion as a simplification/clarification of the language.

We further recommend switching this tie-breaker to the #3 position, and having poverty rate be #4. The rationale is that the Agency would incentivize going to an "underserved area" to achieve greater dispersion of tax credits. Then, once in those underserved areas, the Agency would achieve the census tract with the lowest poverty rates within those under represented Places or Counties. If poverty rate remains the #3 tie-break, those underserved markets may never be reached.

Department's criteria, as outlined in subsections (a) and (b) of this section, ~~with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.~~

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the ~~full~~ required ~~Competitive Housing Tax Credit~~ ~~Pre-a~~Application ~~Fee~~ as described in §10.901 of this title (relating to Fee Schedule), not later than the Pre-aApplication Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the ~~full~~ pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

Comment [LHA28]: This seems contrary to 10.201(1)(A) which allows for the correction of "errors in the calculation of applicable fees"

Comment [LHA29]: What is a full pre-application? We recommend striking this word.

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

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than ~~an~~the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as ~~a full Application~~Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Tex Gov't Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

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

(A) Site Control meeting the requirements of §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full ~~a~~Application submission;

(B) Funding request;

(C) Target Population;

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

(E) Total Number of Units proposed;

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

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

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Undesirable Neighborhood Characteristics under §10.101(a)(~~4~~3):

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

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

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city-municipality are required to notify both city-municipality and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Public Notification Template provided in the pre-application 2018 Uniform Multifamily Application Templates. The Applicant is encouraged required to retain proof of delivery in the event the Department requires requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

Comment [LHA30]: We recommended throughout this draft changing the word city to municipality as it covers cities, towns and other municipal entities.

Comment [LHA31]: “Pre-Application Notification Template” “in the pre-application” is a holdover from pre-2015, when the pre-app used to be in excel.

- (II) the Development name, address, city, and county;
- (III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
- (IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;
- (V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, high-rise etc.); and
- (VI) the approximate total number of Units and approximate total number of low-income Units.

##(ii) Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;

(iii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(iv) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-aApplication Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-aApplication Submission Log. Inclusion of a pre-application on the Pre-aApplication Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex Gov't Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. All measurements will include the entire site, including ingress/egress requirements and any easements regardless of how they will be held. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. Applicants should provide appropriate support substantiating all claims or representations made in the Application, such as claims for points, qualification for set-asides, or meeting of threshold requirements. Due to the highly competitive nature of the program, Applicants that elect points ~~where supporting documentation is required~~ but fail to provide any supporting documentation to substantiate the election will not be

allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements. ~~When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.~~

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

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

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive ~~one (1) point~~ up to two (2) points if the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or a Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside.

(A) The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least ~~80~~50 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, ~~30~~25 percent of the developer fee, and ~~30~~5 percent of cash flow from operations.

~~(B)~~ The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and

Comment [LHA32]: It appears that subparagraph (B) is an option for less participation of a HUB/Non-profit, but the lead in paragraph still requires ownership. Perhaps replacing "ownership structure" with "Development team" would resolve the inconsistency and achieve the Agency's goal.

must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). The Application must include a narrative description of the HUB's experience directly related to the housing industry. (2 points)

Comment [LHA33]: It appears this should be part of subparagraph (A)

(B) The HUB or Nonprofit Organization must be involved with the Development team or in the provision of on-site tenant services during the Development's compliance and extended-use periods. The Application must include a narrative description of the HUB's experience directly related to the housing industry. (1 point)

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

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

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

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points);
or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

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

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points);
or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

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

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) Opportunity Index Points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located ~~entirely within~~ a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located ~~entirely within~~ a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~and a~~ median household income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located ~~entirely within~~ a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

(B) An application that meets the foregoing criteria may qualify for additional points (for a maximum of seven (7) points) for any one or more of the following factors. ~~Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits. Each facility or amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position of the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date deadline. All facilities/amenities must be~~

operational or have started vertical construction at the Pre-Application Final Delivery Date deadline. Any age restrictions associated with an amenity must positively correspond to the target population of the proposed Development. Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership but broken down to a monthly payment):

(i) For Developments located in an Urban Area, (other than Applicants competing in the USDA Set-Aside), an Application may qualify to receive points through a combination of requirements in clauses (I) through ~~(XIII)~~(XIV) of this subparagraph.

(I) The Development ~~site~~Site is located: (up to 2 points)

(-a-) less than 1/2 mile from a public park with a playground; or (1 point)

(-b-) ~~less than 1/2 mile~~ on an accessible route ~~that is less than 1/2 mile in total length from the entrance to a public park with an~~ accessible playground equipment in a public park. ~~The route and the playground both of which must be compliant with meet~~ 2010 ADA standards by the Full Application Delivery Date. ~~In order to qualify for points, the Application must include a map showing the complete accessible route and a report from a qualified third-party attesting to accessibility compliance of both the complete route (identified in the aforementioned map) and the playground itself.~~ (2+ points)

(II) The Development Site is located within a certain proximity of public transportation that provides regular service to employment and basic services. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus service on Saturdays and Sundays. (up to 2 points)

(-a-) Development Site is less than from a public transportation stop or station. (1 point)

(-b-) Development Site is ~~less than 1/2 mile~~ on an accessible route ~~that is less than 1/2 mile in total length from Public Transportation~~the entrance of a public transportation stop or station ~~with a route schedule that provides regular service to employment and basic services. Both T~~the route and the public transportation stop ~~must meet~~be compliant with 2010 ADA standards by the Full Application Delivery Date. ~~In order to qualify for points, the Application must include a map showing the complete accessible route and a report from a qualified third-party attesting to accessibility compliance of both the complete route (identified in the aforementioned map) and the transportation stop itself. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service. (both Saturday and Sunday).~~ (1-2 points)

(III) The Development ~~site~~Site is located within 1 mile of a full-service grocery store and/or pharmacy. For purposes of this subclause, these amenities may be situated within the same facility. (up to 2 points)

Comment [LHA34]: There aren't actually 14 menu items. Museum was deleted, but the numbering after that wasn't adjusted.

Comment [LHA35]: Because there is no longer a tiebreak related to menu items "above the line," Applicant are only required to have 5 amenities total in order to achieve a maximum score on Opportunity Index. Because of this, it is unlikely that anyone will go after these two amenities due to the very strict (2010 ADA) standards. It follows that Applicants will not site their development in relation to parks or public transportation because they are disincentivized to do so because the criteria is too stringent. They can easily find 5 other amenities which don't require the level of scrutiny that 2010 ADA compliance would.

It seems like good public policy to provide an incentive to site developments in relation to public transportation (and parks) and provide a FURTHER incentive for ADA compliance. We believe the suggested language to the left would accomplish both goals.

We also offer some suggestions to address issues that came up in the 2017 cycle.

~~(-a-)~~ -A full service grocery store ~~which is a store~~ of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items; (1 point ~~for grocery stores and 1 point for pharmacies~~)

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~~(-b-)~~ A retail pharmacy. (1 point)

Comment [LHA36]: This appears to mean subclause III is worth up to 2 points. If that is the case, we recommend the clarifications to the left. We also recommend allowing these two items to be within the same building, as many (if not most) full services groceries have their own pharmacies. As a practical matter, it's very convenient for families to pick up their prescriptions while they do their grocery shopping.

(IV) The Development is located within 3 miles of a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. ~~Physieian-Doctors' offices and physieian-doctors'~~ specialty offices are not considered in this category. (1 point)

Comment [LHA37]: We recommend the word 'doctor' as opposed to physician, as a dentist would not necessarily be considered a physician, but is indeed a doctor. Same logic applies to psychologists, optometrists, chiropractors and other such practices.

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services ("~~DFPS~~") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. ~~The Application must include evidence from DFPS that the center meets the above requirements.~~ (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by ~~neighborhoodscout.com, or local data sources, law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located.~~ (1 point)

Comment [LHA38]: For scoring purposes, there needs to be an "apples to apples" comparison so we recommend limiting this to NeighborhoodScout. However, we are supportive of allowing the threshold item in the MF Rule related to violent crime to use either NS or local data sources.

(VII) The ~~d~~Development ~~site~~Site is located within 1 mile of a public library ~~that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal-regularly scheduled operating hours at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding~~ (1 point)

(VIII) The Development Site is located within 5 miles of ~~an accredited~~ University or Community College ~~campus, as confirmed by the Texas Higher Education Coordination Board ("THECB").~~ To be considered a ~~u~~University for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. ~~Universities and The University or Community Colleges~~College must have a physical ~~location~~campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

Comment [LHA39]: Capitalize for consistency.

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the ~~2010-2014~~2011-2015 American Community Survey 5-year Estimate. (1 point)

~~(X) Development site is within 2 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)~~

~~(X4) Development site is located within 1 mile of an indoor recreation facility available to the public (1 point). Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)~~

~~(XI4) Development site is located within 1 mile of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)~~

~~(XII4) Development site is located within 1 mile of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership) (1 point)~~

~~(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)~~

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in clauses (I) through ~~(X4)(XIII)~~ of this subparagraph.

(I) The Development site is located within 4 miles of a full-service grocery store and/or pharmacy. For purposes of this subclause, these amenities may be situated within the same facility. (up to 2 points)

(-a-) A full service grocery store which is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items; (1 point for grocery stores and 1 point for pharmacies)

(-b-) A retail pharmacy. (1 point)

(II) The Development is located within 4 miles of health-related facility, such a full service hospital, community health center, or minor emergency center. Physician Doctors' offices and physician doctors' specialty offices are not considered in this category. (1 point)

Comment [LHA40]: It seems like this would fall under (XII) above as a community, civic or service organization, and therefore we recommend striking this as a standalone clause.

Comment [LHA41]: Same comment as above in Urban.

Comment [LHA42]: Same comment as above in Urban.

(III) The Development Site is located within 4 miles of a center that is licensed by the Department of Family and Protective Services (“DFPS”) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local data sources, law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(V) The ~~development site~~ Development Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal/regularly scheduled operating hours at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(VI) The ~~development site~~ Development Site is located within 4 miles of an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards. (1 point)

(VII) The Development Site is located within 15 miles of ~~a University or Community College campus~~ an accredited University or Community College, as confirmed by the Texas Higher Education Coordination Board (“THECB”). To be considered a University for these purposes, the provider of higher education must have the authority to confer bachelor’s degrees. Two-year colleges are considered Community Colleges. The University or Community College must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(VIII) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher ~~as tabulated by the 2010-2014 American Community Survey 5-year Estimate~~ (1 point) (1 point)

(IX) ~~Development site is within 4 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value.~~ (1 point)

(X) Development ~~site~~ Site is located within 3 miles of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XI) Development ~~site~~ Site is located within 3 miles of an outdoor-, dedicated, and permanent recreation facility available to the public. Examples include swimming

Comment [LHA43]: Smaller towns may have public libraries (which offer regular access to a wide variety of books, computers and internet access as well as meeting space) but do not have the resources to operate these public libraries 6-7 days a week. As an example, the City of Winnsboro has a public library which is closed on Sundays and Mondays. Prescribing a specific number of days of operation in these smaller markets is problematic.

Another example which would be excluded is the City of Whitehouse, which has a non-profit “community library” which is closed on Wednesdays and Sundays. Library card are free to residents who live within Whitehouse ISD; those outside the district can get a library card for a \$20 annual fee. <http://www.whitehousecommunitylibrary.com/about.html>

Comment [LHA44]: We do not believe this is achievable in Rural markets, and therefore recommend that the requirement resort back to the 2017 language.

Comment [LHA45]: Capitalize for consistency.

pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XII) Development ~~site~~Site is located within 3 miles of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership) (1 point)

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

Comment [LHA46]: Same comment as above in Urban.

(5) Educational Quality.

~~In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. Except for Supportive Housing Developments, an Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A)–(E) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) or (B) of this paragraph, as determined by the Texas Education Agency. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~

~~(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (3 points);~~

~~(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2 points, or 1 point for a Supportive Housing Development); or~~

~~(C) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point); or~~

~~(D) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide. (1 point); or~~

~~(E) If the Development Site is able to score one or two points under clauses (B) through (D) above, one additional point may be added if one or more of the features described in subclause (1) – (4) is present:~~

~~(i) The Development Site is in the attendance zone of an elementary school that has Met Standard, and has earned at least one distinction designation by TEA. (1 point);~~

~~(ii) The Development Site is located in the attendance zone of a general admission high school with a four-year longitudinal graduation rate in excess of the statewide four-year longitudinal graduation rate for all schools for the latest year available, based on the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at <http://tea.texas.gov/2016accountability.aspx>. (1 point)~~

~~(iii) The development is in the primary attendance zones for an elementary school that has met standard and offers an extended day Pre-K program. (1 point)~~

~~(iv) The development site within the attendance zone of an elementary school, a middle school and a high school that all have a Met Standard rating for the three years prior to application. (1 point)~~

~~(6) [5] Underserved Area. (§§2306.6725(b)(2); 2306.127; [3]. 42(m)(1)(C)(iii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. The Application must include evidence that the Development Site meets the requirements.~~

Comment [LHA47]: It appears that (ii) is the correct reference "housing needs characteristics" – not sure why this changed.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) ~~An~~ The Development Site is located entirely within the boundaries of an Economically Distressed Area (1 point);

~~(C) A census tract within the boundaries of an incorporated area~~The Development Site is located entirely within a census tract that does not have an HTC Development subject to an active tax credit LURA that is in an extended compliance period (or that has received a Housing Credit Allocation tax credit award but which has not yet reached the point where its LURA must be recorded); (3 points);

~~(D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years and continues to appear on the Department's inventory (3, (2 points);~~

~~(D) For areas not scoring points for (C) above, (E) The Development Site is located entirely within a census tract that does not have a Development subject to an active tax credit LURA (or has received a tax credit award but not yet reached the point where its LURA must be recorded); (2 points);~~

~~(E) A census tract within the whose boundaries of are wholly within an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located itself nor the all its contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply in cities-Places with a population of 300 of 150 100,000 or more, and will not apply in the At-Risk Set-Aside (5 points).~~

~~(76) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (C) of this paragraph. If pursuing these points, Applicants must try to score first with (A), then (B), and lastly, (C).~~

~~(A) An Application Applicant that can is able to use an existing Development to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") will must do so in order to receive two (2) points for the subject Application. In order to qualify for points, the existing Development must commit at least 10 units to the Section 811 PRA Program, at least 10 units or, if the proposed Development proposed in the subject Application would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria.~~

~~(B) Applications Applicants that do not are unable to meet the requirements of (A) but meet all of the requirements in clauses (i) - (v) of this subparagraph, (B), are eligible to receive two (2) points by committing to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines and requirements limit the proposed Development to fewer than 10 Units. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria. In this case, staff may~~

Comment [LHA48]: HTC Development is a defined term which contemplates an active LURA. Alternatively, the language could read:

"The Development Site is located entirely within in a census tract that does not have a Development subject to an Extended Use Period specified in a LURA..." – Extended Use Period being a defined term which includes the initial 15-year Compliance Period and the federal and state extended affordability periods.

Comment [LHA49]: Housing Credit Allocation is a defined term meaning an award of tax credits.

Comment [LHA50]: Going from 300k to 150k only adds 9 additional Places. Taking it to 100k adds 25 additional Places and helps with greater dispersion of tax credits.

allow the Application to qualify for points by meeting the requirements of subparagraph (C) of this paragraph.

(i) The Development must not be an ineligible Elderly Development;

(ii) Unless the Development is also proposing to use any federal funding, the Development must not be originally constructed before 1978;

(iii) The Development has units available to be committed to the Section 811 PRA Program in the Development, meaning that those units do not have any other sources of project-based rental within 6 months of receiving 811 assistance and cannot have an existing restriction for persons with disabilities;

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(v) No new construction activities or projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (i) – (iii) of this subparagraph. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:

(I) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(II) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(III) Project structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

(C) Applications proposing Developments that do not meet the requirements of subparagraphs (A) or (B) of this paragraph may qualify for two (2) points by meeting the requirements of this subparagraph. (C). In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to

affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(87) Proximity to the Urban Core. A Development in a CityPlace, as defined by the US Census Bureau, with a population over ~~300,000~~ 200,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main City Hall facility/municipal government administration building if the population of the city-Place is more than 500,000, or within 2 miles of the main City Hall facility/municipal government administration building if the population of the city-Place is ~~300,000~~ 200,000 - ~~500,000~~ 499,999. The main City Hall facility/municipal government administration building will be determined by the location of regularly scheduled City Council, City Commission, or similar municipal governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (5 points)

Comment [LHA51]: This is a defined term in the MF Rule which contemplates the US Census Bureau.

Comment [LHA52]: City Hall isn't a defined term and therefore shouldn't be capitalized. We recommend "municipal government administration building" as a more generic term.

Comment [LHA53]: Going from 300k to 200k only adds an additional 5 Places. We recommend a tiered structure with 100k as the floor (which would add 25 additional Places) in order to create greater dispersion of tax credits:
100-250k = 2 mile radius
250-500k = 3 mile radius
500k+ = 4 mile radius

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAAT") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the ~~city-municipality~~ (if located in a ~~city-municipality~~) or county in which the Development Site is located. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value ~~that equals \$1,000 or more~~ for the benefit of the Development. The letter must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

Comment [LHA54]: Remove space.

~~(3) Declared Disaster Area.~~ (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if, at the time of Application submission ~~or at any time within the two-year period preceding the date of submission~~, the Development Site is located in an area declared to be a disaster area under ~~the~~ ~~Tex-Gov't~~ ~~Gov't~~ Code, §418.014 ~~at any time within the two-year period preceding the date of submission~~.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site prior to the Pre-Application Final Delivery Date ~~and its boundaries must contain the entire Development Site~~. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

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

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries, of the Neighborhood Organization; and

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

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

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

Comment [LHA55]: (d)(4) QCP is a paragraph

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

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

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

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

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

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, ~~2017~~2018. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are

contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and ~~clearly state express whether the letter conveys support for, neutrality, or opposition to the specific Development.~~ This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters, letters of opposition, or letters that do not specifically refer to the Development ~~or specifically express support or opposition~~ will receive zero (0) points. A letter that does not directly express from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support but expresses it indirectly by inference (e.g. "the others, such as local jurisdiction supports the Development government officials, constituents, and I support the local jurisdiction") will be treated as a neutral letter./or other applicable representatives of the community.

Comment [LHA56]: How would such a letter be scored? We recommend clarification of this sentence or removal.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law

enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status ~~and its existence and (e.g., a copy of its tax-exempt determination letter or its listing on a federal or state government website) and evidence it remains in good standing. An Organization must also provide evidence of its~~ participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts ~~as described in subparagraph C~~), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. ~~The concerted revitalization plan that meets Tax Increment Reinvestment Zones or similar plans may qualify under this category if they meet the criteria described in subclauses (I) – (IV). The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The concerted revitalization plan, which may include Tax Increment Reinvestment Zones or similar plans, must meet~~ the criteria described in subclauses (I) - (IV) of this clause:

Comment [LHA57]: We offer the suggestion at the left as a simplification of the proposed language.

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the [Application](#).

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-) attracting private sector development of housing and/or business;

(-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or

(-f-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

[\(V\) The plan must be current at the time of Application and must officially continue for a minimum of three years thereafter.](#)

Comment [LHA58]: What does current mean?

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan. The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the city municipality or county as contributing more than any other to the concerted revitalization efforts of the city municipality or county (as applicable). A city municipality or county may only identify one single Development within each distinct area of revitalization during each Application Round for the additional points under this subclause. ~~If the concerted revitalization plan includes more than one distinct area within the city or county, a resolution may be provided for Developments in each area.~~ The resolution from the Governing Body of the city municipality or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body for the same revitalization area, none of the Applications shall be eligible for the additional points, unless the resolutions address distinct areas described in the plan; and

Comment [LHA59]: A municipality could have multiple plans, each with a distinct area.

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that ~~is currently has been~~ leased at 85% or greater for the six months preceding a Application by low income households and which was initially constructed ~~prior to 1985 25 years ago preceding prior to~~ a Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include units that cannot be occupied due to needed repairs. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Undesirable Neighborhood Characteristics.

~~(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.~~

~~(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause subparagraph if the Development is explicitly identified in a letter resolution by the city municipality (or county if the Development Site is~~

~~completely outside of a city/municipality) as contributing more than any other Development to the concerted revitalization efforts of the city-municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A city-municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters/resolutions under this subclause from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts; and~~

(iviii) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

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

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of ~~eighteen (18)~~^{nineteen (19)} points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

~~(2) If the Application indicates that the Applicant has firm commitments for all required equity and financing and commits that upon receipt of an award the Applicant will commence construction not later than Carryover, the Applicant may request one (1) additional point for the competitive tax credit Application of their choice in the next cycle. The Application must include designation of the individual who will use the point in the next competitive cycle, and the additional point may not be transferred to other Applicants. Failure to commence construction prior to Carryover will result in the Applicant being unable to request the point and this may not and will not be waived, altered, or extended under the waiver rule or otherwise.~~

(3) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this-scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the

Comment [LHA60]: This should stay 18, as paragraph 2 is a new scoring item, and would not apply to the score of the 2018 Application.

Comment [LHA61]: While we understand the Department's wish to ensure that Development awarded tax credits are placed in service timely, we believe this "2019 bonus point" is unfair and has the potential of creating MANY unintended consequences. It's effect on the 2019 round is far too unpredictable. As proposed, the bonus point could be awarded in Region 6 Rural but redeemed in 3 Urban, or in the At-risk set-aside. It could be allocated to a particular consultant as a way to bypass the 'non-transferable' nature of the bonus point

Furthermore, a Carryover deadline would be difficult to achieve for an Application awarded in July, but wholly unfair to Applications awarded off the waiting list in late September (plans and specs can easily take a full 3 months, with another month to bid the construction job).

As opposed to a scoring incentive, we would recommend some sort of monetary incentive for 2018 deals that start construction before the March 1, 2019 (the full app due date), perhaps the waiver of 1st year compliance fees, waiver of an Applicant's Amendment/Extension fees for a year, or even a discount on Commitment Fees for a 2019 deal.

purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

- (i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;
- (ii) the Development is more than 75 percent single family design;
- (iii) the Development is Supportive Housing; or
- (iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

- (i) The voluntary Eligible Building Cost per square foot is less than \$72.80 per square foot;
- (ii) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot, and the Development meets the definition of a high cost development;
- (iii) The voluntary Eligible Hard Cost per square foot is less than \$93.60 per square foot; or
- (iv) The voluntary Eligible Hard Cost per square foot is less than \$104 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

- (i) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot;
- (ii) The voluntary Eligible Building Cost per square foot is less than \$83.20 per square foot, and the Development meets the definition of a high cost development;
- (iii) The voluntary Eligible Hard Cost per square foot is less than \$98.80 per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than \$109.20 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

- (i) The voluntary Eligible Building Cost is less than \$93.60 per square foot; or
- (ii) The voluntary Eligible Hard Cost is less than \$114.40 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$104.50~~ per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square foot unit;

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20~~ 60 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square foot unit, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20~~ 60 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square foot unit.

~~(34)~~ Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during by the Pre-Application Acceptance Period/Final Delivery Date. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

- (A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;
- (B) The designation of the proposed Development as Rural or Urban remains the same;
- (C) The proposed Development serves the same Target Population;
- (D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);
- (E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than ~~six (6)~~ four (4) points from what was reflected in the pre-application self score;

Comment [LHA62]: These levels don't seem high enough for a rehab, let alone an adaptive reuse. Also, the language is unclear with respect to the "plus or minus \$1" for every 50sf "above or below." It seems to indicate that for every 50sf less than 900sf, the \$/sf would go DOWN by \$1, when it should go the other way – a smaller unit has the same fixed costs as a larger unit in a smaller footprint (kitchen, baths, other plumbing, rough electrical, etc.).

Comment [LHA63]: Although it can be implied from the calendar, Pre-Application "Acceptance Period" isn't technically a calendar item title or defined term.

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application:

- (i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.
- (ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(H) The pre-application met all applicable requirements.

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

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

- (i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or
- (ii) If the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (3 points); or
- (iii) If the Housing Tax Credit funding request is less than nine (9) percent of the Total Housing Development Cost (2 points); or
- (iv) If the Housing Tax Credit funding request is less than ten (10) percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the ~~sub-region~~subregion or set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

(f) Point Adjustments.Factors Affecting Eligibility in the 2019 Application Round

Staff ~~will~~may recommend to the Board and the Board may ~~make~~find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction of one (1) point for each submitted Application (Tex. Gov't Code 2306.6710(b)(2)) because it made a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

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

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

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

(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board's takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. Information received after the RFAD deadline will not be considered by staff or presented to the Board, unless the issue rises to the level of material misrepresentation or ineligibility.

Comment [LHA64]: This, along with the very early deadline, forces an Applicant to challenge ALL application in their respective subregion. In larger regions, this could amount to a substantial cost over an above the cost outlined in the Public Benefit/Cost Note, and Adverse Impact on Small or Micro-Business (\$9,000 in Region 3 Urban for 2017). Because of this, we request that the fee associated with an RFAD to be lowered (no more than \$100/RFAD) or eliminated altogether.

Furthermore, there needs to be room in the rule for information to be brought forth which shows that an Applicant misrepresented specific information in an Application, or otherwise acted in fraudulent manner. If evidence was brought to light (after the RFAD deadline) that an Applicant bribed a local official (or committed some other sort of fraud), TDHCA must have the ability to take action, despite the RFAD deadline passing.

August 23, 2017

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Re: Staff Draft of the 2018 Qualified Allocation Plan

Patrick,

Thank you for the opportunity to comment on the Staff Draft of the 2018 Qualified Allocation Plan. The blue underlined or strikethrough language is Staffs' suggested changes. The red underlined or strikethrough language are my suggested changes. I have provided comments (sometimes questions) related to the suggested changes for each section addressed in this letter.

§11.3(a) Two Mile Same Year Rule

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Tex. Gov't Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more applications are submitted that would violate this rule, the lower scoring application will be considered a non-priority application and will not be reviewed unless the higher scoring application is terminated or withdrawn. At the final award meeting, any such applications will be terminated.

§11.3(a) Comment: It would be premature to terminate an application based on this section as the terminated application may be the next best development on the waitlist if the allocated development were to fall out.

§11.3(e) Proximity of Development Sites

(e) Additional Phase. ~~Applications proposing an additional phase~~ **Proximity of an existing tax credit Development** ~~serving the same Target Population, or Applications proposing Sites. Additional phases of~~ **Developments that are adjacent to an existing tax credit or contiguous** ~~Development serving the same Target Population, or Applications~~ **Sites will undergo further evaluation during the underwriting process by Real Estate Analysis to determine that existing units are stabilized and that the market can absorb more Housing Tax Credit units. If two or more applications that are proposing a Development** ~~Developments~~ **serving the same Target Population on a contiguous site to another Application awarded** ~~sites are submitted~~ **in the same program year, shall the lower scoring application, including consideration of tie-breakers if there are tied scores, will be considered ineligible** ~~a non-priority application and will not be reviewed unless the other Developments~~ **higher scoring application is terminated or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected**

~~inwithdrawn. At the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply. final award meeting, any such applications will be terminated.~~

§11.3(e) Comment: It would be premature to terminate an application based on this section as the terminated application may be the next best development on the waitlist if the allocated development were to fall out.

§11.4(a) Credit Amount

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. ~~If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional allocation. Prior to July 1, an Applicant that has applications pending for more than \$3 million in credit may notify staff in writing or by email of the application(s) they will not pursue in order to bring their request within the \$3 million cap. If the Applicant has not made this self-selection by this date, staff may make the selection. The methodology for making this determination will be to assign first priority to an application that will enable the Department to comply with the state and federal non-profit set-asides and second to the highest scoring application, including consideration of tie-breakers if there are tied scores. The application(s) that do not meet Department criteria will not be considered priority applications and will not be reviewed unless the Applicant withdraws a priority application. The non-priority application(s) will be terminated when the Department awards \$3 million to other applications. Any application terminated for this reason is subject to reinstatement if necessary to meet a required set-aside.~~ All entities that are under common Control are Affiliates. For purposes of determining the \$3 million

§11.4(a) Comment: If reinstated, how will the \$3 million violation be taken care of? Will one of the other applications be terminated? And how late in the process can the switch occur? There could be money spent or site control lost by that point.

§11.4(c) Increase in Eligible Basis

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. ~~In no instance will more than the amount of boost required to create the HTC rent-restricted units be allowed, as determined by the Real Estate Analysis division of TDHCA.~~ The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

§11.4(c) Comment: What does this mean and how is it calculated? Will it be a pro rata share of total costs and then a gap analysis?

§11.5(3) At-Risk Set-Aside

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet ~~all~~ the following requirements:

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received a subsidy in the form of Tex Gov't Code, §2306.6702(a)(5) a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(ii)(a), or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment without penalty. To the extent that an or has been prepaid^[LV6]. Developments with existing Department LURAs must have completed all applicable Right of First Refusal procedures prior to the Pre-Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and Final Delivery Date. Applications participating in the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction At-Risk Set-Aside must include evidence of the qualifying subsidy.

§11.5(3) Comment: I was unable to find language in 2306 that allows for the HUD-insured or HUD-held mortgage to already be prepaid at the time of application. Please provide this reference.

§11.5(3)(D)(iii) and (iv) At-Risk Set-Aside

(iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) ~~.)~~ or ; OR

~~(D)(iv)~~ the local governing body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out one of its previously adopted plans. Development Sites that cross jurisdictional boundaries must provide a resolution from both local governing bodies.

§11.5(3)(D)(iii) and (iv) Comment: Keep it in one paragraph to make sure it is clear that you can meet either characteristic of Opp Index or Resolution but you have to meet §11.5(3)(D)(i) and (ii).

§11.7(3) and (4) Tie Breaker Factors

~~(5)(3) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.~~

~~(6)(34) Applications proposed to be located in the most underserved area as compared to another Application with the same score. For the purposes of this paragraph, “underserved area” is determined according to the same methodology as §11.3(b), “Twice the State Average Per Capita,” of this Chapter. The proposed Development located in a municipality, or if located completely outside a municipality, a county, that has the fewest HTC units per capita is located in the most underserved area. The HTCs per capita measure is located in the 2018 HTC Site Demographic Characteristics Report that has been submitted to the Board.~~

~~(4) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.~~

§11.7(3) and (4) Comment: The order of these two tie breakers should be switched to go from a broader geographical area (cities and counties) to a narrower geographical area (census tracts).

§11.9(c)(4)(B) Opportunity Index

(B) An application that meets the foregoing criteria may qualify for additional points (for a maximum of seven (7) points) for any one or more of the following factors. ~~Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits.~~ ~~Each facility or amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits.~~ ~~All mMembers of the Applicant or Affiliates cannot have had an ownership position of the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application deadline. All facilities must be operational or have started vertical construction at the Pre-Application deadline. Any age restrictions associated with an amenity must positively correspond to the target population of the proposed Development. Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership but broken down to a monthly payment):~~

§11.9(c)(4)(B) Comment: Multiple amenities housed in the same building or located on the same site should be treated as separate scoring items as they benefit tenants as much and maybe more than the same amenities in separate locations. (Also, I don’t see a spot where it is “allowed within the scoring item.”)

§11.9(c)(4)(B)(i)(I) and (II) Opportunity Index

(I) The Development ~~site~~Site is located ~~less than 1/2 mile~~ ~~on an accessible route~~ ~~that is less than 1/2 mile~~ from ~~the entrance to~~ a public park with an accessible playground, ~~The route and the playground both of which must that~~ meets 2010 ADA standards. (1 point)

(II) The Development Site is located ~~less than ½ mile on an accessible route that is less than ½ mile~~ from ~~Public Transportation~~ the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. ~~The route and the public transportation stop must meet 2010 ADA standards.~~ For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service. (both Saturday and Sunday). (1 point)

§11.9(c)(4)(B)(i)(I) and (II) Comment: Offsite routes are constructed and maintained by a third party such as a City and, therefore, maintaining continued accessibility of the route is not the responsibility or even within the rights of the applicant to accomplish. Accessibility can change from application date to award date and beyond. It has proven to be extremely difficult to accurately determine if a route on City sidewalks and/or across City streets meets 2010 ADA standards.

§11.9(c)(4)(B)(i)(III) Opportunity Index

(III) The Development ~~site~~ Site is located within 1 mile of a full-service grocery store ~~or pharmacy~~. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point ~~for grocery stores and 1 point for pharmacies~~)

(IV) ~~The Development Site is located within 1 mile of a pharmacy.~~ (1 point)

§11.9(c)(4)(B)(i)(III) Comment: It is clearer to have pharmacy as a separate item.

§11.9(c)(4)(B)(i)(VII) Opportunity Index

(VII) The development ~~site~~ Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding (1 point)

§11.9(c)(4)(B)(i)(VII) Comment: Some municipalities cannot operate their libraries six days a week. The other criteria is adequate.

§11.9(c)(4)(B)(ii)(I) Opportunity Index

(I) The Development ~~site~~Site is located within 4 miles of a full-service grocery store ~~or pharmacy~~. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point ~~for grocery stores and 1 point for pharmacies~~)

(II) ~~The Development Site is located within 4 miles of a pharmacy. (1 point)~~

§11.9(c)(4)(B)(ii)(I) Comment: It is clearer to have pharmacy as a separate item.

§11.9(c)(4)(B)(ii)(VI) Opportunity Index

(VI) ~~The development site~~Development Site is located ~~within 4 miles of on an accessible route that is less than 1 mile~~4 miles from a public park ~~with an accessible playground. The route and the playground both must meet 2010 ADA standards.~~ (1 point)

§11.9(c)(4)(B)(ii)(VI) Comment: Revert to 2017 language. A public playground may not be available in many rural communities; however, most LIHTC developments provide this amenity onsite to tenants. Offsite routes are constructed and maintained by a third party such as a City and, therefore, maintaining continued accessibility of the route is not the responsibility or even within the rights of the applicant to accomplish. Accessibility can change from application date to award date and beyond. It has proven to be extremely difficult to accurately determine if a route on City sidewalks and/or across City streets meets 2010 ADA standards.

§11.9(d)(2) Commitment of Development Funding by Local Political Subdivision

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value ~~that equals \$1,000 or more~~ for the benefit of the Development. The letter must describe value of the

contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

§11.9(d)(2) Comment: Revert to 2017 language. For some Local Political Subdivisions, \$1,000 is still a prohibitive amount. If the language remains, Rural Areas should be allowed to contribute a minimum of \$100.

§11.9(d)(5) Community Support from State Representative

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to ~~threeeight (38)~~ points or have deducted up to ~~oneeight (18)~~ points^[LV19] for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and ~~clearly state~~ express whether the letter conveys support ~~for, neutrality, or opposition to the specific Development~~. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Letters of support will receive three (3) points. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters, ~~letters of opposition~~, or letters that do not specifically refer to the Development ~~or specifically express support or opposition~~ will receive zero (0) points. Letters of opposition will result in the deduction of one (1) point. A letter ~~that does not directly express from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support but expresses it indirectly by inference (e.g. "the others, such as local jurisdiction supports the Development government officials, constituents, and I support the local jurisdiction") will be treated as a neutral letter./or other applicable representatives of the community.~~

§11.9(d)(5) Comment: 2306.6710(b)(1)(J) the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site

2306.6710(f) In evaluating the level of community support for an application under Subsection (b)(1)(J), the department shall award:

- (1) positive points for positive written statements received;
- (2) negative points for negative written statements received; and
- (3) zero points for neutral statements received.

There is no requirement to have an equal application of positive and negative points. There is also no indication of the actual number of points to be attributed. In fact, this item is the last on the list of priority

in descending order of scoring. Changing to 3 points for support and -1 point for opposition allows applications to maintain their pre-application participation points.

§11.9(e)(1) and (2) Financial Feasibility

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of ~~eighteen (18)~~nineteen (19) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

~~(2) If the Application indicates that the Applicant has firm commitments for all required equity and financing and commits that upon receipt of an award the Applicant will commence construction will commence not later than Carryover, the Applicant may request one (1) additional point for the competitive tax credit Application of their choice in the next cycle. The Application must include designation of the individual who will use the point in the next competitive cycle, and the additional point may not be transferred to other Applicants. Failure to commence construction prior to Carryover will result in the Applicant being unable to request the point and this may not and will not be waived, altered, or extended under the waiver rule or otherwise.~~

§11.9(e)(1) and (2) Comment: (1) I believe the change from 18 to 19 total points is an error as the extra point (for 19) would actually apply in the following year. (2) I understand the desire to reward readiness to proceed; however, I believe this will be a difficult item to track and apply. If it is added to the final 2018 QAP, it should be limited to a commitment by the Applicant to commence construction by a certain date. It is not practical to get firm commitments from lenders and syndicators at application. In fact, it can be detrimental to the terms received due to timing adjusters.

§11.9(e)(3)(E) Cost of Development per Square Foot

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$10450~~ per square foot, ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit.~~

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20~~ 60 per square foot, ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit~~, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20~~ 60 per square foot, ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit~~.^[LV22]

§11.9(e)(3)(E) Comment: Revert to 2017 language. It is better to keep things simple with a flat dollar figure rather than one that has to be calculated. If the language is changed in the final 2018 QAP, the base dollar amount and base unit square footage should be supported by actual data. For example, USDA developments have an average square footage of 700 and spent an average of \$80 in hard costs per square foot.

§11.9(e)(4)(E) Pre-application Participation

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than ~~six (6)~~ four (4) points from what was reflected in the pre-application self score;

§11.9(e)(4)(E) Comment: Revert to 2017 language; a four point spread is not wide enough to take into consideration many of the scoring items that are out of the Applicants' control; for example, Representative support letters as currently scored.

§11.9(f) Factors Affecting Eligibility in the 2019 Application Round

(f) ~~Point Adjustments.~~ Factors Affecting Eligibility in the 2019 Application Round

~~Staff will~~ may recommend to the Board and the Board may ~~make~~ find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction of one (1) point for each submitted 2019 Application (Tex. Gov't Code 2306.6710(b)(2)) because ~~it~~ the Board made a deduction of up to five (5) points for any of the items listed in paragraph (1) ~~through (3)~~ of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

§11.9(f) Comment: This seems to be a double penalty on Applicants for the same infraction. The up to 5 points deduction already applies to the following application round according to paragraph (4). Ineligibility to participate in an Application Round should be handled through the Department's debarment process.

Please let me know if you have any questions. I am available via email at lisa@betcohousinglab.com or (512) 627-8062.

Sincerely,

A handwritten signature in black ink that reads "L. Vecchietti". The signature is written in a cursive style with a large, looping initial "L".

Lisa Vecchietti

(6) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. For purposes of this paragraph, existing Development means an operational property in the Applicant's portfolio, and proposed Development is the subject of the Application. Points will be awarded as described in subparagraphs (A)–(C) of this paragraph. If pursuing these points, Applicants must try to score first with (A), then (B), and lastly, (C).

(A) An ~~Application-Applicant~~ that ~~is able can~~ to use an existing Development to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") ~~will must~~ do so in order to receive two (2) points under this paragraph for the subject Application. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the existing Development participate in the Section 811 PRA Program unless the Department determines that the existing Development cannot meet all of the Section 811 PRA Program criteria. In order to qualify for points, the existing Development must commit to the Section 811 PRA Program either:

~~(i) at least a minimum of 10 units;~~ or;

~~(ii) if the proposed Development in the subject Application would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units that (as would be required of the proposed Development under subparagraph (B) of this paragraph, should for the proposed Development be eligible for participation in) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria.~~

(B) ~~Applications-Applicants~~ that ~~do not are unable to~~ meet the requirements of (A) ~~but meet all of the requirements in clauses (i)–(v) of this subparagraph, (B),~~ are eligible to receive two (2) points by committing by committing units in the proposed Development to participate in the Department's Section 811 PRA Program. Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the proposed Development cannot meet all of the Section 811 PRA Program criteria. In order to ~~achieve be eligible for points under this subparagraph,~~ Applicants the proposed Development must meet the following criteria.

(i) The proposed Development must commit to Section 811 PRA:

~~(I) a minimum of at least 10 Units;~~ or

~~(II) the maximum number of units allowable under in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines and requirements, should those rules limit the proposed Development to fewer than 10 Units. The same units cannot be used to qualify for points in more than one HTC Application.~~

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~~Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria. In this case, staff may allow the Application to qualify for points by meeting the requirements of subparagraph (C) of this paragraph.~~

- (ii) The proposed Development must not be an ineligible Elderly Development.;
- (iii) ~~Unless the Development is also proposing to use any federal funding,~~ The proposed Development must not be originally constructed before 1978, unless it is layered with federal funding.;
- (~~iii~~iv) The Development has units available to be committed to the Section 811 PRA Program in the Development, meaning that those units do not have any other sources of project-based rental within 6 months of receiving 811 assistance and cannot have an existing restriction for persons with disabilities.;
- (~~iv~~v) The Development Site must be located in one of the following ~~areas~~ Metropolitan Statistical Areas (“MSA”):

- (I) Austin-Round Rock MSA,
- (II) Brownsville-Harlingen MSA,
- (III) Corpus Christi MSA;
- (IV) Dallas-Fort Worth-Arlington MSA;
- (V) El Paso MSA;
- (VI) Houston-The Woodlands-Sugar Land MSA;
- (VII) McAllen-Edinburg-Mission MSA; or
- (VIII) San Antonio-New Braunfels MSA. ~~and~~

(vi) No new construction activities or projects shall be located in the mapped 500-year floodplain ~~or in the 100-year floodplain~~ according to FEMA’s Flood Insurance Rate Maps (“FIRM”). Existing structures may be assisted in these areas, if they meet the criteria outlined in subclauses (I)-(III) of this clause, unless the site is located in coastal high hazard areas (V Zones) or regulatory floodways. Rehabilitation ~~Developments proposing Rehabilitation that which~~ have previously received HUD funding or obtained HUD insurance are exempt from ~~do not have to follow sections~~ subclause (i) – (iii) ~~of this subparagraph clause. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:~~

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Comment [LHA1]: Is there a reason for the difference in language between the “mapped 500-year floodplain” vs a “100-year floodplain according to FEMA’s Flood Insurance Rate Maps (FIRM)”?

(I) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(II) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(III) Project structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

(C) ~~Applications Applicants that are unable to proposing Developments that do not~~ meet the requirements of subparagraphs (A) or (B) of this paragraph may qualify for two (2) points by ~~meeting the requirements of this subparagraph, (C). In order to qualify for points, Applicants must~~ agreeing to set-aside at least 5 percent of the total Units in the proposed Development for Persons with Special Needs. ~~The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program.~~ For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

Comment [LHA2]: This is a holdover from when this was in threshold, but it no longer applies. If qualifying under subparagraph C, the Application/Applicant has already been deemed ineligible for participation in 811.

From: [Lisa Stephens](#)
To: [Patrick Russell](#)
Subject: 2018 Draft QAP Comments
Date: Wednesday, August 23, 2017 3:42:22 PM

Hi Patrick. Below please find some comments for your consideration on the draft QAP. Thank you for making this available to us to review and comment.

1. There are three areas where certain applications may be terminated at the time of award – under the Two Mile Same Year Rule, Proximity of Development Sites and Credit Amount as it relates to the Cap. We believe the time of award is premature for terminations of these non-funded applications. At the time of award, many times underwriting is not complete, conditions for moving forward are not known, commitment has not been made by applicant to move forward and zoning is not required to be in place. Due to these unknown factors, it is possible the awarded application that was the impetus for terminating another application does not proceed. In that circumstance, the previously terminated application should then be eligible. There has not been a need in prior years to formally terminate these non-competitive applications, but should staff feel this is warranted, a better time to make this determination would be post-Commitment at a minimum.
2. Under Credit Award – as it relates to the \$3M credit cap – regarding the exemption for a consultant or advisor, language has been removed as to the fees that may be received by such consultant or advisor. For clarification, is it staff's intention that a consultant will not be deemed a principal of an application (Applicant, Developer, Affiliate or Guarantor) regardless of the amount of fee that consultant receives as long as the services being provided are consulting in nature only? As an example, if a consultant receives 50% of the developer fee for providing consulting services but is not an Applicant, Developer, Affiliate or Guarantor as defined by the Application, then TDHCA will not deem that consultant a Principal of the deal as it relates to the \$3M cap?
3. Under 11.7 Tie Breaker Factors – I think including easements for ingress/egress makes sense however, allowing for random other easements that may or may not be absolutely necessary for the development should not be included for measurement purposes. Rather than allowing open ended easements regardless of how they are held, I would suggest for purposes of this section limiting to just those easements required for ingress/egress.
4. Also under 11.7 Tie Breaker Factors – the deciding factor here will be primarily poverty, meaning that every developer will identify the tract with the lowest poverty and will attempt to secure sites in a single census tract in many regions. This is Georgetown circa 2016. Not only is this bad for dispersion of housing but it also unnecessarily drives up land costs as we are all fighting over the same tracts. Previously distance from the closest tax credit development was used for a tie-breaker. While this also has its issues, at least it does not drive every developer to the same tracts and allows for more dispersion and differentiation in land available.
5. Under the Opportunity Index, a requirement for the library to be open 6 days a week has been added. Just doing some quick research, many public libraries are closed Sunday and Mondays, especially in rural areas. Five days a week would seem to be a better

standard.

6. Under Input from Community Organizations – a requirement has been added to provide evidence of a non-profit’s good standing. In my limited experience with this, a 501(c)(3) designation is not issued annually by the IRS. In order to get evidence of good standing of non-profit status, an attorney opinion letter would probably be required which is expensive to obtain. Alternatively, the non-profit could self-certify in their support letter that they are in good standing. Or perhaps, staff has identified another way for this evidence to be provided and that can be clarified in the QAP?
7. Under Financial Feasibility, the additional point that has been added for prior year applications that commence construction by Carryover provides for an unfair advantage to those developers that have shorter permitting time frames and disadvantages communities that take more than 90 days to 6 months to permit. Same for deals that do not require federal funding, environmental clearance, or other extended approval processes. Even though the point can be assigned the following year to any deal, only those applicants with the “easy” deals will be able to receive this point. Major metro areas like Austin, San Antonio, Dallas, Fort Worth are not going to be able to get this. The unintended consequence here is to reward developers for doing the “easy” deals and have applicants in 2018 make decisions on where to put housing based upon how quickly they can get a permit and start construction so they can benefit from this point next year. While the application of the point to any deal in 2019 is an interesting concept, it does not solve the issue that in 2018 only certain types of deals in certain locations can even begin to achieve this. Making housing decisions based on being able to get a permit in under 6 months is not sound real estate.
8. The cost limitations for points under Adaptive Reuse and Rehabilitation are simply too low unless the Staff is looking to incentive “paint and patch” type rehabs. Adaptive reuse is going to require in most instances a gut to exteriors and full re-build of interiors including all new MEP to accommodate residential uses. This cannot be done for the cost limitations in the QAP. Similarly, an extensive rehab of a multi-family building that is 15-20+ years old cannot be done for these cost figures.

Thank you for the opportunity to submit comments and for your consideration of same.

Lisa

Lisa Stephens
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August 24, 2017

Sharon Gamble
Texas Department of Housing and Community Affairs
221 E. 9th Street
Austin, TX 78701

RE: 2018 Draft QAP

We appreciate the opportunity to participate in the rule making process with the Texas Department of Housing and Community Affairs (the "Department").

1. §11.4(a) Credit Amount

"The non-priority application(s) will be terminated when the Department awards \$3 million to other applications. Any application terminated for this reason is subject to reinstatement if necessary to meet a required set-aside"

Why will applications be terminated? Why can they not remain on the waiting list as has been the policy for all previous years? Why is there a reinstatement to meet a set-aside? What is the reasoning for this addition to the rule?

2. §11.4(a)(4) Credit Amount

Is there still a fee cap for consultants with the deletion of most of this subsection?

3. §11.7 Tie Breaker Factors

TAAHP made previous comment for adding Housing Needs Score. This has been discussed for two years which is plenty of time to have researched the issue and formulated the scores for this coming year.

4. §11.9(c)(4) Opportunity Index

(A)(ii) add fourth quartiles along with third quartiles in Rural areas to help eliminate the donut holes that we have in Rural allocation.

(B)(i)(I) Delete the accessible route and accessible playground language. The development has no control over offsite facilities and routes for current or future maintenance. There are too many variables (as seen from this last cycle) that

cannot be make sure the route or equipment is accessible. There was discussion by staff during the QAP roundtables to delete the park for points altogether since most developments have playgrounds. What happened to this idea?

(B)(i)(II) Delete the accessible route to transportation language. Again, the developer does not have control over offsite facilities and routes.

(B)(i)(VII) Delete the requirement of indoor meeting space. Not all libraries have meeting space but are valid libraries.

(B)(ii)(V) Delete the meeting space requirement. Not all libraries have meeting space but are valid libraries.

(B)(ii)(VI) Delete the accessible route and accessible playground. This is highly unlikely in Rural, Texas. Request returning back to the 4 mile distance.

5. §11.9(c)(6) Tenant Populations with Special Housing Needs.

Request language be added that a maximum of 10 units for any development unless the developer/owner requests to have additional units placed on a specific development (up to the integrated housing rule) in subsequent years.

6. §11.9(d)(2) Commitment of Development Funding

Request "value that equals \$1000 for Urban areas and \$100 for Rural areas"

We support the comments from both the Rural Rental Housing Association (RRHA) and the Texas Affiliation of Affordable Housing Providers (TAAHP) concerning At-Risk and USDA developments.

If I can be of additional assistance, please let me know.

Sincerely,



Robbye G. Meyer

From: [Henry Flores Sr.](#)
To: [Patrick Russell](#)
Subject: 2018 QAP Input
Date: Wednesday, August 23, 2017 4:42:34 PM

Good afternoon Patrick,

I have one minor comment/question on the 2018 QAP, but I also wanted to tell you and the rest of staff how much we appreciate all your hard work on the QAP this year! Having worked in the REA division for several years, I know how hard it can be to try to come up with a set of rules that makes everyone happy - not gonna happen... I really do think you guys have done an excellent job with the QAP this year.

Regarding the Underserved Area (C) – Will staff be posting a list of deals with an active tax credit LURA that is in an extended compliance period? Short of a list or a massive open records request, I am not sure how developers will be able to ascertain if a census tract has a deal in an extended compliance period. Can you shed some light on this for us?

(C) ~~A census tract within the boundaries of an incorporated area~~The Development Site is located entirely within a census tract that does not have a Development subject to an active tax credit LURA that is in an extended compliance period (or has received a tax credit award but not yet reached the point where its LURA must be recorded); (3 points);

Thanks!

Toby Williams
Development Manager
Madhouse Development Services, Inc.
8500 Shoal Creek
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Austin, TX 78757
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From: [Lisa Rucker](#)
To: [Patrick Russell](#)
Subject: 2018 QAP Question
Date: Wednesday, August 23, 2017 7:46:04 AM

Patrick- I have a question about the following section:

(Underserved Area) C. The Development Site is located entirely within a census tract that does not have a Development subject to an active tax credit LURA that is in an extended compliance period (or has received a tax credit award but not yet reached the point where its LURA must be recorded); (3 points).

Please let me know if I'm understanding this section correctly. The Development site must be entirely within a census tract that does not have an active tax credit LURA so this would include ALL tax credit developments that will be listed on the most current inventory posted for 2018?

Also this section does not discuss incorporated areas this year so this census tract can be anywhere within or partially out of a the city limits?

--

Lisa M. Rucker
1217 Heppner Drive
Cedar Park, TX 78613
Ph: 512-409-6170
Email Address: mrslisarucker@gmail.com



HERMAN & KITTLE PROPERTIES, INC.

Real Estate Development • General Contracting • Property Management

August 23, 2017

Mr. Patrick Russell
Texas Department of Housing and Community Affairs (TDHCA)
221 East 11th Street
Austin, Texas 78701

RE: Staff Draft - 2018 Qualified Allocation Plan (QAP)

Dear Mr. Russell,

On behalf of Herman & Kittle Properties, Inc. (HKP), below are our comments, concerns, and questions with regard to the staff draft of the 2018 QAP.

Generally, we urge the Department to avoid vague language that could result in Third Party Requests for Administrative Deficiencies. Whenever possible, terms should be defined as needed for clarity, and scoring items should be verifiable by an impartial, reliable, free data source. Language regarding the Opportunity Index menu items should be reviewed with particular care, as that scoring category will continue to differentiate which Developments do and do not receive awards in 2018. Lastly, staff should review all QAP changes and additions to anticipate any unintended consequences, and to confirm that the proposed change will not adversely affect the Department's ability to deliver decent and safe affordable housing to Texans in need.

Please find more specific input on the staff Draft below:

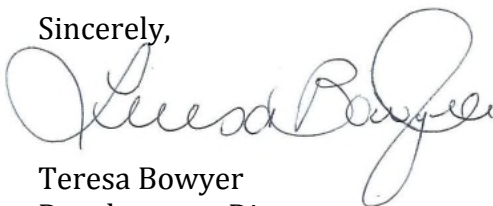
- 11.1(e) - Data: We are concerned that the date of data derived from “other data sources” such as neighborhoodscout will be difficult to verify unless the data source either publishes a list for all areas or there is a static list that can be traced to October 1, 2018.
- 11.7(1) - Tie Breakers, Urban Core: We urge the Department to consider whether placing units near the urban core is the Department's highest priority goal. As the first tie breaker, the Department would be incentivizing this characteristic above other desirable characteristics. Please consider unintended consequences this could have, such as higher priced real estate and, in turn, potentially fewer units being funded. Further, we believe that by adding Community Revitalization Plan into the second tie breaker, the Department has already created a balance between infill, revitalization urban sites and suburban, (typically) higher income and opportunity sites.

- 11.7(4) - Tie Breakers, Underserved Area: We are in favor of the proposed methodology for meeting Underserved goals and believe it gets closer to addressing affordable housing need than parts of the current Underserved scoring category. We believe this tie breaker should be moved higher up in priority and, in future rounds, we suggest that the Department develop a modified version of this methodology and implement it in the Underserved scoring category (11.9(c)(5)(E)).
- 11.9(b)(2)(B) - Sponsor Characteristics: We are not in favor of the involvement of HUBs and Nonprofits throughout the Extended Compliance Period. Many HUBs and Nonprofits are smaller entities without a business plan that spans multiple decades. Further, how will TDHCA ensure compliance throughout the extended period? We suggest the involvement of HUBs and Nonprofits only be required during the 15-year compliance period.
- 11.9(c)(4)(B) - Opportunity Index:
 - The word “facility” should be defined to avoid ambiguity. For example - is facility defined by separate parcel ownership, separate operating licenses, or separate physical walls, etc.?
 - Although we appreciate the Department’s effort to ensure that amenities are affordable for an HTC Development’s residents, we foresee a large “gray area” with the proposed fee language. For example - how would the Department interpret a \$50/month membership that requires a one-time \$40 sign-up fee, or a \$50/month membership with a one-year minimum contract, or a \$55/month membership with the first 2 months free?
- 11.9(c)(4)(B)(i)(I) - Opportunity Index, Accessible Route: We suggest the addition of another sentence to clarify to the average reader whether the entire accessible route itself needs to be ½ mile or less. Further, is there a need to define the minimum requirements of a “playground” facility?
- 11.9(c)(4)(B)(i)(XIV) - Opportunity Index, Home Services: The language as written is not specific enough. We foresee challenges arising out vague terms like “similar” and “regular.” We suggest further developing this item.
- 11.9(c)(5)(C)-(E) - Underserved: Please see above comments with regard to the Underserved Tie Breaker. In some cases, subsections (C)-(E) incentivizes development in small or declining markets. We urge the Department to engage industry experts to develop a methodology that better addresses affordable housing need for the 2019 9% Round.
- 11.9(c)(7) - Proximity to Urban Core: We suggest that the Department change the lower population threshold to 150,000 for consistency with the Underserved subsection criteria. This would only add 3 qualifying Places: Brownsville, Grand Prairie, and Pasadena.

- 11.9(d)(3) - Declared Disaster Area: We suggest the Department revise the language to: “any time within the two-year period preceding the date of the *application acceptance period*” (not submission).
- 11.9(d)(7)(A)(i)(V) - Concerted Revitalization Plan, Dates: Prior to implementing these changes, we suggest that the Department look at previously submitted plans and a variety of current revitalization plans statewide to assess whether it is common for plans to contemplate effective dates.
- 11.9(d)(7)(A)(ii)(II) - Concerted Revitalization Plan, Multiple Distinct Areas: We are in favor of this change in language, as we believe it will create more development opportunities in larger urban cities.
- 11.9(e)(2) - Timing of Closing and Construction Commencement: We are not in favor of this proposed section. Although we understand the Department’s position, we believe it will have greatly undesirable unintended consequences. First, this section could pressure Developers to close prematurely in still uncertain equity markets. More importantly, however, 1 point is often the difference between an award and no award. This change would prioritize legacy Developers rather than focusing on the quality of a proposed Development in the 2019 cycle. This change would also disproportionately benefit large Developers that have the capital and resources to submit many Applications in 2018.
- 11.9(e)(3) - Cost of Development per Square Foot:
 - We ask the Department to upward adjust the cost/sf. Construction costs do not stay static year to year. Like operating expenses, rents, and utility allowances, it is reasonable and realistic to expect an annual increase in construction costs. The QAP should be responsive to these conditions.
 - The Adaptive Reuse/Rehabilitation calculations should be revised to be less confusing. As written, it is unclear if all units’ square footage will be totaled and then averaged by the number of units. Is there a more direct way to achieve the desired results of this formula?
- 11.9(E)(4)(E) - Pre-application Participation: We are not in favor of changing the point threshold to 4. We suggest keeping the 6 point allowed variation.

Thank you in advance for your consideration of this input. Please do not hesitate to call or email me should you have questions or need further clarification at: tbowyer@hermankittle.com or 806-543-8645.

Sincerely,



Teresa Bowyer
Development Director

2018 TDHCA Staff Draft QAP Comments
Submitted by Alyssa Carpenter on August 21, 2017

11.1(e) Data

I am not aware of a way to specifically request Neighborhoodscout data as of a specific date. I think that Staff needs to consult with Neighborhoodscout about this possibility. Because Applicants do not have all sites selected by October 1, 2017, it is unrealistic to expect Applicants to “retain evidence of the applicable data on that date.”

Furthermore, I strongly encourage Staff to compare Neighborhoodscout data to local data sources that were submitted during the 2017 Application Round so that they may confirm that there are serious discrepancies between Neighborhoodscout data and actual police data. I have brought issues with Neighborhoodscout to Staff’s attention in the past. Between the property crime scoring item and violent crime Undesirable Neighborhood Characteristics item in the Rules, I have serious concerns about Staff requiring the development community to spend hundreds of dollars monthly on a third-party commercial website that has inaccurate data. My comment is that all references and requirements regarding Neighborhoodscout be removed from the QAP and Rules.

11.2 Program Calendar

Moving the Third Party Request for Administrative Deficiency to April 13, 2018, means that the development community is going to have approximately 1 month to fully review competing Applications without the ability to see Staff’s deficiency items. I think April 13 is too aggressive of a date and that the development community should not need to pay \$500 if they are concerned that Staff will not identify an issue.

My suggestion is that TDHCA go back to a “Volume 4” type Application of many years ago where each Application goes through a first review of only scoring items to finalize scores within 45 days of Full Application Submission. As we saw in the 2017 round, this type of review would be beneficial so that Staff does not waste time on full reviews of Applications that are not accurately scored.

11.3(a) Two Mile Same Year Rule

The addition of language terminating a lower ranking Application at the final award meeting makes no sense. What if the awarded Application does not get its zoning, which is not due until sometime in September? What if the REA report is not finished by final award and REA finds that the awarded Application is infeasible? What if the awarded Application has an REA condition due at Commitment Notice or Carryover that it does not meet? There are many scenarios where the awarded Application could be terminated or give the credits back and the lower ranking Application could be awarded. This language should be deleted.

11.3(e) Proximity of Development

The addition of language terminating a lower ranking Application at the final award meeting makes no sense. What if the awarded Application does not get its zoning, which is not due until sometime in September? What if the REA report is not finished by final award and REA finds that the awarded Application is infeasible? What If the awarded Application has an REA condition due at Commitment Notice or Carryover that it does not meet? There are many scenarios where the awarded Application could be terminated or give the credits back and the lower ranking Application could be awarded. This language should be deleted.

11.4(a) Credit Amount

The addition of language terminating a lower ranking Application at the final award meeting makes no sense. What if the awarded Application does not get its zoning, which is not due until sometime in September? What if the REA report is not finished by final award and REA finds that the awarded Application is infeasible? What If the awarded Application has an REA condition due at Commitment Notice or Carryover that it does not meet? There are many scenarios where the awarded Application could be terminated or give the credits back and the lower ranking Application could be awarded. This language should be deleted.

11.9(c)(2) Rent Levels of Tenants and 11.9(C)(3) Tenant Services

As a result of an appeal regarding an Application that selected additional points for Supportive Housing when it was not a Supportive Housing development, these two scoring items should be clarified such that they are only “for Supportive Housing Developments that meet the definition of Supportive Housing and select that Population in the Application.”

11.9(c)(5) Underserved Area

Subsections C, D, and E have inconsistent language with regard to the whether there is a Development in the census tract that is currently active. Additionally, the stricken language that reads “and continues to appear on the Department's inventory” was added because there are several cases where Applications received awards but later gave the credits back....the current language would consider such Applications when they should be irrelevant. Please make the language consist across all subsections and it should make some reference to developments that are currently being monitored by TDHCA.

11.9(d)(4) Quantifiable Community Participation

Please clarify the following sentence setting an actual date for the valid existence of the organization and its boundaries. As written, it could be argued that an organization that was in existence in 1989 and forfeited their existence in 2001 could still be considered.

In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site ~~prior to~~ as of the Pre-Application Final Delivery Date

Additionally, please consider adding some requirement that the Neighborhood Organization prove that it has the lawful authority to include the Development Site within its boundaries and prove that it notified the Property Owner and the Property Owner agreed to be part of the Neighborhood Organization. In the 2017 Application Round, a Neighborhood Organization simply extended their boundaries to oppose an Application and there is no recourse from the Application or Property Owner. This scoring item was abused in 2017 and has the potential to be abused in future Application Rounds.

An additional thought is that, under 11.9(d)(4)(D), if a challenge to opposition is found to be warranted and the opposition is contrary to the findings and determinations of the local government, then the Application would receive 4 points under this subsection and be eligible for points under 11.9(d)(6) Input from Community Organizations.

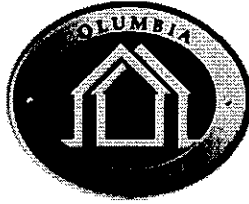
11.9(e)(1) Financial Feasibility

The addition of the 1-point item under 11.9(e)(1)(2) would not be achievable for any Application using TDHCA HOME/MF funds or HUD FHA financing because the closing process for such financing sources cannot be completed in that timeframe. This scoring item would benefit Applicants that can self-finance or have affiliated lending and syndication arms. If this scoring item is to remain in the QAP, it should be required that all financing sources except for Deferred Developer Fee be non-affiliated third-party financial institutions. Otherwise, this scoring item should be deleted.

11.9(e)(4) Pre-Application Participation

To help Staff better identify changes in Development Sites from Pre-Application to Full Application, I suggest requiring that the Pre-Applications indicate the total site acreage on the Jotform and provide an outline of the site on the census tract map as referenced in the suggested language below:

(F) The Development Site at Application is at least in part the Development Site at pre-application when compared to the acreage and site outline provided in the pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;



August 23, 2017

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Comments to the 2018 Draft QAP

Dear Mr. Russell:

Thank you so much for the opportunity to comment on the 2018 Draft QAP. Columbia Residential has limited comments to the QAP.

We believe that applicants pursuing point for Concerted Revitalization Plan under 11.9(d) (7) should not also be eligible for 10 points for a Declared Disaster Area under section 11.9(d) (3). We believe that these points in essence double-count for the same underlying distressed conditions affecting communities, and counties that have not experienced a disaster declaration would be unduly penalized by this scoring.

Alternatively, revitalization properties and/or neighborhoods that were specifically affected by a disaster could be eligible for these point, but unaffected properties may be unfairly gaining 10 points on a technicality. Disaster declarations vary considerable in scale and nature, and often affect only portions of a county.

Thank you for your consideration,



Ray Kuniansky
Chief Development Officer

From: [Arnold padilla](#)
To: [Patrick Russell](#)
Cc: [Arnold padilla](#)
Subject: Comments on the 2018 Draft QAP
Date: Wednesday, August 23, 2017 3:02:32 PM

Mr. Russell,

Please accept the following comments and concerns referencing the DRAFT 2018 QAP:

- 11.9 © (5) (E) scoring item related to Underserved Areas: the population threshold should be lowered to Places with populations of 100k or more. Going from the current 300k to the suggested 150K only add an additional 9 Places. Going from 300k to 100k adds 25 additional Places which helps with greater dispersion of tax credits.
- 11.9 (c) (7) scoring item related to Proximity to Urban Core: population threshold should be lowered to Places with a population of 100k or more, should have a tiered structure; 100k-250k within 2 mile radius, 250k-500k within 3 mile radius and 500k + within a 4 mile radius.
- The bonus point factor for 2019 cycle if construction begins by 2018 Carryover is troublesome and would likely not be available to awards made in September. If the intent is to get construction commenced earlier, please add a financial incentive.
- RFAD Challenge deadline of April 13th is troublesome, by moving this date so far forward developers are going to have to challenge everyone not knowing where applications are ranking. This will cause an undue financial burden to applicants, either remove the \$500 Challenge Fee or move the Challenge back to June 1st when only the top applications will be challenged. Furthermore, the issue of information received after the RFAD period not being considered should be removed, please note that information may present itself that is to the level of “materially misrepresented or ineligible” and still needs to be considered. We do not want an application that is incomplete or truly does not represent the intent of QAP to get passed anyone and be awarded.

Respectfully,

Arnold Padilla
Executive Director
McAllen Housing Authority

From: [Lakewood - Dan](#)
To: [Patrick Russell](#)
Subject: Draft 2018 QAP - comments
Date: Tuesday, August 15, 2017 9:18:53 AM

I would like to offer some comments on the Draft 2018 Qualified Allocation Plan.

Draft language -

§11.9 Competitive HTC Selection Criteria, (c) Criteria to serve and support Texans most in need, (4) Opportunity Index, (B)(i)(I) - "The Development Site is located on an accessible route that is less than ½ mile from the entrance to a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards." and for rural applications

§11.9 Competitive HTC Selection Criteria, (c) Criteria to serve and support Texans most in need, (4) Opportunity Index, (B)(ii)(VI) - "The Development Site is located on an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards."

I appreciate the desire to have accessibility but off site routes and playground equipment are constructed and maintained by a third party such as a City and maintaining continued accessibility of the route or equipment is not the responsibility or even within the rights of the applicant to accomplish. Accessibility can change from application date to award date and beyond if the municipality doesn't maintain playground equipment, resurfaces a street or for many other reasons beyond the applicant's control. Additionally it is extremely difficult to accurately determine if a route on City sidewalks and/or across City streets meets 2010 ADA standards. Finally, the term "entrance" should be further defined or eliminated from these requirements.

I suggest this language be revised thusly:

The Development Site is located ~~on an accessible route that is less than ½ mile (or one mile in the rural area requirement) from the entrance to a public park with a an accessible playground. The route and the playground both must meet 2010 ADA standards.~~

-

Draft language –

§11.9 Competitive HTC Selection Criteria, (d) Criteria promoting community support and engagement, (7) Concerted Revitalization Plan, (B) For Developments located in a Rural Area, (i) – "The occupancy percentage will not include units that cannot be occupied due to needed repairs."

What evidence will be required in the application to show a unit cannot be occupied due to needed repairs?

Daniel Allgeier
Lakewood Property Management
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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S. W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov."

From: [Walter Moreau](#)
To: [Patrick Russell](#)
Cc: [Tillie Croxdale](#)
Subject: CRP plans that are in a City and a County
Date: Tuesday, August 15, 2017 9:02:44 AM

Hi Patrick

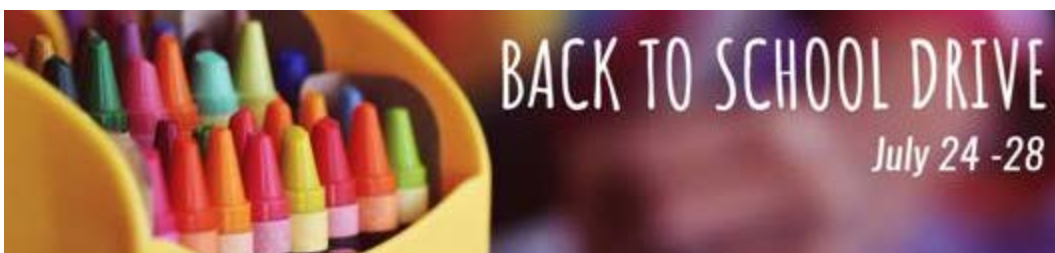
We saw the edit below for a CRP in a *rural* area...but the change was not made for an urban area. The key change below is (or county *if the Development Site is completely outside of a city*)

We think the current urban language should be clarified so that if a City designates a top priority CRP, that a County cannot also adopt a top priority CRP in the same City. Otherwise a City can end up with TWO CRPs that get full points.

Thanks

~~(iii)~~ Applications may receive (2) points in addition to those under ~~subclause~~ clause (i) or (ii) of this ~~clausesubparagraph~~ if the Development is explicitly identified in a letter resolution by the city (or county if the Development Site is completely outside of a city) as contributing more than any other ~~Development~~ to the concerted revitalization efforts of the city or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A city or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under

Walter Moreau,
Executive Director
Foundation Communities
512-610-4016



From: [Tillie Croxdale](#)
To: [Patrick Russell](#)
Cc: [Walter Moreau](#)
Subject: Foundation Communities 2018 QAP draft comments
Date: Monday, August 28, 2017 5:15:58 PM

Hi Patrick,

Please see our comments below in red related to the 2018 QAP draft. These are specifically in response to the QAP draft posted for the TDHCA Governing Board QAP and Multifamily Rules Committee Meeting, which was slightly different from the QAP draft posted on TDHCA's Multifamily Finance Division's Announcements page. Thank you for your time and dedication to this process.

11.1(e) Data

Where other data sources are specifically allowed, such as Neighborhoodscout, the data as published on October 1, 2017 will apply. Where data may change after October 1, Applicants are cautioned to retain evidence of the applicable data on that date.

I confirmed with Neighborhood Scout that they do not provide historic reports. Therefore, there is no way to confirm after October 1 what the data was on October 1. Sometimes, we find winning sites after October 1 and the only way to get neighborhood scout data for October 1, is to log in on October 1 and print the report. We understand and greatly appreciate the intent to help developers rely on neighborhood scout data, which changes from time to time. We would suggest specifying a timeframe (i.e. 4 months) in lieu of a date. If a report is printed within this timeframe, it can be used regardless if it changes within the timeframe.

11.9 (a) General Information

All measurements will include the entire site, including ingress/egress requirements and any easements regardless of how they will be held. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted.

We were initially confused by this section and had to re-read a few times. We believe that the intent of the first sentence is to clarify whether sites are entirely within a census tract or incorporated area and the intent of the last sentence is to clarify the measurement of distance between a site and another place. If that is the case, we would suggest adding more detail in order to distinguish between the intent of the first sentence and last sentence

11.9 (c)(5) Underserved Area

(C) The Development Site is located entirely within a census tract that does not have a Development subject to a Compliance Period or Extended Use Period; (3 points)

(D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that does not have a Development subject to a Compliance Period; (2 points);

(E) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and which neither the census tract itself nor all its contiguous census tracts have received an award or HTC allocation within the past 15 years. This item will apply in cities with a population of 150,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Below is a list of comments associated with this section. Primarily, we would argue that developers do not have access to the data needed to abide by these rules. We realize that TDHA's property inventory may not be perfect, but it is all we have to use at the moment. Even HUD's LIHTC property inventory, which provides more detail than TDHCA's, has significant info gaps. We are concerned that lack of data will create confusion and appeals later on. We understand the intent of the policy objective and hope that more clarity can be provided here.

1. Compliance periods within our tax credit properties range from 25 to 30 years depending on the date of allocation. How will developers be able to confirm whether a development within a census tract is in a compliance period or an extended use period? This information is not readily accessible on TDHCA's website or the Property Inventory.
2. Compliance periods start with the year of the credit period. How will developers be able to confirm the credit period of various developments within census tracts? This information is not readily accessible on TDHCA's website or the Property Inventory.
3. Please provide some clarity around dates associated with the 15 year timeline. Is this 15 years from January 1? Is this 15 years from the pre-application deadline? Is the board approval date the cut off? These suggestion would provide some clarity although some of the older properties do not have exact board approval dates listed within the property inventory.
4. I wanted to provide an example of using the property inventory to investigate this rule. Let's say we are looking for anything older than a 25 year Compliance Period that is on the property inventory. 25 years from January 2018 is January 1993. The oldest developments on the Property Inventory list are from 1990, and let's say the credit period begins 3 years later. If the credit period commences January 1993, none of these developments are outside the compliance period and therefore the only census tracts that could get 3 pts or 5 pts underserved are those that have no properties shown on the inventory. Some census tracts may in fact have a development in an extended use period, but developers would have no way of verifying this given the current tools available. I would argue that we do not have the data needed to follow these rules.
5. Below is my suggested language

(C) The Development Site is located entirely within a census tract that does not have a Development that continues to appear on the Department's Inventory have a Development subject to a Compliance Period or Extended Use Period; (3 points)

(D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that has not received an award or HTC allocation since January 1, 2003 does

~~not have a Development subject to a Compliance Period; (2 points);~~

~~(E) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and which neither the census tract itself nor all its contiguous census tracts have received an award or HTC allocation since January 1, 2003 within the past 15 years. This item will apply in cities with a population of 150,000 or more, and will not apply in the At-Risk Set-Aside (5 points).~~

11.9 (d)(7)(II) Concerted Revitalization Plan

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the city or county as contributing more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. If the concerted revitalization plan includes more than one distinct area within the city or county, a resolution may be provided for Developments in each area. The resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points, unless the resolutions address distinct areas described in the plan;

We would like to suggest language that clarifies that a county may not identify a top deal within city limits. If this is allowed, 2 deals within the same city could receive the additional 2 points for being the most important CRP deal. This would, in our opinion, go against the intent of these points.

Tillie Croxdale
Real Estate Project Manager
Foundation Communities
3036 S 1st St.
Austin, TX 78704
(512) 771-7545
tillie.croxdale@foundcom.org



From: [Tillie Croxdale](#)
To: [Patrick Russell](#)
Cc: [Walter Moreau](#)
Subject: tax credit per unit
Date: Thursday, August 10, 2017 3:46:06 PM
Attachments: [2017 Tax credit per unit.xlsx](#)

Attached is a rough analysis of this year's HTC per LI unit along with a guessed standard deviation. If accurate, there are 12 out of 69 developments that are higher than 1 standard deviation of the mean.

Also included is a comparison of HTC per LI unit from 2013 to 2017. This is only using the posted award list, I think some deals still got awarded later, but wasn't sure how to confirm.

Hope this makes for good conversation.

Tillie Croxdale
Real Estate Project Manager
Foundation Communities
3036 S 1st St.
Austin, TX 78704
(512) 771-7545
tillie.croxdale@foundcom.org



| Application Number | Development name | City | LI Units | Market Rate Units | Total Units | Target Population | HTC Request/ Underwriting Amount | HTC/LI unit |
|--------------------|------------------|------|----------|-------------------|-------------|-------------------|-------------------------------------|-------------|
|--------------------|------------------|------|----------|-------------------|-------------|-------------------|-------------------------------------|-------------|

At-Risk Set-Aside

| | | | | | | | | |
|-------|---------------------------------|----------------|-----|----|-----|--------------------|-----------|--------|
| 17330 | Blue Flame | El Paso | 120 | 30 | 150 | General | 1,500,000 | 12,500 |
| 17362 | Pellicano Place | El Paso | 113 | 5 | 118 | General | 1,500,000 | 13,274 |
| 17158 | Electra Village | Electra | 47 | 1 | 48 | General | 340,034 | 7,235 |
| 17253 | Samuel Place Apartments | Corpus Christi | 60 | 0 | 60 | General | 1,130,000 | 18,833 |
| 17157 | Castroville Village | Castroville | 40 | 0 | 40 | General | 240,649 | 6,016 |
| 17151 | Albany Village | Albany | 40 | 0 | 40 | General | 311,796 | 7,795 |
| 17148 | Shady Shores | Lake Dallas | 40 | 0 | 40 | General | 406,324 | 10,158 |
| 17036 | Merritt McGowan Manor | McKinney | 136 | 0 | 136 | General | 1,500,000 | 11,029 |
| 17091 | Plateau Ridge Apartments | Cleburne | 48 | 1 | 49 | Elderly Preference | 474,657 | 9,889 |
| 17324 | Orange Grove Seniors Apartments | Orange Grove | 24 | 0 | 24 | Elderly Preference | 237,078 | 9,878 |
| 17161 | Round Rock Oak Grove | Round Rock | 24 | 0 | 24 | General | 196,270 | 8,178 |
| 17338 | Pecanwood I Apartments | Whitehouse | 31 | 1 | 32 | General | 313,333 | 10,108 |
| 17341 | Pecanwood II Apartments | Whitehouse | 32 | 0 | 32 | General | 283,575 | 8,862 |
| 17342 | Pecanwood III Apartments | Whitehouse | 32 | 0 | 32 | General | 278,200 | 8,694 |
| 17383 | McGregor Senior Apartments | McGregor | 36 | 0 | 36 | Elderly Preference | 296,223 | 8,228 |
| 17159 | Pflugerville Meadows | Pflugerville | 20 | 0 | 20 | General | 146,265 | 7,313 |
| 17708 | Cedar Ridge Apartments | Dayton | 79 | 1 | 80 | General | 739,274 | 9,358 |
| 17384 | Alvarado Senior Apartments | Alvarado | 24 | 0 | 24 | Elderly Preference | 206,877 | 8,620 |

Region 1/Rural

| | | | | | | | | |
|-------|----------------------------|-----------|----|---|----|--------------------|---------|--------|
| 17107 | The Residence at Wolfforth | Wolfforth | 41 | 8 | 49 | Elderly Limitation | 664,709 | 16,212 |
|-------|----------------------------|-----------|----|---|----|--------------------|---------|--------|

Region 1/Urban

| | | | | | | | | |
|-------|-----------|----------|----|----|-----|--------------------|-----------|--------|
| 17307 | Marabella | Amarillo | 85 | 16 | 101 | Elderly Limitation | 1,243,565 | 14,630 |
|-------|-----------|----------|----|----|-----|--------------------|-----------|--------|

Region 2/Rural

| | | | | | | | | |
|-------|----------------------------|-----------|----|---|----|--------------------|---------|--------|
| 17235 | Henrietta Pioneer Crossing | Henrietta | 44 | 5 | 49 | Elderly Limitation | 527,610 | 11,991 |
|-------|----------------------------|-----------|----|---|----|--------------------|---------|--------|

Region 2/Urban

| | | | | | | | | |
|-------|------------------------|---------------|----|----|----|--------------------|---------|--------|
| 17273 | The Residence at Lamar | Wichita Falls | 28 | 2 | 30 | Elderly Limitation | 444,767 | 15,885 |
| 17225 | Cascade Villas | Wichita Falls | 46 | 14 | 60 | General | 750,000 | 16,304 |

Region 3/Rural

| | | | | | | | | |
|-------|--------------------------|---------|----|----|----|--------------------|---------|--------|
| 17295 | Legacy Trails of Decatur | Decatur | 41 | 29 | 70 | Elderly Limitation | 597,599 | 14,576 |
|-------|--------------------------|---------|----|----|----|--------------------|---------|--------|

Region 3/Urban

| | | | | | | | | |
|-------|------------------------------|------------|-----|----|-----|--------------------|-----------|--------|
| 17028 | The Vineyard on Lancaster | Fort Worth | 98 | 6 | 104 | Supp Hsg | 1,330,273 | 13,574 |
| 17259 | Mistletoe Station | Fort Worth | 74 | 4 | 78 | General | 1,500,000 | 20,270 |
| 17281 | The Residence at Arbor Grove | Arlington | 107 | 19 | 126 | Elderly Limitation | 1,430,132 | 13,366 |
| 17012 | Secretariat Apartments | Arlington | 65 | 9 | 74 | Elderly Limitation | 1,243,264 | 19,127 |
| 17363 | Residences of Long Branch | Rowlett | 76 | 0 | 76 | General | 1,500,000 | 19,737 |
| 17315 | Provision at North Valentine | Hurst | 96 | 24 | 120 | General | 1,500,000 | 15,625 |
| 17080 | Palladium Fort Worth | Fort Worth | 92 | 58 | 150 | General | 1,500,000 | 16,304 |
| 17037 | Pioneer Place | Mansfield | 135 | 0 | 135 | Elderly Limitation | 1,500,000 | 11,111 |

Region 4/Rural

| | | | | | | | | |
|-------|--------------------------|---------|----|----|----|--------------------|---------|--------|
| 17327 | Legacy Trails of Lindale | Lindale | 64 | 12 | 76 | Elderly Limitation | 889,904 | 13,905 |
| 17288 | Forest Trails | Lindale | 60 | 0 | 60 | Elderly Limitation | 790,740 | 13,179 |

| Application Number | Development name | City | LI Units | Market Rate Units | Total Units | Target Population | HTC Request/ Underwriting Amount | HTC/LI unit |
|------------------------|-------------------------------|-----------------|----------|-------------------|-------------|--------------------|-------------------------------------|-------------|
| Region 4/Urban | | | | | | | | |
| 17347 | Alton Plaza | Longview | 33 | 16 | 49 | General | 420,000 | 12,727 |
| 17268 | Edgewood Place | Longview | 58 | 16 | 74 | General | 1,050,506 | 18,112 |
| Region 5/Rural | | | | | | | | |
| 17736 | Providence at Ted Trout Drive | Hudson (Lufkin) | 64 | 12 | 76 | Elderly Limitation | 890,357 | 13,912 |
| Region 5/Urban | | | | | | | | |
| 17004 | Old Dowlen Cottages | Beaumont | 62 | 10 | 72 | Elderly Limitation | 1,049,712 | 16,931 |
| Region 6/Rural | | | | | | | | |
| 17208 | Waverly Village | New Waverly | 50 | 0 | 50 | General | 500,000 | 10,000 |
| Region 6/Urban | | | | | | | | |
| 17188 | EaDo Lofts | Houston | 80 | 0 | 80 | General | 1,483,762 | 18,547 |
| 17317 | Jubilee at Texas Parkway | Missouri City | 79 | 11 | 90 | Elderly Limitation | 1,347,000 | 17,051 |
| 17316 | Gala at Texas Parkway | Missouri City | 82 | 11 | 93 | Elderly Limitation | 1,400,000 | 17,073 |
| 17248 | Stonebrook Senior Residences | Houston | 120 | 0 | 120 | Elderly Limitation | 1,443,000 | 12,025 |
| 17097 | Holly Oak Seniors | Houston | 110 | 40 | 150 | Elderly Limitation | 1,500,000 | 13,636 |
| 17700 | The Terraces at Arboretum | Houston | 98 | 14 | 112 | General | 1,500,000 | 15,306 |
| 17186 | Oasis on Ella | Houston | 102 | 33 | 135 | General | 1,500,000 | 14,706 |
| Region 7/Rural | | | | | | | | |
| 17204 | Vista Bella | Lago Vista | 40 | 32 | 72 | General | 500,000 | 12,500 |
| 17247 | Western Springs Apartments | Dripping Spring | 46 | 26 | 72 | General | 750,000 | 16,304 |
| Region 7/Urban | | | | | | | | |
| 17719 | Pathways at Goodrich Place | Austin | 110 | 10 | 120 | General | 1,500,000 | 13,636 |
| 17275 | Aria Grand | Austin | 60 | 10 | 70 | General | 1,204,400 | 20,073 |
| 17113 | Mueller Apartments | Austin | 132 | 0 | 132 | General | 1,350,000 | 10,227 |
| Region 8/Rural | | | | | | | | |
| 17290 | Golden Trails | West | 45 | 0 | 45 | Elderly Limitation | 520,840 | 11,574 |
| Region 8/Urban | | | | | | | | |
| 17331 | Westwind of Killeen | Killeen | 88 | 22 | 110 | General | 1,263,626 | 14,359 |
| Region 9/Rural | | | | | | | | |
| 17239 | Abbingtion Ranch | Boerne | 36 | 12 | 48 | General | 500,000 | 13,889 |
| Region 9/Urban | | | | | | | | |
| 17008 | East Meadows Phase II | San Antonio | 95 | 24 | 119 | General | 1,500,000 | 15,789 |
| 17013 | Rio Lofts | San Antonio | 67 | 14 | 81 | General | 1,198,439 | 17,887 |
| 17376 | The Bristol | San Antonio | 87 | 9 | 96 | General | 1,500,000 | 17,241 |
| Region 10/Rural | | | | | | | | |
| 17218 | The Post Oak | Edna | 50 | 14 | 64 | General | 877,325 | 17,547 |
| Region 10/Urban | | | | | | | | |
| 17258 | Village at Henderson | Corpus Christi | 76 | 12 | 88 | General | 1,262,000 | 16,605 |
| Region 11/Rural | | | | | | | | |

| Application Number | Development name | City | LI Units | Market Rate Units | Total Units | Target Population | HTC Request/ Underwriting Amount | HTC/LI unit |
|--------------------|------------------|--------|----------|-------------------|-------------|--------------------|-------------------------------------|-------------|
| 17739 | Monarch Estates | Uvalde | 80 | 0 | 80 | Elderly Limitation | 1,118,371 | 13,980 |

Region 11/Urban

| | | | | | | | | |
|-------|----------------------------------|-------------|-----|----|-----|--------------------|-----------|--------|
| 17010 | Baxter Lofts | Harlingen | 19 | 5 | 24 | General | 335,545 | 17,660 |
| 17042 | Huntington at Paseo de la Resaca | Brownsville | 105 | 27 | 132 | Elderly Limitation | 1,500,000 | 14,286 |
| 17094 | Catalon at Paseo de la Resaca | Brownsville | 100 | 28 | 128 | General | 1,500,000 | 15,000 |
| 17287 | Jackson Place | Edinburg | 108 | 26 | 134 | General | 1,500,000 | 13,889 |

Region 12/Rural

| | | | | | | | | |
|-------|--------------------|--------|----|----|----|---------|---------|--------|
| 17336 | Westwind of Lamesa | Lamesa | 50 | 30 | 80 | General | 750,000 | 15,000 |
|-------|--------------------|--------|----|----|----|---------|---------|--------|

Region 12/Urban

| | | | | | | | | |
|-------|------------|------------|----|---|----|--------------------|---------|--------|
| 17285 | Oak Trails | San Angelo | 48 | 0 | 48 | Elderly Limitation | 846,251 | 17,630 |
|-------|------------|------------|----|---|----|--------------------|---------|--------|

Region 13/Rural

| | | | | | | | | |
|-------|--------------|-------------------|----|---|----|---------|---------|--------|
| 17093 | Vinton Palms | Village of Vinton | 40 | 0 | 40 | General | 500,000 | 12,500 |
|-------|--------------|-------------------|----|---|----|---------|---------|--------|

Region 13/Urban

| | | | | | | | | |
|-------|---------------------|---------|-----|----|-----|---------|-----------|--------|
| 17090 | Alameda Palms | El Paso | 110 | 14 | 124 | General | 1,219,717 | 11,088 |
| 17189 | Villas at Sandstone | El Paso | 118 | 0 | 118 | General | 1,219,718 | 10,337 |

| | | |
|-----------------|-----------------|---------------------|
| Average LI Unit | Total awarded | average HTC/LI unit |
| 68.8 | \$66,013,686.82 | 13,634.70 |

From: [Walter Moreau](#)
To: [Patrick Russell](#)
Subject: FW: BB and CS Areas
Date: Thursday, August 10, 2017 3:06:43 PM

From: Megan Matthews
Sent: Tuesday, August 08, 2017 8:47 AM
To: Walter Moreau
Subject: BB and CS Areas

Hi Walter,

Here's where we are on areas. They were broken out differently on each project, but I think these capture the areas you're looking for.

Bluebonnet:

- Residential: 47,949 sf (65%)
- Common: 4,060 sf (5%)
- Circulation: 21,917 sf (30%)

Capital Studios

- Residential: 56,075 sf (71%)
- Common: 8,220 sf (10%)
- Circulation: 14,414 sf (19%)

Megan Matthews, RA

Development Project Manager

Foundation Communities

O: (512) 610-7972

C: (512) 431-7284

From: [Marni Holloway](#)
To: [Patrick Russell](#)
Subject: FW: 2018 QAP Draft: Underserved
Date: Friday, August 18, 2017 3:00:03 PM
Attachments: [image007.png](#)
[image009.png](#)
[image011.png](#)
[image016.png](#)
[image019.png](#)
[image021.png](#)
[image022.png](#)

I can't make sense of this – may be my Friday afternoon brain.....

Marni Holloway
Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us

From: Sheri Wilhelm [mailto:swilhelm@amcalhousing.com]
Sent: Thursday, August 17, 2017 6:56 PM
To: Sharon Gamble; Marni Holloway
Subject: 2018 QAP Draft: Underserved

Hi, How busy you must be 2017 application years has not come to a close and were already working with the new 2018 year. Which I have a question about if you could help me? While reviewing the recent release of the 2018 QAP that was posted in Draft form on the website, my question is with 11.9 (c)(5)(C) & (D) Underserved Area points, it is written:

(C) **A census tract within the boundaries of an incorporated area** The Development Site is located entirely within a census tract **that does not have a Development subject to an active tax credit LURA that is in an extended compliance period (or has received a tax credit award but not yet reached the point where its LURA must be recorded); (3 points);**

Do we understand this correctly? For the 3 points - the RED Arrow zones WILL NOT score these points and the GREEN arrow zone WILL score the points?

Construction 1-2 years ^Compliance Period 1-15 years **^Extended Compliance Period 16-35 years**

Awarded/ LURA not recorded Recorded LURA Extended LURA if applicable

Also, If the Development Site is located entirely within a census tract that has NO Property Inventory EVER it will score for 3 points? (which is not mentioned)

(D) **For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years and continues to appear on the Department's inventory (3- (2 points);**

2018 Applications / NO POINTS Two POINTS

Awarded within past 15 years: 2002-2017 **Awarded 2001 and earlier**

Sorry for all the colors, I tried...

*Thank you,
Sheri Wilhelm
Sheri D. Wilhelm
Development Associate*

AMCAL Multi-Housing, Inc.
AMTEX Development, LLC
30141 Agoura Road, Suite 100
Agoura Hills, CA 91301
☎ Office: (818) 706-0694 x142
✉ E-Mail: swilhelm@amcalhousing.com



From: [Sallie Burchett](#)
To: [Patrick Russell](#)
Cc: [Brent Stewart](#); [Marni Holloway](#); [Sharon Gamble](#); [Sarah Andre](#); [Dan Sailer](#)
Subject: Fwd: Cost Per Square Foot for Historic
Date: Friday, August 25, 2017 11:02:59 AM

Good morning Patrick. Thanks again for going to the Capitol today to let people like me know the meeting was postponed due to the storm.

As discussed, my only question I planned on verbalizing at the meeting was the cost per square foot for historic. As you requested, I am sending the email that I had sent Brent Stewart in early August.

In a nutshell, adaptive reuse is complete demo inside a shell + new construction inside the shell + a slight premium for exterior shell improvements (windows, doors, etc.) that meet historic standards. All reasonable costs for historic will exceed new construction due to the same cost + demo + exterior improvements.

I respectfully request that the QAP add a cost per square foot category for historic adaptive reuse to be reasonable and consistent with the statute that prioritizes historic preservation.

Sincerely,
Sallie Burchett, AICP

----- Forwarded message -----
From: **Sallie Burchett** <sallie@structuretexas.com>
Date: Fri, Aug 4, 2017 at 10:43 AM
Subject: Cost Per Square Foot for Historic
To: Brent Stewart <brent.stewart@tdhca.state.tx.us>

Hi Brent.

As we discussed, I am sending you an idea for historic adaptive reuse. **I am proposing adding a cost per square foot category for Historic. This was in the draft QAP last year, but not in the final. Historic is different that a traditional Adaptive Reuse or Rehabilitation and is more expensive.** The extra eligible basis will be helpful to make the deals successful.

Besides making a new cost per square foot category, I also request that a project that qualifies for historic be classified as historic regardless of it it having any new construction. For example, if the developer chooses to add 25% of the units via new construction, categorizing the entire application as New Construction would be a hardship. But, keeping it categorized as historic for the cost per square foot category, will go a long way in making the historic project successful.

Please remember that it isn't a detriment to the housing tax credit program on a per unit basis due to historic tax credit sources. I am also suggesting that these modifications are necessary to assist the Department in meeting the TGC criteria listed in (§2306.6725(a) and specifically subsection 6: rehabilitate or perform an adaptive reuse of a certified historic structure, as defined by Section [171.901](#)(1), Tax Code, as part of the development.

Thank you for the consideration.

Sincerely,
Sallie Burchett, AICP

MARQUE REAL ESTATE CONSULTANTS

710 North Post Oak Road, Suite 400

Houston, TX 77024

(713) 560-0068 – p

(713) 583-8858 – f

Donna@MarqueConsultants.com

August 21, 2017

Via Email – tim.irvine@tdhca.state.tx.us

Tim Irvine

Executive Director

Texas Department of Housing and Community Affairs

221 E. 11th Street

Austin, Texas 78701

Re: Comments - Draft 2018 Qualified Allocation Plan

Dear Mr. Irvine,

Thank you to you and your Staff for hosting several workshops over the last year seeking input from stakeholders regarding proposed changes to the rules governing the Texas Housing Tax Credit program. Please accept the following comments and suggested changes on behalf of Marque Real Estate Consultants (Marque) to Staff's draft of the 2018 Qualified Allocation Plan ("QAP") released on 8/11/17.

Marque's comments are focused and intended to promote clarity in the rules, transparency in the evaluation process and the dispersion of housing. Our comments also contemplate the potential for a 2-year QAP.

§11.1. General

(b) Due Diligence and Applicant Responsibility. The following comments are meant to clarify the provisions of this section that addresses appeal rights pursuant to §2306.6715(c). We struck the last sentence because we assume that the posted scoring notice represents the "*results of the evaluation process*" that would trigger appeal rights:

As provided by Tex. Gov't Code §2306.6715(c), an Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice to file a written appeal; provided, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. ~~Appeal rights may be triggered by the publication on the Department's website of the results of the evaluation process.~~

(g) Documentation to Substantiate Items and Representations in the Application. We realize that Staff is evaluating a lot of applications in a compressed time period and doing their best to post updated information relating to an application in a timely manner. However, in order to ensure consistency in the level of transparency across all application we would like to incorporate a time period into this paragraph by which Staff is required to post any correspondence or updated information relating to an application to the Department's website. We suggest such updated information be posted no later than

5-business days following receipt or release of any updated information by TDHCA. Timely postings relating to each application will ensure the level of transparency that all stakeholders desire and will minimize time consuming open records request for such information by third parties. We certainly desire to work with Staff if more time is required then the suggested 5-business day turnaround.

§11.2. Program Calendar for Competitive Housing Tax Credits.

We request that Staff move the deadline for Third Party Request for Administrative Deficiency to June 1, 2018. The date change to April 13, 2018 gives Staff very little time to evaluate and complete their review of priority applications in each Region and does not give Requestors the opportunity to review Staff's actions some of which may trigger reprioritization of applications in a Region resulting from loss of points, termination or withdrawal. If Staff disagrees with this date change then we suggest that the RFAD deadline be moved to Mid-May which will correspond to the deadline when scoring notices will be issued to the majority of applications considered competitive.

§11.7. Tie Breaker Factors

Marque does not believe that the first tie breaker should go to those applications that achieve a score based on the development's proximity to the Urban Core unless Staff agrees with my comments to §11.9(c)(7)-Urban Core set forth below which recommends awarding Urban Core points solely to those developments in a County with a population over 1 million and a City with a population over 500,000 that must comply with §2306.6711(f)-Two Mile Same Year Rule. We believe that Staff should use the tie-breaker factors to prioritize the dispersion of housing in the same program year which will minimize awarding applications that are clustered in the same area. We recommend the following changes:

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) or Concerted Revitalization Plan under §11.9(d)(7) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development awarded Housing Tax Credits within the past 10-years. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

(3) Applications proposed to be located in the most underserved area as compared to another Application with the same score. For the purposes of this paragraph, "underserved area" is determined according to the same methodology as §11.3(b), "Twice the State Average Per Capita," of this Chapter. The proposed Development located in a municipality, or if located completely outside a municipality, a county that has the fewest HTC units per capita is located in the most underserved area. The HTCs per capita measure is located in the 2018 HTC Site Demographic Characteristics Report that has been submitted to the Board.

(4) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

§11.9. Competitive HTC Selection Criteria

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

(4)(B) Opportunity Index. We appreciate the changes Staff made to clarify and refine several of the amenities described in this scoring category. We recommend adding the following additional amenities and factors into §11.9(c)(4)(B)(i) in connection with Developments located in an Urban Area some of which are consistent with those recommended by TAAHP. Two of our recommendations would be new to this scoring category. We think that a site that is properly zoned and those sites that are within close proximity to public schools are important factors in considering sites in high opportunity areas and should be supported through points:

- (XV) The Development Site is properly zoned to allow for the Development;
- (XVI) The Development Site is located within 1/2 mile of a public elementary, middle or high school within the attendance zone of the Development;
- (XVII) The Development Site is located within 1 mile of a Bank/Credit Union; and
- (XVIII) The Development Site is located within 1 mile of a Fire/Police Station.

We believe the above described additional amenities and factors are appropriate and should be added to §11.9(c)(4)(B)(ii) in connection with Developments located in a Rural Area with suitable adjustments made to the distances between the Development Site and the amenity or factor.

(5) Underserved Area. Staff is recommending that an application should be eligible for the maximum of 5-pts. If, in part, the development site is located in a census tract within the boundaries of an incorporated area with a population of 150,000 or more. In this scenario, maximum points in this scoring item unfairly limit opportunities and the dispersion of affordable housing in the vast majority of our Urban cities that are high opportunity areas rich in amenities. More densely populated municipalities already have other advantages such as Urban Core points. These are also area where 4% tax credits bond transactions can work effectively.

If the intent of this scoring category is to promote affordable housing development in traditionally underserved areas of our State than we believe that the population of a city should be removed as a requirement to qualify for the maximum points. We also believe that awarding points under subsection C to census tracts that do not have a Development subject to an active LURA will cause Applicants to seek determinations of LURA status through open records request to TDHCA for such information. A process that will consume a lot of unnecessary time and attention by TDHCA staff. We recommend the following changes to subsections (C), (D) and (E) of this scoring category. We believe that these changes will achieve the appropriate and desired results of dispersing affordable housing in the most underserved areas of our State:

- (C) The Development Site is located entirely within a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development. ~~does not have a Development subject to an active tax credit LURA that is in an extended compliance period (or has received a tax credit award but not yet reached the point where its LURA must be recorded)~~; (3 points);
- (D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years. (2 points); and

(E) The Development Site is located entirely within ~~the a census tract whose boundaries of are wholly within an incorporated area that has not and which neither the census tract itself nor all its contiguous census tracts have~~ received a competitive credit allocation or a 4 percent non-competitive tax credit allocation for a Development ~~an award or HTC allocation within the past 15 years. This item will apply in cities with a population of 150,000 or more, and will not apply in the At-Risk Set-Aside (5 points).~~

(7) Proximity to Urban Core. This was a new five (5) point scoring category last year and incorporated into the 2017 QAP to promote the production of affordable housing in the inner city neighborhoods of our 8 largest cities that in most instances could not achieve similar points under Educational Quality. Since Educational Quality is no longer a scoring category and inner city developments in our 5-largest cities where active revitalization is taking place are guaranteed to receive an award of tax credits pursuant to HB 3535, we do not believe that Urban Core should remain a scoring category. Alternatively, we request that Urban Core points be limited to those inner city developments that are located in a County with a population over 1 million and a City with a population over 500,000 that must comply with §2306.6711(f)-Two Mile Same Year Rule.

Staff is recommending expanding the number of cities that are eligible to receive these five (5) points several of which are not subject to the 2-Mile Same Year Rule. This adjustment will determine winners and losers especially in those Regions where only one City would be eligible to receive these five (5) points. We also believe that to the extent credits are available to fund more than one transaction, the expansion of these points to several more cities will lead to multiple awards to Applicants with development sites in very close proximity to one another in the same year as has been seen in recent competitive application rounds. For the above-described reasons we recommend removing Urban Core as a scoring category. Alternatively, we recommend the following changes:

A Development in ~~located in a municipality a Place, as defined by the US Census Bureau,~~ with a population over 500,000-200,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main City Hall facility ~~if the population of the city is more than 500,000, or within 2 miles of the main City Hall facility if the population of the city is 200,000—499,999.~~ The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to applications under the At-Risk Set-Aside. (5 points)

We also believe that a municipality is more appropriate than a Place when defining an eligible area and is consistent with the use of such terminology in several other scoring categories.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. Please accept the following comment to Staff's changes in this scoring category:

Resolutions received by the Department on or before the Full Application Delivery Deadline setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website.

(3) Declared Disaster Area. In order to provide clarity this scoring item, we recommend that Staff goes back to the 2017 language which better tracks §2306.6710(b)(1)(H) of the Texas Government Code.

(5) Community Support from State Representatives. We do not understand several of the changes made to this scoring category, including the recognition that an application may have up to eight (8) points deducted from this scoring item but there is no description of what type of letter would trigger the reduction of points. Please clarify.

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

(1) Financial Feasibility. We recommend no change to this scoring category and that Staff goes back to the 2017 language. While we commend Staff for trying to develop a provision that encourages the closing and expeditious construction of Units, we suggest doing so through a separate scoring category that incentivizes Applicants that can promptly close their awarded developments and commence construction. Please see our thoughts below for a new scoring category defined under §11.9(e)(9)- Ready to Proceed.

~~(2)~~(3) Cost of Development per Square Foot. We recommend that Staff goes back to the 2017 language in subsection (E)-Applications proposing Adaptive Reuse or Rehabilitation. Each Adaptive Reuse and Rehabilitation development is unique with distinct characteristics and construction requirements regardless of the size of the units and we do not believe they can be categorized and should be treated through the same financial lens.

(9) Ready to Proceed. We would like to suggest the following new scoring category that supports Staff's suggested change in §11.9(e)(2) of Staff's draft and reintroduces as modified below a scoring category that was included in the 2012 QAP. Not everyone will be able to achieve these points in 2018 but if the 2018 QAP is designed to be a 2-year QAP then Applicants will have the opportunity to source good real estate and submit applications in 2019 for Developments that can qualify for these points for being more ready to proceed. We suggest the following:

(9) Ready to Proceed. An Application may qualify to receive three (3) points if at the time of application the Development Site is zoned to allow for the proposed Development, and the Application includes evidence that the Development meets the requirements described in subparagraph (A) – (C):

A. The Development has received final plat and any other necessary approvals from the Governing Body of the appropriate municipality or county where the Development is to be located;

B. The Application indicates that the Applicant has firm commitments from all required equity and debt providers; and

C. Upon receipt of an award, the Applicant will commence construction of the Development within 90-days following the Carryover Documentation Delivery Date. Subject to a *Force Majeure* event or a significant collapse in the tax credit market that prevents the Development from moving forward as structured at Application, if the Applicant fails to commence construction within such time period then a penalty deduction of five (5) points will be assessed against the Applicant or any Principal of the Applicant from each submitted 2019 application. This penalty may not be waived, altered or extended under the waiver rule or otherwise. However, the Executive

Tim Irvine – TDHCA
QAP Comments
August 21, 2017
Page -6-

Director may extend the time period to commence construction if the Development is awarded the tax credits after the Final Awards are made by the Board in July.

We respectfully submit these initial comments to Staff's draft of the 2018 QAP released 8/11/17. Please do not hesitate to contact us with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Donna Rickenbacker". The signature is written in a cursive style with a large initial 'D'.

Donna Rickenbacker

Cc: Marni Holloway, TDHCA – marni.holloway@tdhca.state.tx.us
Sharon Gamble, TDHCA – sharon.gamble@tdhca.state.tx.us
Patrick Russell, TDHCA – patrick.russell@tdhca.state.tx.us



New Hope Housing

August 23, 2017

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Delivered via email

Dear Patrick,

This letter brings with it our appreciation to you and your staff for the extensive work you all do throughout the development cycle. As you know, New Hope Housing has a mission to develop and operate housing for the most vulnerable citizens in our communities, and we have an obligation to work diligently to ensure that resources are directed, whenever possible, to that cause. This is an important endeavor to ensuring availability of deeply affordable units and the services necessary to keep Texas' vulnerable citizens stably housed. Below you will find our comments on the current staff draft of the 2018 QAP and proposed changes to the upcoming draft 2018 Multifamily Rules.

In recent years there have been exceptionally few 9% awards serving families or supportive housing populations in the City of Houston. New Hope Housing has been disappointingly unsuccessful in our applications for 9% housing tax credits since 2012, when New Hope's last 9% award was granted as a Forward Commitment – the very last in the state. In numerous locations that would have been excellent places for our residents to live, we made the difficult decision to not apply because the scoring criteria in the QAP were so heavily weighted toward suburban and high-income areas. We simply stood no chance of success. While we recognize that the Department has slowly pulled back from weighting the scoring heavily toward suburbs, the reality is that in the 2017 round *only two developments* serving the general population were awarded in the City of Houston, and no development awarded was Supportive Housing.

Qualified Allocation Plan

Prior to the ICP lawsuit, a housing needs score was integral to the Department's forecast on where housing was in greatest need. A large city with an overwhelming number of cost-burdened renters, such as Houston with a population of more than 2.3 million, would receive a higher housing needs score than a smaller adjacent city/suburb with far fewer cost burdened renters. It makes perfect sense to locate housing where it is most needed, and we urge that a housing needs score be reinstated.

In addition, we hope that the Department staff and board will review the existing Concerted Revitalization Plan language and reduce the barriers for local municipalities to implement and determine the best process for their own jurisdictions. We recommend allowing the Director of Community Development to submit a letter stating that certain neighborhoods have been designated revitalization areas. If the Department would remove the city council resolution requirement, the budget and timeline of this scoring item, neighborhoods in Houston that are truly

revitalization plan areas would actually qualify for the points. This step is critical to developing the needed housing in the urban core of Texas' largest city.

In the tie breaker section of the draft QAP, the third tie breaker is the census tract with lower poverty rate. This tie breaker is anti-urban, and will lead to sites in far flung suburbs winning ties with sites in the urban core of our state's largest city. This tie breaker does not encourage affordable housing to be located where the greatest need exists, and we recommend removing the poverty rate tie breaker altogether.

Multifamily Rules

In addition, we urge the QAP committee of the TDHCA board to look closely at the threshold and scoring criteria that work against organizations such as New Hope. In the Undesirable Neighborhood Characteristics threshold criteria, some revisions need to be made. I am aware the Multifamily Rules draft has not yet been released; however, I am taking this opportunity to comment. The entire section of our Multifamily Rules surrounding Undesirable Neighborhood Characteristics arose from the ICP lawsuit and the Department's remedial plan. Some of the criteria, such as poverty rate, are in conflict with the federal Section 42 program, which deems the very neighborhoods, that are "undesirable" under the state rule to be Qualified Census Tracts, eligible for a 130% credit boost. Investment and revitalization are critical in these urban core neighborhoods, many of which are so rapidly gentrifying that residents who have lived there for generations are forced out by property tax increases and market rate developers. This is feeding the ongoing housing crisis in our country, and the TDHCA has the ability to help stem the tide of unaffordability in large metro areas for our working-class citizens, *and* for those living at the margins – those at greatest risk of homelessness.

Moreover, the zoned schools were a point of contention in New Hope's recent 4%/Bond transaction, New Hope Housing at Reed. We spent over \$75,000, not including staff time, and delayed closing by months tangled in discussion and documentation with the Department over educational quality, with multiple officials at the Houston Independent School District offering their professional views on schools. We urge the board to take a fresh look at school thresholds, *and in particular at charter and choice districts*, as well as clearer and more direct pathways to demonstrate mitigation of negative school ratings.

The changes we are requesting here would increase the feasibility of direly needed Supportive Housing across the State of Texas, as well as the feasibility of all affordable housing types in the urban areas. Should you wish to speak with me personally, I welcome hearing from you at any time. We appreciate the board's investment of time and energy in this process – it is quite refreshing! If we can be of assistance, please do not hesitate to contact me directly 713.628.9113.

Sincerely,



Joy Horak-Brown
President and CEO

CC: Tim Irvine, Marni Holloway

From: [Brad Forslund](#)
To: [Patrick Russell](#)
Cc: [Tony Sisk](#); [Becky Villanueva](#)
Subject: RE: 2018 QAP
Date: Monday, August 14, 2017 1:27:03 PM

Patrick,

Based upon the results of the QAP for 2017 for Region 3 urban and the proposed changes to the 2018 QAP we would like to make the following comments:

The following Regions 3 urban deals were awarded tax credits in 2017:

TDHCA #17028 – CRP and **urban core** (family) - **Fort Worth**
 TDHCA #17259 – **urban core**, high opportunity (family) - **Fort Worth**
 TDHCA #17281 – CRP, **urban core** and 5 points for underserved (elderly) - **Arlington**
 TDHCA #17012 – high opportunity, 5 points for underserved (elderly) - **Arlington**
 TDHCA #17363 – high opportunity (family) -Rowlett
 TDHCA #17315 – high opportunity (family) -Hurst
 TDHCA #17080 - high opportunity (family) - **Fort Worth**
 TDHCA #17037 - high opportunity (elderly) - Mansfield

Comments:

1. **Urban Core** - With the removal of educational excellence from the scoring criteria we feel the urban core points are no longer necessary to give these developments preferential scoring opportunities. If this is unacceptable we would ask that TDHCA not decrease the population to a smaller population which would result in even more urban core deals and a very unbalanced QAP. As you can see from the above that there were 3 urban core deals or 37.5% of the awards done in 2017.

There are 1754 cities represented on the TDHCA worksheet and only 13 that are over 200K representing only .007 and only 44% of the population. The 2017 QAP already had a slight preference for larger cities (see above results). With the urban core changes proposed for 2018 these below cities will receive the vast majority, if not all, of the awards.

| Place Name | Population | Metro Statistical Area | Rural/Urban | Region | CDP |
|----------------|------------|--------------------------------------|-------------|--------|-----|
| Houston | 2167988 | Houston-The Woodlands-Sugar Land, TX | Urban | 6 | |
| San Antonio | 1385438 | San Antonio-New Braunfels, TX | Urban | 9 | |
| Dallas | 1240985 | Dallas-Fort Worth-Arlington, TX | Urban | 3 | |
| Austin | 864218 | Austin-Round Rock, TX | Urban | 7 | |
| Fort Worth | 778573 | Fort Worth-Arlington, TX | Urban | 3 | |
| El Paso | 669771 | El Paso, TX | Urban | 13 | |
| Arlington | 375305 | Fort Worth-Arlington, TX | Urban | 3 | |
| Corpus Christi | 312680 | Corpus Christi, TX | Urban | 10 | |
| Plano | 271166 | Dallas-Fort Worth-Arlington, TX | Urban | 3 | |
| Laredo | 245048 | Laredo, TX | Urban | 11 | |
| Lubbock | 236868 | Lubbock, TX | Urban | 1 | |
| Garland | 232305 | Dallas-Fort Worth-Arlington, TX | Urban | 3 | |
| Irving | 224859 | Dallas-Fort Worth-Arlington, TX | Urban | 3 | |
| Amarillo | 194930 | Amarillo, TX | Urban | 1 | |
| Grand Prairie | 181135 | Dallas-Fort Worth-Arlington, TX | Urban | 3 | |
| Brownsville | 179834 | Brownsville-Harlingen, TX | Urban | 11 | |
| Pasadena | 152171 | Houston-The Woodlands-Sugar Land, TX | Urban | 6 | |

2. **Tie Breaker**- remove Urban Core from the first tie breaker for the reasons stated in Item 1.
3. **Underserved Area** – remove the 5 point preference for cities with a population over 150,000. This along with urban core has and would result in a disproportionately higher percentage of deals going to cities with large populations (see cities outlined above). Removing this point preference doesn't put these larger cities at a disadvantage but instead puts them on equal footing with all other cities regardless of population. As another option allow the 5 point preference for all cities regardless of population.

Thanks for your consideration.

Brad

Brad Forslund
 Partner
 Churchill Residential, Inc.
 5605 N. MacArthur Blvd. Suite 580
 Irving, Texas 75038
 Office: (972)550-7800
 Facsimile (972)550-7900

From: [Charles Holcomb](#)
To: [Patrick Russell](#)
Subject: 2018Draft QAP
Date: Sunday, August 13, 2017 4:43:02 PM

Patrick,

I have a serious concern about the drastic reduction of Eligible Hard Cost for Rehabilitation developmdents.

The proposed Eligible Hard Cost has been reduced from \$104.50 to \$50 and \$135.20 to \$60 respectfully.

My experience as an Architect has been that Rehabilitation cost are general more expensive than new Construction. And surely it is not over a 50% reduction as proposed.

This is simply because the demolition, or removal cost, is added to the new construction cost. Thus making it more expensive.

Rehabilitation cost is generally for the removal, prep and new installation of finishes and equipment. The only thing saved is the slab, basic building structure, and underground utilities; and, sometimes those items are also in need of repair. They definitely do not equal to over 50% of the building hard cost.

Additionally, the reduction of \$1.00 per SF for units under 900 SF does not consider Elderly developments with predominately 1 BR units. Because the threshold for 1BR units is 650 SF Elderly developments are being penalized by 250 SF or \$5.00 per SF. And that is even more drastic.

Please revise this requirement to in include Elderly units under 650 SF, (or over); or, itemize each type of unit by the threshold size. The 900 SF as stated is arbitrary.

Your affirmative consideration of this matter is appreciated.

Charles Holcomb, AIA

From: [Charles Holcomb](#)
To: [Patrick Russell](#)
Subject: RE: 2018Draft QAP
Date: Monday, August 14, 2017 12:12:48 PM

Patrick,

Another comment:

In paragraph (5)(E) of “Underserved Areas” please clarify or add that USDA Set-Aside applications will not apply; and, whether they are eligible for the 5 points.??

The language is not clear about that in my opinion.

Also please consider adding “targeting the same population” after “received an award or HTC allocation”. Areas that have received awards for the General population will most likely be undeserved for the Elderly population

PS:

I will respond to your comments below a little later.

Charles

From: Patrick Russell [mailto:patrick.russell@tdhca.state.tx.us]
Sent: Monday, August 14, 2017 9:45 AM
To: Charles Holcomb <crhjah@cebridge.net>
Subject: RE: 2018Draft QAP

Good morning, Charles.

Thank you very much for your feedback. This is what we are looking for as we continue to massage the QAP.

Quick clarification: the reduction from \$104.50 to \$50 and \$135.20 to \$60 is because we have removed acquisition costs from the cost/sqft calculation. So, for the purposes of this scoring item, we only want to see what the costs are regarding rehab, whereas before it was the costs of rehab and acquisition lumped into one number.

With that in mind, do your concerns still remain? If so, what is a fair cost/sqft (not including acquisition costs) based on your experience?

I think lowering the baseline sqft size of an apartment might be a good solution. If units truly are smaller—and I find that to be true with older Developments—then maybe 900sqft is too high and we should start a tad lower.

Best,
Patrick

Patrick Russell
Multifamily Policy Research Specialist
Texas Department of Housing & Community Affairs
221 E. 11th Street | Austin, TX 78701

(512) 475-0927

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b), there are important limitations and caveats (Also see 10 TAC §10.2(b)).

About TDHCA

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From: Charles Holcomb [<mailto:crhjah@cebridge.net>]
Sent: Sunday, August 13, 2017 4:43 PM
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Rehabilitation cost is generally for the removal, prep and new installation of finishes and equipment. The only thing saved is the slab, basic building structure, and underground utilities; and, sometimes those items are also in need of repair. They definitely do not equal to over 50% of the building hard cost.

Additionally, the reduction of \$1.00 per SF for units under 900 SF does not consider Elderly developments with predominately 1 BR units. Because the threshold for 1BR units is 650 SF Elderly developments are being penalized by 250 SF or \$5.00 per SF. And that is even more drastic. Please revise this requirement to in include Elderly units under 650 SF, (or over); or, itemize each type of unit by the threshold size. The 900 SF as stated is arbitrary.

Your affirmative consideration of this matter is appreciated.

Charles Holcomb, AIA

From: [Charles Holcomb](#)
To: [Patrick Russell](#)
Subject: RE: 2018Draft QAP
Date: Wednesday, August 16, 2017 2:01:24 PM
Importance: High

Daniel,

Removing the cost of acquisition from the cost/sqft is very good. It has nothing to do with the rehab cost.

Based on my 35 years of Architectural experience in housing rehabilitation I do not think there is a fair cost /sqft.. There are too many variables. Some units need new roofs, some do not . Some units need new kitchen cabinets, some do not, Some units need new energy efficient appliances and HVAC equipment, some do not . And so on for all the different building finishes and systems (plumbing, electrical and etc.). Also, most cities require that rehabilitation developments (units and structures) be brought up to meet the current building codes. This may, or may not, require older units and buildings to be sprinkled, and etc.

Therefore yes, I still have the same concerns with the cost as proposed.

Having said that I understand and agree with the goal of keeping cost down and therefore suggest that rehab cost approaching the new construction cost be given lower scores and those even lower than new construction cost be given higher scores. I suggest that the rehab cost equal to or higher than 90% of new construction be the higher benchmark (lowest score) and cost that are equal to or lower than 85% of new construction cost be the lower benchmark (Highest score). Based on the posted proposed new construction cost (for 12 points) this would equate to:

| | <u>Lowest Score</u> | <u>Highest Score</u> |
|----------------|---|----------------------------------|
| Building Cost; | | |
| | 72.80(90%) = 65.50 | 72.80(85%) = 61.90 |
| | 78 (90%) = 70.20 for High Cost Areas | 78(85%) = 66.30 for High Cost |
| Areas | | |
| Hard Cost; | | |
| | 93.60(90%) = 84.30 | 93.60(85%) = 79.60 |
| | 104.00(90%) = 93.60 for High Cost Areas | 104.00(85%) = 88.40for High Cost |
| Areas | | |

This is not too far from what is currently proposed but is more realistic.

The distribution of units will cause a change in the average sf./units in a development. A 100 unit family development will have different average sf/unit size than a 100 unit elderly development. A 50 unit family development may, or may not, have less sf/unit than 100 unit family unit. It depends on the distribution and population served.

Therefore, there is no baseline sf size/unit that will be fair to all developments.

I think the only way to be fair regarding this matter is to list the units by BR threshold size. Then there would be no advantage, or disadvantage, to any size or type of development.

Additionally, penalizing smaller units by reducing the cost/sf is not accurate or fair.. The higher ticket

cost items such as plumbing fixtures , kitchen cabinets , appliances and HVAC equipment have nothing to do with the size of unit.

If the cost of those items were to be \$12,500 per unit, for example, then the cost /sf would be:

| | |
|------------------|-------------------------|
| 1BR unit @ 650sf | $12500/650 = 19.23/SF$ |
| 2BR UNIT@ 85SF | $12500/850 = 14.70/SF$ |
| 3BR UNIT @1050 | $12500/1050 = 11.70/SF$ |
| 4 BR UNIT @1250 | $12500/1250 = 10.00/SF$ |

Therefore the smaller the unit size ,the larger the cost/SF; and, the larger the unit size the smaller cost/SF.

The only item of rehab construction cost that is actually based on SF is the flooring material.

This is not hypothetical, it is factual.! And it is just the opposite of what is proposed.

This adjustment need to be reversed or omitted entirely.

Thank you for allowing us to provide input on these items.

Charles

From: Patrick Russell [mailto:patrick.russell@tdhca.state.tx.us]

Sent: Monday, August 14, 2017 9:45 AM

To: Charles Holcomb <crhjah@cebridge.net>

Subject: RE: 2018Draft QAP

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With that in mind, do your concerns still remain? If so, what is a fair cost/sqft (not including acquisition costs) based on your experience?

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Best,
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Patrick Russell
Multifamily Policy Research Specialist
Texas Department of Housing & Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-0927

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About TDHCA

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Your affirmative consideration of this matter is appreciated.

Charles Holcomb, AIA

From: [Lily Wein](#)
To: [Walter Moreau](#); [Patrick Russell](#)
Subject: RE: data on where meals on wheels and equivalent have service in Texas
Date: Thursday, August 24, 2017 2:58:55 PM

Walter – Thank you for connecting us.

Patrick – Nice to “meet” you. As Walter mentioned, Meals on Wheels Texas keeps a database of meals on wheels providers across the state and their coverage areas and gaps. Would you like to have a phone call? I would love to learn what you are thinking and if there are things that we could provide that would be helpful.

Lily Wein
Director of Community Projects
[Woollard Nichols and Associates](#)
512-552-4005

From: Walter Moreau [mailto:Walter.Moreau@Foundcom.org]
Sent: Wednesday, August 23, 2017 11:18 AM
To: 'Patrick Russell' <patrick.russell@tdhca.state.tx.us>
Cc: 'Lily Wein' <info@onevoicecentraltx.org>
Subject: data on where meals on wheels and equivalent have service in Texas

Hi Patrick

I saw Lily Wein at a meeting today and thought I would connect you via email. Lily works as a consultant with One Voice Central Texas, and I think she and her partners also consult with Meals on Wheels of Texas. They have zipcode level data on coverage in Texas (not maps yet). Sounds like most of urban Texas is covered, but maybe rural pockets in North and West Texas are not.

I think that if this is an amenity point...then most subregions will easily get the point...and perhaps a few rural subregions might not.

Walter Moreau,
Executive Director
Foundation Communities
512-610-4016



From: [Marni Holloway](#)
To: [Darrell G Jack](#)
Cc: [Patrick Russel](#)
Subject: RE: Health Related Facility
Date: Monday, August 21, 2017 3:26:41 PM

Hi Darrell –

Several of these go beyond our intent, we'll work on tightening up the description

Thanks,
Marni

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

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From: Darrell G Jack [mailto:djack@stic.net]
Sent: Wednesday, August 16, 2017 6:53 PM
To: Marni Holloway
Subject: FW: Health Related Facility

From: Darrell G Jack [mailto:djack@stic.net]
Sent: Wednesday, August 16, 2017 6:10 PM
To: 'marni.holloway@mail.tdhca.state.tx.us'
Subject: Health Related Facility

Marni

On the web site of the Texas Dept. of Health Services, I found listings for the following categories of Licensed Health Care Facilities <http://dshs.texas.gov/facilities/find-a-licensee.aspx>. Would you please verify that the following would qualify under the Opportunity Index – Health Related Facility? If any do not qualify, please reply back with the category so I may remove it from my list.

Ambulatory Surgical Centers

Birthing Centers
End Stage Renal Disease Facility
Freestanding Emergency Medical Care Facility
General & Special Hospitals
Psychiatric Hospitals
Crisis Stabilization Units
Narcotic Treatment Clinics
Special Care Facilities
Substance Abuse Treatment Facilities
Registered Exempt Faith-Based Programs

Thank you,

Darrell G Jack
Apartment MarketData, LLC
20540 Hwy 46 West
Suite 115 – PMB 416
Spring Branch, Texas 78070
(210) 530-0040

From: [Darrell G Jack](#)
To: [Marni Holloway](#)
Cc: [Patrick Russell](#)
Subject: RE: Health Related Facility
Date: Monday, August 21, 2017 4:13:22 PM

Marni

Thank you for your reply. I will wait to hear what categories you decide qualify.

For what it is worth, I would encourage you to consider End Stage Renal Disease Facilities. I found many of these to be located in extreme rural areas. My wife was previously a pharmaceutical rep. She was telling me that these facilities save people that need weekly dialysis treatment from having to take an entire day to travel to a hospital or larger community. This would seem to fit with the intent of including health-related facilities in the Opportunity Index.

Darrell

From: Marni Holloway [mailto:marni.holloway@tdhca.state.tx.us]
Sent: Monday, August 21, 2017 3:27 PM
To: Darrell G Jack
Cc: Patrick Russell
Subject: RE: Health Related Facility

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- End Stage Renal Disease Facility
- Freestanding Emergency Medical Care Facility
- General & Special Hospitals
- Psychiatric Hospitals
- Crisis Stabilization Units
- Narcotic Treatment Clinics
- Special Care Facilities
- Substance Abuse Treatment Facilities
- Registered Exempt Faith-Based Programs

Thank you,

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August 23, 2017

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Comments to the 2018 Draft QAP

Dear Mr. Russell:

Thank you so much for the opportunity to comment on the 2018 Draft QAP. This letter is organized by general comments and then items that require clarification. In general, the comments are suggestions for changes to the QAP, while the clarification items may or may not warrant editing of the QAP as written. They do, however, require clarification in order for applicants to follow the QAP as precisely as required.

Comments

For information used in making judgements about a site, I like the static data date of October 1, with the exception of Neighborhood Scout. Neighborhood Scout is not a static data source and does not allow a user to go back in time to see statistics for a particular date. This is an issue, because unless an Applicant downloads crime data for every census tract on October 1, there is no way to check the data for that date (if for example, you get a site *after* October 1). Changing *only* the effective date for this data source to the Application Opening date (January 4, 2018), would alleviate this.

Under the information about notifications you have added some language: *“Notification must not contain any statement that violates Department rules, statute, code or federal requirements.”* This definition is too broad, difficult to enforce, and scary. It sounds as though it would be easy to inadvertently violate this and competitors will come up with violations to “challenge” other applicants. I suggest a compromise that includes only the language “violates Department rules” and eliminates “statute, code or federal requirements”.

In Section 11.9 (a), language regarding easements is confusing. As written, it implies that distances are calculated from the Applicant site to the easement of a prospective amenity or other scoring factor. I believe you mean that the distance will be measured from the Applicant site, *including any easements for the Applicant site* to the nearest boundary of the prospective property facility.

There are also a few instances in which the points either do not add up or are not clear. In particular, Section 11.9 (a) (2) Sponsor Characteristics says that it is possible to qualify for up to

2 points, but then there is a category underneath this section for 2 points *and* another 1 point for, which would make a total of 3 points under Sponsor Characteristics.

The Opportunity Index section has similar points issues. In the general section, the QAP states that an application can qualify for 7 points *total* but then the details under this section allocate 2 for Census Tract characteristics *plus* 7 for amenity “factors”, which would total 9 points. It is unclear if there are two options to score seven points (2+5, OR 7) under this section or if the math is just incorrect.

Under section 11.9(c)(4)(B) I suggest that you change the definition of an amenity that is under construction from “vertical construction” to “site work”. Because there is a long delivery time for a tax credit development, if an amenity has started construction on the site, it will be complete and open before the proposed application, if awarded, is complete.

I would like to keep the funding threshold for the financial commitment of a local political subdivision at \$100 instead of \$1000. Although \$1000 is not a lot of money, for unsophisticated Cities, this could be a barrier.

I like the proposed incentive of 1 point for deals that start construction by Carryover. However, I think you should allow the application that achieves this milestone to designate an individual *or* a corporate entity (business) to use the point in the next round. Large developers have personnel changes all the time, and individuals within the industry move from company to company. Designating a person only is too rigid and has the potential to cause confusion and multiple requests for changes to TDHCA. I suggest an applicant choose one or the other – an individual or corporate entity instead of only an individual.

The proposed cost per square foot for rehab deals is too low and unrealistic for many deal types other than a straight rehab of an apartment complex. This should remain as it was last year.

Clarifications

The following is a list of questions that require clarification from TDHCA.

1. Can an application take one point for a grocery store AND one point for a pharmacy?
2. If yes, can a grocery and pharmacy be used for 2 points if they are within the same facility?
3. Tiebreakers - please provide a drawing that explains the easement/driveway measurement.
4. Tiebreakers - if you are in more than one census tract do you use the lower of the two poverty rates, the higher?
5. Is it possible to have a tie between an opportunity index deal and a revitalization deal and if so which one would win?
6. Tiebreakers - is there no longer an incentive to have more than 5 amenities? For example, if you have a score of 7 in High Opportunity that consists of 2 points for the Census Tract, plus 5 points for amenities, are you “maxed out” on the High Opportunity points?
7. Notifications - what happens if a neighborhood organization’s boundaries contain PART of a site? Are we required to notify? Do their letters count for support?

8. Is the requirement for an accessible route to less than a ½ mile from the entrance to a public park or is the requirement for a proposed development to be located less than a ½ mile from the entrance to a public park and the route between the two is accessible? This may need to be re-worded.
9. Meals on Wheels- is the alternative service supposed to be free? Or does the service need to be delivered in a person's home? Or both?
10. Community Amenity Cost Cap - how will TDHCA account for introductory offers at amenities or memberships that are charged annually?
11. There are a handful of census tracts that are eligible for the 5 points underserved, but they straddle two eligible cities (fully within two different incorporated jurisdictions). Will these tracts get 5 underserved points?
12. Underserved - Can you straddle an incorporated area and the ETJ and still get points, and if not, why not?
13. Do census tracts that are on the Mexican border get 5 underserved points if they are surrounded by 3 and 5-point census tracts on the U.S. side? (This applies in Laredo and El Paso)
14. Does TDHCA inventory trump actual data - for example if TDHCA inventory provides an incorrect address for a previously funded development will the inventory or the actual location be used to determine scoring for a proposed application.
15. Revitalization - can 2 deals qualify for the "deal that most contributes to revitalization" points in one municipality?

Thank you so much for reviewing this long list of items. We are looking forward to working with you for a successful 2018 LIHTC round. Feel free to call or email me if you have any questions

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Andre", with a long horizontal flourish extending to the right.

Sarah Andre



National Church Residences
EXCELLENCE THAT TRANSFORMS LIVES

August 21, 2017

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Mr. Russell

Thank you for the opportunity to present recommendations to the Staff Draft 2018 Qualified Allocation Plan (QAP). Please consider the below recommendations by National Church Residences.

1. Financial Feasibility - \$/SF for Rehabilitations

The proposed \$/SF restrictions under Rehabilitations are NOT feasible and we STRONGLY request that this calculation remain the same as in 2017. Below is an example of Plateau Ridge Apartments, a 49 unit HUD 202 which was awarded in 2017. As you can see, if this limitation was implemented, hard cost per unit would drop from over \$52k to \$20k- such a low figure that it would not be adequate for syndicators and lenders that typically require a minimum of \$40k in hard costs per unit for rehabs. Even when including approximately 4,500 in common space, the hard costs remains under \$25k per unit. Furthermore, this figure is insufficient to cover repairs identified in the PCNA.

We typically never include acquisition costs in eligible basis. Since our properties have small units, including acquisition costs decreases hard costs so significantly that we would no longer have a robust renovation nor be able to meet the repairs identified in the PCNA. Removing "acquisition costs" does not offset this enormous decrease in allowed rehab costs.

This type of calculation is not appropriate for rehabs:

- Reduces eligible hard costs down by 60%+ on a NRSF basis
- Reduces eligible hard costs down by 48% on a GRSF basis (from 2017 NRSF)
- HUD properties are historically very small (below, Plateau Ridge studios 413 SF and 1br at 526 SF) are significantly hurt by this calculation;
- Regardless of SF sizes, the most expensive cost to a unit renovation is the kitchen and bathroom. Regardless of unit size, this cost remains constant;
- Rehab budget would be too low to meet investor/lender requirements;
- Total Development Costs would decrease, decreasing tax credit sizing creating sizable gaps as fixed transactional costs would remain the same with fewer credits;
- Cannot meet with required PCNA needs at such a low rehab budget;
- Construction materials and labor costs continue to escalate and the \$104 figure should be increased accordingly, not decreased**;
- It is confusing to calculate.

**See Article: *The Cost of Construction*, from July 2017 Tax Credit Advisor.

Example Plateau Ridge – HUD 202, 49 units

| | | | | | |
|---------------------|------------------------|--|----------|---|----------|
| | 2017 QAP \$104/NRSF | 2017 QAP \$104/NRSF Voluntary Eligible Hard Costs | Per Unit | 2018 QAP \$50/NRSF Voluntary Eligible Hard Costs | Per Unit |
| Plateau Ridge SF | 24,621 - NRSF | \$2,560,446* | \$52,254 | \$993,598* | \$20,277 |
| | 29,129 – Gross SF | | | \$1,218,998* | \$24,877 |

*Excludes Acquisition Costs

| Units | Unit Count | Unit SF | Total NRSF | \$50 (-\$1) per 50 SF below 900 | Eligible Costs – Staff QAP |
|-------------------|------------|---------|---------------|---------------------------------------|----------------------------------|
| Studio | 12 | 413 | 4,956 | \$40 | \$198,240 |
| 1 br | 36 | 526 | 18,936 | \$42 | \$795,312 |
| 2 br | 1 | 729 | 729 | \$46.50 | \$46.50 |
| TOTAL NRSF | | | 24,621 | | \$993,598 |
| Common Space | | 4,508 | | \$50 | \$225,400 |
| TOTAL GSF | | | | | \$1,218,998 |

2. USDA Applicants as “RURAL”

While we do not oppose USDA applicants being funded in the USDA Set-Aside to be all considered Rural, we want to ensure that this does not spill out into the rest of the At-Risk Set Aside. Many USDA applicants qualify for both USDA and At-Risk and would thus be strongly opposed to the Rural label being applied to any USDA Urban applicant funded outside of USDA set-aside, but inside the At-Risk Set-Aside as it would give them an unfair advantage.

3. Tie Breaker

With fewer scoring areas, I anticipate scoring will be even flatter than in years past, especially in At-Risk where Urban Core and extra Underserved points are unavailable. We request you remove the tie-breaker for Poverty Rate in its entirety. As currently structured, applicants will win based on lowest poverty rate- removing us from good real estate and making 2nd and 3rd income quartiles in High Opportunity non-competitive.

Tie Breaker Ideas:

- Continue to include amenities as a tie-breaker.
- For At-Risk ONLY: Fewest requested tax credits per Low Income Unit (Total Tax Credit Request / LI Units)

4. Opportunity Index

- Meals on Wheels – we have lunch delivered by local non-profits at most of our properties, however, these meals are served in the community room instead of in individuals homes. Not only does this service provide hot meals to our residents, but encourages socialization among our senior residents, a factor in promoting healthy living for aging seniors. We request the language be changed to served “on-site” instead of “individuals in their homes”.

Recommend applicant has an MOU with this service provider for the application.

- Accessible: we request the word accessible be removed from routes and public playgrounds. In order to prove “accessible” would require an additional cost of an ADA consultant on top of an already, extremely expensive application.

5. Sponsor Characteristics

I appreciate the change to focusing on long-term on-site services. We request that (1) point be given for (A) and (1) point be given for (B) to encourage better long-term services at the Development.

6. Underserved Area

The proposed language in Underserved Areas does not support TDHCA’s intention. Census tracts vary greatly in size and do not reflect the monumental population growth that many areas throughout Texas have experienced. At the very least, we recommend adding “**does not have a tax credit development serving the same Target Population**” to (C), (D) and (E). For low-income frail seniors, a general population apartment building are not appropriate for their needs to allow for Aging In Place. These properties typically do not have elevators, have limited accessibility and are not paired with appropriate services that a frail senior will likely need to remain living independently. On the opposite spectrum, a census tract with an Elderly development cannot serve a young household with children.

We also request the removal of “LURA that is in extended use” ... as the development community does not easily have access to which properties on the TDHCA inventory list still have an active LURA.

7. Factors Affecting Eligibility in the 2019 Application Round

We request that this new language be deleted from the 2018 QAP that would either make a 2019 application ineligible or get a point deduction should a carryover or 10% test require an extension. There are a variety of factors that can impact these dates that are beyond an applicant’s control. Most notably, any financing or HUD required approvals can be very lengthy. Regardless, all federal tax credit dates will be met and units will be delivered in an appropriate time frame. Any penalty as proposed should be tied to something much more egregious than a reasonably necessary extension.

We appreciate the opportunity to provide comments, and would be happy to provide any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Tracey Fine". The signature is written in a cursive style.

Tracey Fine

Project Leader, Southwest Region

Cell: 773.860.5747

tfine@nationalchurchresidences.org



RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

August 23, 2017

Mr. Patrick Russell
Multifamily Policy Research Specialist
Program Specialists – Housing Tax Credits & Bonds
Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, Texas 78701-2410

Re: RRHA of Texas Comments for 2018 QAP

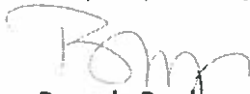
Dear Mr. Russell:

Please find the Rural Rental Housing Association's comment to the 2018 Qualified Application Plan "Draft," attached to this letter. In addition to our suggested revisions listed below, we would like you to take consideration of the following in making your decisions regarding this application process.

First, the majority of this organization's members are involved with relatively small portfolios in comparison to national groups competing in the urban areas requesting changes on purely self-fulfilling motives. This group presents a unified practical observation of what allows the businesses to continue operating and preserving an aging portfolio. Second, the cost for rehabilitation of rural properties is less, requiring the issuance of less credits, thus allowing the credits to be spread wider and not enrich a mere few. We list all concerns on the basis that it is good for our industry to promote preservation of this portfolio housing residents in rural Texas.

Please find that some of our listed concerns contain questions as to items we would like addressed. If these questions are resolved or answered, please notify us of the response or posted guidance. If you need any additional information or clarification, please feel free to contact Dennis Hoover, Development Chair, at 512-756-6809, ext. 212, or via email at dennishoover@hamiltonvalley.com. Thank you for your consideration of our concerns.

Very respectfully,


Beverly Banks
President

Suggested revisions to language, including the draft language, and practical policy concerns behind the suggestions:

1. Draft language on Accessibility

§11.9 Competitive HTC Selection Criteria, (c) Criteria to serve and support Texans most in need, (4) Opportunity Index, (B)(i)(I) - “The Development Site is located on an accessible route that is less than ½ mile from the entrance to a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards.” and for rural applications

§11.9 Competitive HTC Selection Criteria, (c) Criteria to serve and support Texans most in need, (4) Opportunity Index, (B)(ii)(VI) - “The Development Site is located on an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards.”

Suggested revision:

~~The Development Site is located on an accessible route that is less than ½ mile (or one mile in the rural area requirement) from the entrance to a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards.~~

Practical Concerns:

Off-site routes and playground equipment are constructed and maintained by a third party such as a City and maintaining continued accessibility of the route or equipment is not the responsibility or even within the rights of the applicant to accomplish. Accessibility can change from application date to award date and beyond if the municipality doesn't maintain playground equipment, resurfaces a street, or for many other reasons beyond the applicant's control. Additionally, it is extremely difficult to accurately determine if a route on City sidewalks and/or across City streets meets 2010 ADA standards. The term “entrance” should either be further defined or eliminated from these requirements.

2. Concerted Revitalization Plan

§11.9 Competitive HTC Selection Criteria, (d) Criteria promoting community support and engagement, (7) Concerted Revitalization Plan, (B) For Developments located in a Rural Area, (i) – “The occupancy percentage will not include units that cannot be occupied due to needed repairs.”

Suggested revision:

Add the following language to define when unit cannot be occupied due to repairs: “The definition for inability to “be occupied due to needed repairs” is as identified by the CNA provider.

There is no standard defined here which can lead to what appears as an arbitrary decision and extensive appeal.

3. Construction Costs & Average Unit Size

Draft Language & Suggested **Revisions in Red**:

(e) Criteria promoting the efficient use page 41 of 44.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following condition is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$80** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$90** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit, located in an Urban Area.

(iii) Eleven (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$90** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

Figures/Estimates on Construction Costs & Unit Size:

General Estimate from the group of Per Unit Cost= **\$60,000**

Our estimates of average unit size are well below the 900 sq ft figure:

Member Example:

1 bedroom: **633 rsf**

2 bedrooms: **793 rsf**

3 bedrooms: **957 rsf**

Total Average = **794 rsf**

Member 2 Estimate:

1 bedroom: 625 sq ft

2 bedrooms: 800 sq ft

Total Average = 712.5 sq ft

Member 3 Estimate:

Seniors: 679 sq ft

Family: 715 sq ft

Total Average = 697 sq ft

Comment:

We believe we should do a full rehab, not a partial, as it's a more efficient use of all the other fixed costs; the architect, the lawyer (our attorney fees are not fixed), the CNA, the appraisal, etc. To do a complete rehab on a 40-year old property, we collectively believe the need is about \$60,000 per unit "Total Construction Contract". Rehab already spreads the credits around as compared to new construction. USDA writes up what we don't have money to address during their inspections.

Our estimates indicate the feasible construction costs at a price per unit much higher than what is stated in the draft. One member has had one or two jobs out of 15 we've done since 2010 that had \$60,000 per unit and those projects were the only ones that had enough money to do all of what we wanted to do; replace all major systems, build a community room and new playground. At least one other developer/owner reported square footage being under the 900 square foot figure and a general consensus of the RRHA was that 1/2br units will fall under that figure.

4. §11.7. Tie Breaker Factors. [p17-18]

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) or Concerted Revitalization Plan under §11.9(d)(7) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

~~(4) Applications proposed to be located in the most underserved area as compared to another Application with the same score. For the purposes of this paragraph, “underserved area” is determined according to the same methodology as §11.3(b), “Twice the State Average Per Capita,” of this Chapter. The proposed Development located in a municipality, or if located completely outside a municipality, a county, that has the fewest HTC units per capita is located in the most underserved area. The HTCs per capita measure is located in the 2018 HTC Site Demographic Characteristics Report that has been submitted to the Board.~~

(5) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

Suggested Revisions to (3) & (4):

Do not place an emphasis on poverty in (3), rather actual need for rehab of the property and completely remove the language in (4). Alternatively, include the language from (1) in (4) stating “This tie-breaker does not apply to rural.”

Practical Reasons:

The twice per capita is harmful to Rehabs, as if there are areas of **higher demand** then there should be an emphasis placed on getting the deals rehabbed to ensure the demand is met. It is impractical to put emphasis elsewhere where demand is lower? The emphasis on poverty should be replaced with the emphasis to preserve a property already serving residents as there will be a greater need if the property cannot continue to operate. As an alternative, do not apply this tie break to At-Risk and USDA applications.

5. Market Studies

It would be helpful to have the market studies published when the applications are published. This would assist in verifying realistic numbers and estimates of the market. It should be noted, the market study is usable for only a short amount of time and becomes antiquated quickly.

6. Criteria promoting development of high quality housing.

Draft Language & Suggested **Revisions in red**:

(b) Criteria promoting development of high quality housing.

(4) Opportunity Index (A)(ii) [p 23 of 44].

(ii) The Development Site is located ~~in~~ **entirely within** a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third **or fourth** quartile within the region.

Suggested Revision:

Use the 2015 Language: allow scoring on the basis of Opportunity Criteria.

Practical Reasons:

Opportunity points need to be awarded by the presence of listed opportunity facilities and amenities in (B) and not disqualified because of the rural town “donut hole” problem. Alternately, this could go back to the 2015 QAP language that scored on the basis of opportunity criteria. It is our understanding you can’t score under (A) (i) and (ii) even if you have all the criteria in (B). Alternatively, applications in Rural areas could score points in the 4th quartile.

7. Local Funding Provision (d) Criteria promoting community support and engagement.

Draft Language under (B) [p 32 of 44]:

(2) Commitment of Development Funding by Local Political Subdivision.
(§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that ~~equals \$1,000 or more for the benefit of the Development~~ **equals \$100 or more for the benefit of the Development**. The letter must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

Suggested revision:

For the part struck through, insert “equals \$100 or more for the benefit of the Development.” Noted in red above.

Comment:

For small rural municipalities \$1,000 coming from a general account is major endeavor in comparison to Austin or Denton. Also, the legislative guidance by statute reads that it “may be a de minimis amount.” Alternatively, \$1000 for Urban and \$100 for Rural.

8. Rural v. Urban Designation

(2) USDA Set-Aside, On page 10 of 44.

If we choose to file in the Regional Set-aside, as a USDA development, and are located in an Urban area, do we still file in the Rural Set-Aside? This does not give clear guidance.

[END of COMMENT]



TAAHP

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

May 12, 2018

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Tim:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we submit several early recommendations for inclusion in the 2018 Multifamily Program Rules, as well as the Qualified Allocation Plan (QAP) in the interest of helping TDHCA staff produce final rules significantly earlier than in past years. This letter is one of at least two that TAAHP will submit in the coming months. This first letter includes all TAAHP recommendations that reached TAAHP consensus last year but were not included by staff in the 2017 rules. The second letter will provide further TAAHP comments, after membership reaches consensus after a membership meeting on the following topics (among possible other topics that membership might like to revisit): Tie Breakers, High Opportunity, Educational Quality, Underserved, Concerted Revitalization Plans.

With those comments as an introduction, please consider the following recommendations with regard to specific provisions of the rules:

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2)(B) Undesirable Neighborhood Characteristics.

TAAHP requests that this entire section be deleted.

Justification: This section is a remnant of the remediation plan and should be removed from the rules in the wake of the dismissal of the ICP litigation. It is an anti-urban provision that works to eliminate large swaths of urban areas from the competition. Furthermore, because data sources like neighborhood scout and school performance data are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods.

In the event that TDHCA does not support an entire removal of this section, we will submit further comments on our preferred language.

§10.101(b)(2) Development Size Limitations.

TAAHP requests the attached changes.

Justification: In prior years, the QAP allowed developments in Rural areas that exceeded 80 units. Rural Areas exist in major MSAs such as Dallas, Austin, Houston, San Antonio, El Paso and Mc Allen that have significant demand. The market study is the most reasonable method to determine the number of units demand in the market.

President
BOBBY BOWLING
Tropicana Building Corp

Immediate Past
President
MAHESH AIYER
CommunityBank of Texas

President-elect
NICOLE FLORES
R4 Capital Inc.

First Vice President
DEBRA GUERRERO
The NRP Group

Second Vice President
JOY HORAK-BROWN
New Hope Housing, Inc.

Treasurer
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*Bank of America
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DMA Development Co. LLC

CHRIS AKBARI
*IteX Property Management,
LLC*

DIRECTORS
DAN ALLGEIER
*National Inter-Faith
Foundation*

JEN BREWERTON
Dominium

TOM DIXON
Boston Capital

DARRELL G. JACK
*Apartment Market
Data, LLC*

DAN KIERCE
*RBC Capital Markets- Tax
Credit Equity Group*

DAVID KOOGLER
Mark-Dana Corporation

GEORGE LITTLEJOHN
Novogradac & Company LLP

JUSTIN MACDONALD
MacDonald Companies

SCOTT MARKS
Coats Rose, PC

MARK MAYFIELD
Texas Housing Foundation

CHRIS THOMAS
Tidwell Group

Executive Director
FRANK JACKSON



TAAHP

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Section 10.101(b)(4) Mandatory Development Amenities

TAAHP requests a slight revision to the exception for PTAC units.

Justification: Modern PTAC units are energy and cost efficient, and older existing buildings typically don't have the plate height to allow for both central air and a reasonable ceiling height. The current rule allows them in SRO, efficiency units and historic preservation properties, which is lower case and an undefined term. Our proposed rule replaces "historic preservation" with "Rehabilitation" which is a defined term.

Section 10.101(b)(7) Tenant Supportive Services

TAAHP requests deletion of the new language regarding who provides these services.

Justification: Many properties, especially smaller rural ones, cannot financially support a separate staff person or a third party provider to provide supportive services. In many rural communities, those third party providers are not even available.

Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Qualified Allocation Plan

Section 11.6 Competitive HTC Allocation Process

TAAHP recommends including the following as a "Force Majeure" in Section 11.6(5): "significant decline in the investor equity market because of the likelihood of federal tax reform, causing previously awarded applications to become financially infeasible (for this event, requirement that it occurred after the start of construction and before issuance of Form 8609 does not apply)."

Justification: There are several 2016 tax credit awards that will not be able to close due to the decline of tax credit pricing. It serves the state's interest to give these deals more time to close as opposed to recapturing the credits and losing the opportunity to create additional units of housing. Many of these deals are shovel ready.

Section 11.9 Competitive HTC Selection Criteria

(5) Educational Quality

TAAHP recommends that this scoring item be deleted as a separate scoring category, but that aspects of it are included in the Opportunity Index scoring as "amenities," as suggested last year.



TAAHP

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tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

Justification: This scoring provision is the greatest barrier to applications with sites in highly populated urban areas from competing for 9% tax credits. Furthermore, the testing and the standards by which Texas schools are rated are flawed and unreliable. Over the past few rounds, this scoring item has effectively determined the winners and losers. Since the high opportunity scoring category still has a rigorous income and poverty threshold, the areas with well performing schools already have a point advantage. Maintaining this scoring category would provide for those areas to get even more points for the same neighborhood feature.

(6) *Input from Community Organizations*

TAAHP recommends a new 4 point category for additional letters in the event that the application gets 0 points under the Local Government Support scoring category. This is an extension of the current language which allows letters of support from a "civic organization." A city government is a civic organization. These additional 4 points are only available when the application scores a 0 on the Local Government Support scoring category.

Justification: Municipalities often fail to place the requested resolutions on their agenda or the resolution fails for lack of motion, even in cases when city staff recommends approval of the proposed development. This additional 4 points for input from community organization will help balance the scoring in those cases.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP committee are happy to meet with your staff to discuss these recommendations fully.

Thank you for your service to Texas.

Sincerely,

Janine Sisak

Chair TAAHP QAP Committee

cc: TAAHP Membership



TAAHP

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

June 27, 2017

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Goodwin & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we submit several recommendations for modifications to the 2017 Uniform Multifamily Rules, as well as the Qualified Allocation Plan (QAP), the Underwriting and Loan Policy Rules, and Multifamily Direct Loan Rules. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on May 31, 2017 and in subsequent subcommittee meetings. With those comments as an introduction, please consider the following recommendations with regard to specific provisions of the rules, which should be considered in conjunction with our prior comments submitted to you on May 12, 2017. Further, TAAHP appreciates TDHCA staff's efforts to engage in discussions with stakeholders regarding the rules, and we are hopeful that staff will release an early draft of the 2018 rules for further comment prior to the release of the official draft to be posted in the Texas Register.

Uniform Multifamily Rules
Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2) Undesirable Site Features

TAAHP requests changes to this section, which are included on the attached pages.

Justification: The radii in the 2017 QAP are appropriate with the exception of one area: proximity to railroad tracks. For that provision, we recommend a 100 foot distance which is consistent with HUD's guidelines on proximity to active railroad tracks. These are more appropriate guidelines to use because they address the impact to the resident, as opposed to redlining entire swaths of urban areas.

Section 10.101(a)(2)(B) Undesirable Neighborhood Characteristics

TAAHP requests that this entire section be deleted.

President
BOBBY BOWLING
Tropicana Building Corp

Immediate Past
President
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MacDonald Companies

SCOTT MARKS
Coats Rose, PC

MARK MAYFIELD
Texas Housing Foundation

CHRIS THOMAS
Tidwell Group

Executive Director
FRANK JACKSON



Justification: This section is a remnant of the remediation plan and should be removed from the rules in the wake of the dismissal of the ICP litigation. It is an anti-urban provision that works to eliminate large swaths of urban areas from the competition. Furthermore, because data sources like Neighborhood Scout and school performance are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods.

In the event that TDHCA does not support an entire removal of this section, we recommend the revisions attached as Exhibit A.

Section 10.101(b)(8) Development Accessibility Requirements

TAAHP is aware of TDHCA's proposed replacement of subparagraph (B) of 10 TAC §10.101(b)(8), "Development Accessibility Requirements," with a rule that adds visitability standards to accessibility requirements. TAAHP requests the continued use of 2017 language within the 2018 rules.

Justification: Detail regarding TAAHP's position on this topic has been provided in the letter submitted to Mr. Tim Irvine on June 16, 2017. Please consider the previously submitted comments in conjunction with the comments provided herein (Exhibit B).

Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Section 10.201(7) Administrative Deficiency Process

TAAHP would like to have a dialogue with staff to seek clarification regarding the treatment of administrative deficiencies. TAAHP does not have rule change suggestions, but rather seeks to ensure that expectations are clear for all parties and that applicants be informed as to how staff will treat deficient items within applications. Such clarification may be appropriate within the Application Submission Procedures Manual.

Section 10.204(16) Section 811 Project Based Rental Assistance Program

TAAHP requests that this section be moved to the scoring criteria under the QAP as in past years. We believe this change can be made since the QAP addresses the Section 811 Program under the Tenants with Special Needs section. Adding this provision back into the QAP would be a natural outgrowth of the Tenants with Special Needs section.

The justification for moving this back to the scoring section is that as threshold, this provision burdens 4% developments in two ways. First, administering 811 units creates added operating expense to deals that often need tax exemptions or soft money to work. Second, adding this requirement limits the ability to position these developments as "workforce housing" and gives neighbors another reason to strongly oppose.



Regardless of whether this section remains as a threshold item or a scoring item, TAAHP requests that this rule revert back to the previous version where the applicant has a choice regarding placing Section 811 residents in existing developments or in the development for which an application is submitted. This flexibility is important to applicants, especially when committing existing developments to accept Section 811 residents requires lender and investor approval. Additionally, we request language that an applicant be exempt from locating 811 residents in existing developments if the applicant provides evidence that it cannot receive approval from either its lender or investor.

Qualified Allocation Plan

Section 11.7 Tie Breaker Factors

TAAHP recommends the following changes:

(1) Applications having achieved a score on Proximity to the Urban Core

~~–(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.~~

~~(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.~~

~~(4) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.~~

~~–(5) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.~~

(36) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but that do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

Justification: TAAHP members reached consensus to leave urban core as the first tie breaker, but would prefer that HOA be removed as the second tie breaker so that the more highly amenitized site wins the second tiebreaker regardless of whether it is in an HOA or CRP. Educational quality cannot be considered in the tie breaker due to HB 3574. Poverty rate should be deleted so that linear distance is the last tie breaker should all others fail to break the tie.



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Section 11.9 Competitive HTC Selection Criteria

(b) Criteria to service and support Texans most in need

(2) Sponsor Characteristics

TAAHP recommends changing the all-in HUB participation from 80% to 50% percent.

Justification: TAAHP reached consensus that this is an important scoring category that promotes capacity building for HUBs. However, TAAHP also reached consensus that the 80% benchmark for all-in participation of the HUB is difficult to achieve when an experienced developer is taking most of the risk and contributing most of the work. Consensus is that 50% is more reasonable given the risk/reward of joint ventures.

(c) Criteria to service and support Texans most in need

(3) Tenant Services

TAAHP reached consensus on supporting a point advantage for supportive housing deals in the Tenant Services scoring category but only if the rules include a much more robust definition of supportive housing. It is our understanding that several key stakeholders are working on a revised definition with THDCA staff, and TAAHP will make further comments on this revised definition at a later date.

(4) Opportunity Index

TAAHP formed a subcommittee for this scoring item alone because it is of such critical importance to the selection of good sites. Because the recommendations from that subcommittee are extensive, I am including those as a separate attachment to this letter (Exhibit C).

(6) Underserved Area

TAAHP members reached consensus on re-working this scoring category and adding a new scoring category that would be complementary to this one. With regard to Underserved, TAAHP recommends deleting subsections (C), (D), and (E) because they consistently result in a clustering of applications that only serves to drive up the cost of land in those areas. However, in the event that TDHCA maintains these subsections in the rules, we request that at least TDHCA no longer require that the entire census tract be located in incorporated areas for subsections (C) and (D). This determination by the Department in the FAQ caused a great deal of confusion and resulted in several appeals in the 2017 round. Having the entire census tract in an incorporated area does not lead to more dispersion, which is the goal of this scoring category.

The two new concepts that TAAHP recommends for consideration are: 1) re-introducing a scoring category reflecting a needs score, similar to the needs score which was included in the 2012 QAP; and 2) introducing a point disincentive for applications within places with populations less than 75,000 that received a 9% tax credit award in the previous cycle, regardless of the target population.



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Reintroducing needs score will result in tax credit awards in places with the strongest markets, and is a much better barometer than rewarding census tracts solely because they have never had a tax credit award before. Often those census tracts have not had a tax credit award because there is insufficient population or infrastructure to support it. We have attached a prior needs score methodology with our proposed changes (Exhibit D).

Introducing a point disincentive for smaller cities that have already been served creates more dispersion by allowing other markets a chance to compete for valuable tax credits. TAAHP believes that this is a better way to achieve dispersion than rewarding often remote census tracts that have never had a tax credit award.

(7) *Tenant Populations with Special Housing Needs*

TAAHP recommends moving the Section 811 requirements back to this scoring category. TAAHP recommends reverting back to the language regarding scoring of Section 811 participation that was included in the 2016 QAP.

(8) *Proximity to the Urban Core*

TAAHP recommends broadening this scoring item so that sites in smaller jurisdictions can achieve these points. For sites in cities with populations greater than 100,000 but less than 300,000, applications can receive these points if they are within one mile of city hall.

(b) *Criteria promoting community support and engagement*

(7) *Concerted Revitalization Plan*

TAAHP recommends creating a “safe harbor” provision for larger jurisdictions with a population of 150,000 people or more. In these cases, an applicant must submit a letter from the jurisdiction along with their pre-application in which the City identifies certain areas that it considers a “Concerted Revitalization Planning Area.” These areas must be defined in the letter with boundaries and an accompanying map. If an applicant submits this letter with its pre-application, and then later submits a full application for a site that is contained within one of the areas, the application is awarded 4 points under the Concerted Revitalization Plan scoring category without having to meet any other requirement. If the applicant does not submit the City letter with the pre-application or if the applicant is within a jurisdiction with a population of less than 150,000, the applicant can obtain 4 points for this scoring category by meeting the requirements of the 2017 rule.

TAAHP also recommends changing Subsection (B)(i) and (ii) regarding developments in rural areas to allow for rehab/reconstruction deals “initially constructed prior to 1993-1985.”



Justification: This scoring item is simply too difficult to achieve because even the most sophisticated planning efforts do not result in a final product that can meet the extremely codified TDHCA definition. The proposed changes are subtle but will open up areas that are truly undergoing revitalization to receiving these points. With regard to the change requested for rural rehabilitation/reconstruction projects, critical systems can start breaking at 20 to 25 years based on the Fannie Mae Estimated Useful Life sheet.

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

(1) Cost of Development per Square Foot

TAAHP recommends a simple increase factor of 15% for each dollar figure cited in the scoring criteria in the 2017 QAP and that the concept of NRA be replaced by gross square footage, as follows:

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the ~~Net Rentable Area (NRA)~~ gross square footage. The calculations will be based on the cost listed in the Development Cost Schedule and ~~NRA gross square footage~~ NRA gross square footage shown in the ~~Rent Schedule Specifications and Building/Unit Type Configuration~~ Rent Schedule Specifications and Building/Unit Type Configuration. ~~If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.~~

Justification: Staff and the applicant community have long struggled to structure the Cost per Square Foot scoring item in a way that allows staff to collect accurate cost estimates at application and also to utilize cost levels that tie to the realities of the construction industry in Texas. Feedback from TAAHP members indicates that cost increases have occurred in certain markets, sometimes at significant levels, since the last time cost levels in the QAP were adjusted. To address cost increases, each dollar figure level cited in the QAP can be increased by a certain percentage. However, adjusting cost levels is more effective if a base year level of costs can be established using actual construction data. TAAHP suggests the use of TDHCA's Quarterly Construction Status Reports to establish a database of actual costs that can be used to establish an appropriate level of costs to be used for the scoring item. Additionally, because TDHCA's use of net rentable area as the basis for evaluation is flawed since construction costs are driven by the gross square footage of a development, TAAHP suggests the use of gross square footage for the scoring item.

(3) Leveraging of Private, State and Federal Resources



TAAHP recommends the following revisions, which reflect a one percentage point increase for each scoring category.

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

- (i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than ~~9~~ ten (10) percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or
- (ii) If the Housing Tax Credit funding request is less than ~~eight (8)~~ nine (9) percent of the Total Housing Development Cost (3 points); or
- (iii) If the Housing Tax Credit funding request is less than ~~nine (9)~~ ten (10) percent of the Total Housing Development Cost (2 points); or
- (iv) If the Housing Tax Credit funding request is less than ~~ten (10)~~ eleven (11) percent of the Total Housing Development Cost (1 point).

Justification: The rules have a number of scoring items that put downward pressure on the amount of tax credits awarded to a development, with Leveraging of Private, State, and Federal Resources contributing greatly to this downward pressure. TAAHP understands TDHCA's fiduciary responsibility to be stewards of limited tax credit resources. However, the current percentages used for the Leveraging scoring item artificially limit credit requests such that developments are not sufficiently funded to ensure long-term financial strength, and such that developers are incentivized to provide greater numbers of market rate units than may otherwise be justified. TDHCA benefits from a portfolio of strong affordable housing developments that are positioned to provide the greatest benefits over the long-term to the citizens of Texas. Further, increased levels of market rate units reduce the number of affordable units provided in each development, which is counter to TDHCA's mission. To address the issue of artificially limiting credit awards below the level of credits justified by eligible costs, and to maximize the number of affordable units provided, the percentages under the Leveraging scoring item must be increased.

Subchapter D – Underwriting and Loan Policy

§10.302(d)(4)(D) Acceptable Debt Coverage Ratio

TAAHP suggests the following revision:

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing subject to scheduled repayments of principal and interest must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).



Justification: The calculated minimum debt coverage ratio should be applied to must-pay debt and not loans subject to available cash flow. This includes cash flow loans from TDHCA.

§10.302(e)(1) Acquisition Costs

TAAHP recommends the following revision:

(1) Acquisition Costs. The underwritten acquisition cost is verified with Site Control document(s) for the Property. At cost certification, the underwritten acquisition cost will be the acquisition cost verified by the settlement statement.

Justification: This is a clarification to establish that at cost certification the Department will underwrite the actual acquisition cost as reflected in the settlement statement for the transaction.

Comments to 2018 Direct Loan Rule

§13.8 Loan Structure and Underwriting Requirements

TAAHP suggests the following revisions:

§13.8(a)

(a) Except for awards made under the SR/SH set-aside, and developments with a first lien mortgage that is federally insured HUD or FHA mortgage, all Multifamily Direct Loans awarded will be underwritten as fully repayable (must pay) ~~at not less than the Discount window primary credit rate published by the Federal Reserve (<https://www.federalreserve.gov/releases/h15/#fn2>) on the date of publication of the NOFA, plus 200 basis points~~ at a rate of at least 1% and not to exceed 2%, and an ~~30-year~~ amortization equal to the first lien mortgage, with a term that matches the term of any superior loans (within 6 months) at the time of application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the development feasible under all applicable sections of 10 TAC §10.300 related to Underwriting Policy, and §13.8(c). The interest rate, amortization period, and term for the loan will be fixed by the Board at Award.

§13.8(c)(1)

(1) The term for permanent loans shall be no less than fifteen (15) years and no greater than forty (40) years, and the amortization schedule shall be ~~thirty (30) years~~ equal to the first lien mortgage. The Department's loan must mature at the same time or within six (6) months of the shortest term of any senior debt so long as neither exceeds forty (40) years and six (6) months.

§13.8(c)(2)

Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage or if a surplus cash flow structure is required for a loan from the SH/SR set-aside, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, ~~continues to meet the requirements in this subchapter, is at least 1.05.~~



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Justification: The required structuring of Direct Loan funds at an interest rate in excess of 3%, in conjunction with a 30-year amortization does not provide a meaningful benefit to transactions and results in a missed opportunity to fortify transactions in need of favorable financing. Further, the requirement for cash flow loans to meet a 1.15 DCR eliminates the benefit of a cash flow loan. TAAHP recommends changes to create a source of financing that provides a benefit compared to conventional loan financing. To the extent that TDHCA utilizes a higher interest rate to generate income, an alternative approach of requiring an origination fee could be utilized.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP committee are happy to meet with your staff in order to discuss these recommendations more fully.

Thank you for your service to Texas.

Sincerely,

Frank Jackson
Executive Director

cc: Tim Irvine – TDHCA Executive Director
Brent Stewart – TDHCA Director of Real Estate Analysis
TAAHP Membership

Exhibit A – Revisions to Undesirable Neighborhood Characteristics

(3) Undesirable Neighborhood Characteristics.

- (A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.
- (B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued

improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

~~(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.~~

~~(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.~~

(iv) The Development Site is located within the attendance zones of an elementary school, ~~a middle school or a high school~~ that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), ~~middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.~~ Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation or single room occupancy sites ~~is-are~~ considered exempt and ~~does~~ not have to disclose the presence of this characteristic.

[Note: Include choice district or charter school concept in mitigation.]

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent

- changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;
- (ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;
 - (iii) An assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;
 - (iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;
 - (v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;
 - (vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;
 - (vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and
 - (viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.
- (D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.
- (i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, , evidence of gentrification in the area which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.
 - ~~(ii) Evidence that crime rates are decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016~~

~~calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.~~

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

~~(iii)~~ (iii) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan, or evidence that a charter school nearby has a Met Standard rating, or that students at the site will have a choice to attend a school within 2 miles of the site with a Met Standard Rating. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) - (iii) of this subparagraph.

- (i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; and
- (ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.; or
- (iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics on the basis that the Development is ~~necessary~~ important to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order ~~and such documentation is submitted with the disclosure.~~

Exhibit B



TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

June 16, 2017

TDHCA
Tim Irvine
Executive Director
221 East 11th Street
Austin, TX 78701

Hand Delivered

Dear Mr. Irvine,

TAAHP strongly opposes any changes to **10 TAC §10.101(b)(8)(B)** that would require housing tax credits to be used for additional visitability modifications. Texas already has very rigorous accessibility and visitability standards, and the proposed additional requirements will strain the financial feasibility of Low Income Housing Tax Credit (LIHTC) developments.

The federal government’s accessibility standards provide for adaptability and accessibility for people with disabilities. The Fair Housing Act (FHA) requires covered apartments to be adaptable, and Section 504 of the Rehabilitation Act of 1973 requires 5% of units to be accessible to a person using a wheelchair. The state’s already more restrictive requirement mandates that 20% of FHA-exempt units (e.g., townhomes) have an adaptable bathroom on the ground floor. In this respect, Texas is already going above and beyond federal accessibility requirements.

The new draft visitability rule is onerous for both developments with apartments covered by the FHA and for those with a high percentage of exempt units. For apartments covered by the FHA, adding the requirement for grab bars may seem possible at a nominal cost, but the cost can be significant for larger developments with 200-300 units. Additionally, adding grab bars lends an institutional feel that makes apartments feel like a hospital or nursing home. Grab bars hinder the marketability of apartments which must compete in a marketplace where grab bars are very uncommon. While requiring grab bars on a senior deal makes some sense, requiring grab bars in every unit of a family deal is wasteful and unwise.

For a development that contains a high percentage of FHA-exempt units, this proposed rule will drive up costs unnecessarily. The costs of building or modifying units to comply with the proposed bathroom requirements will threaten the financial feasibility of developments by increasing the costs associated with the square footage of a development. Many construction costs, including roofing and framing, are bid out based on square footage; therefore, enlarging the size of each unit by even a small amount can dramatically impact the overall cost of construction.

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Tropicana Building Corp

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CommunityBank of Texas

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Credit Equity Group*

DAVID KOOGLER
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Novogradac & Company LLP

JUSTIN MACDONALD
MacDonald Companies

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Tidwell Group

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Alternatively, if the developer chooses not to increase the overall size of the apartments, they will be less marketable because the larger bathrooms required will result in smaller living spaces. Additionally, the costs associated with ensuring that all ground floor and elevator-accessed units have accessible paths to common-use areas will be extremely high. Texas has diverse topography, and oftentimes LIHTC developments are built on sites with varying elevations and land features. Under the proposed rule change, modifications meant to be simple, such as wheelchair ramps, could become infeasible simply because the land is not flat.

Finally, tightening visitability standards now in the midst of a very volatile market without providing additional credits will widen the gap in financing that developers are already trying hard to close. Developers of both new construction and rehab developments are trying to put deals together with a lot of unknowns, and adding additional, unnecessary costs to deals will cause some to fail. There is no good reason for TDHCA to take actions that threaten the feasibility of affordable housing.

To conclude, as currently proposed the draft visitability rule will create an economic hardship for developers in the LIHTC program. The financial ramifications of this rule will put both new construction and rehab deals in jeopardy of not penciling out, and will result in diverting tax credits from their purpose of building more units to making burdensome construction modifications. While we agree that visitability is important, this draft rule goes too far and does not serve the best interest of Texans. We strongly oppose any changes that will increase Texas' already stringent visitability requirements for LIHTC developments and would be happy to discuss our concerns with you.

Thank you,

Frank Jackson
Executive Director

Exhibit C – Opportunity Index Comments

1. **Add 4th quartile to (4)(A)(ii).** We believe that this will help identify those areas that are gentrifying, but whose demographics may not have caught up to the conditions in the area:
(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third or fourth quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points).
2. **Items agreed upon at the TAAHP QAP meeting:**
 - a. delete accessible route requirement for playground
 - b. delete accessible route requirement to public transportation
 - c. delete crime statistics and use of neighborhood scout
 - d. delete associate's degrees item
 - e. decoupling grocery store and pharmacy – to become two individual items
3. **New Amenities for Consideration: (one mile urban/four mile rural to mirror existing distances)**
 - a. Restaurant – Full Service and Fast Casual
 - b. Public Library – needs defining, but not a Christian Science Reading Room – must be owned/operated by the municipality
 - c. General Purpose retail store – to be defined, but Dollar General, WalMart, Target type
 - d. Dentist Office
 - e. Official US Post Office (not FedEx type with PO Box)
4. **Language Changes**
 - a. Multi-use facilities. For places like a Super HEB that will have grocery, pharmacy, and bank, we don't see why it could not count for multiple categories. The most important thing is that the services are available – not that they be in different buildings.

(B) An application that meets the foregoing criteria may qualify for additional points (for a maximum of seven (7) points) for any one or more of the following factors. ~~Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:~~
 - b. (4)(B)(i)(IV) – Health Facility
(IV) The Development is located within 3 miles of a health-related facility, such as a general practitioner or primary care physician office, full service hospital, community

health center, minor emergency center, emergency room or urgent care facility.
Physician specialty offices are not considered in this category. (1 point)

- c. If we can't get rid of Neighborhoodscout, we would like to set a date by which it should be used so that it will not change from pre to full app. We are proposing Sept 1, but it could go up to December 1.

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local data sources. Neighborhoodscout information will be what is published as of September 1 2017. (1 point)

- d. Addition of technical/vocational schools:

(VIII) The Development Site is located within 5 miles of a University, or Community College, or technical/vocational school campus. To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. Technical/vocational schools must be accredited by the Accrediting Commission of Career Schools and Colleges (ACCSC). Universities, and Community Colleges, and technical/vocational schools must have a physical location within the required distance; online-only institutions do not qualify under this item. (1 point)

- e. (4)(B)(i)(IX) – Associate's Degree: We request TDHCA do research as to whether this caused clustering of applications before its continued use. We also request TDHCA determine whether this item should be different for rural and urban areas.

If this is kept as an item, we suggest the following.

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as reflected in the 2018 HTC Site Demographic Characteristics Report (based on tabulated by the 2010-2014 American Community Survey 5-year Estimate). (1 point)

- f. The Development Site is located less than ½ mile from Public Transportation. We have a question to TDHCA regarding weekend service. In the event that the city as a whole only has a single weekend day or no weekend service, should a development still get public transportation points? If a site it no worse off that a site in another part of the city is that okay? Or is TDHCA's intent to drive development to cities have weekend service?

- g. Museums: we recommend elimination of this item. We believe that the items in this category should be those that will be used on a regular basis by a resident.

~~(IX) Development site is within 4 miles of a museum that is a government sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)~~

5. Definitions

We believe that several items in this section need more specific definitions, and that the Application Manual should also be revised to include examples of what TDHCA will accept as proof. Specifically:

- a. Indoor Recreation Facility
- b. Outdoor Recreation Facility
- c. Public Park
- d. Public Library
- e. Weekend Service for transportation
- f. If Museums is not removed, then Museums

6. Additional Quantitative Items to Consider

We think that there are some additional quantitative items that TDHCA should research and consider:

- a. Population increase for census tract or city: While we don't have a specific recommendation on how to implement this, we believe that in-migration in to an area is an indicator of a healthy community.
- b. Availability of jobs within the census tract: Again, we would leave this to TDHCA to develop, but believe that the availability of a diversity of jobs is an important consideration for our residents.

7. General Statement Regarding This Scoring Item

In our deliberations we had lingering questions about the intent and actual result of this scoring item. It seems to have taken on dual roles -- quantitative measures of HOA and available services for tenants. We question whether this should be broken into two scoring categories to allow for each to be more fully explored.

2012 Affordable Housing Needs Score Methodology

Background

The AHNS scoring criterion has been used to evaluate HOME, Housing Tax Credit (HTC), and Housing Trust Fund (HTF) applications. The formula is submitted annually for public comment. The final version is published in the SLIHP.

While not specifically legislated by the state, the AHNS has historically helped to address other need based funding allocation requirements by responding to:

- an IRS Section 42 requirement that the selection criteria used to award the HTC funding must include “housing needs characteristics.”
- State Auditor’s Office (SAO) and Sunset findings that called for the use of objective, need based criteria to award TDHCA’s funding.

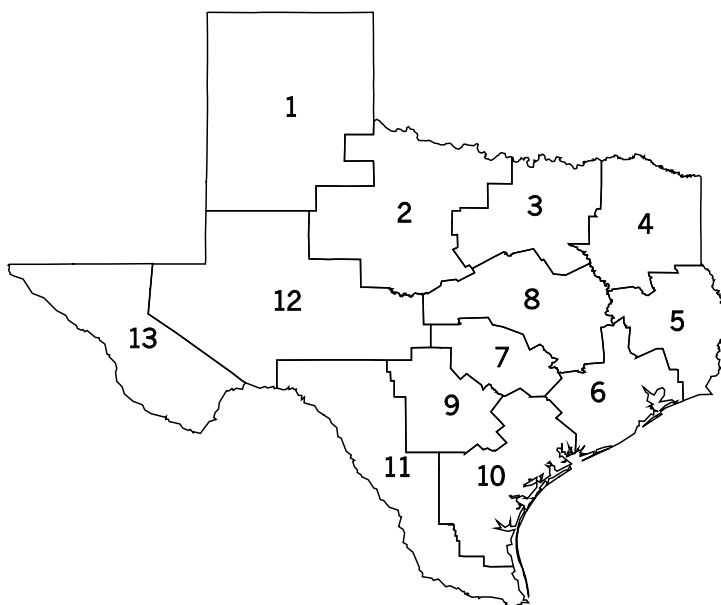


Figure 1. State Service Regions

The AHNS is an extension of the TDHCA

Regional Allocation Formula (RAF) in that it provides a comparative assessment of each area’s level of need relative to the other areas within its State Service Region. Through the AHNS, TDHCA is encouraged to request funding to serve communities that have a high level of need.

The HOME, HTF, and HTC programs use slightly modified versions of the AHNS because of different eligible activities, households, and geographical areas. Under §2306.111(c) of the Texas Code, at least 95 percent of HOME funding is set aside for non-participating jurisdictions. The HOME AHNS only uses need data for non-participating jurisdictions.

Add to consideration:
 *Extreme cost burden (give additional weight over just cost burden)
 *housing condition
 *ratio of renter to owner vs. region average
 *overcrowding

change to 60% AMFI to match program

Methodology

The following steps measure each area’s level of affordable housing need.

- 1) The Census number of households at or below 80% AMFI with cost burden establishes baseline for each area’s number of households in need of housing assistance. The type of household considered for this baseline varies by activity.
 - a) Renter data is used for the rental development (RD), tenant based rental assistance (TBRA), and down payment assistance (DPA) scores.
 - b) Owner data is used for the owner occupied rehabilitation (OCC) score.
- 2) For each activity, an adjusted number of households with cost burden is calculated based on the difference between the area’s population in the 2000 Census and the most accurate and recent population estimate data available.
- 3) The number of households assisted using TDHCA funding since the 2000 Census was taken (April 1, 2000) is subtracted from the adjusted number of households with cost burden. The resulting number shows the area’s estimated remaining need.
 - a) For HTC scores, RD activity is used;
 - b) For HOME and HTF TBRA and RD scores, TBRA¹ and RD activity is used;

¹ Because of the limited duration of TBRA, a conversion factor was used to equate the value of a voucher to an affordable housing unit. This factor equaled the voucher duration divided by the number of years since the Census. For 2011, this is 2 years/10 years or an approximate reduction in the number of households in need by 25 percent for each TBRA voucher.

- c) For HOME and HTF DPA scores, First Time Homebuyer and HOME DPA activity is used; and
 - d) For HOME and HTF OCC scores, HOME OCC activity is used.
- 4) The estimated remaining need measure is used to quantify the area's level of need for each scoring activity as measured by the ratio of the area's households in need to the area's total households. This ratio shows the concentration of need within an area.
 - 5) A sliding scale that compares each area's level of need to the region's other areas is used to assign points to each area based on its relative concentration of need (maximum of 6 points).

Rural and Urban Need

Section 2306.111(d) of the Government Code requires the RAF to consider rural and urban areas in its distribution of funds. To assist with this distribution, each area is classified using the RAF's geographic area definitions.

The RAF and AHNS use the following definitions to categorize rural and urban areas.

1. Area - The geographic area contained within the boundaries of:
 - a. an incorporated place, or
 - b. a Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census.
2. Rural – ~~An Area~~ Update per latest definition of Rural
 - a. outside a metropolitan statistical area (MSA); or
 - b. within the boundaries of a MSA, if the Area has a population of 25,000 or less² and does not share a boundary with an Urban Area.³
 - c. in an Area that is eligible for funding by the Texas Rural Development Office of the United States Department of Agriculture, other than an Area that is located in a municipality with a population of more than 50,000.⁴
3. Urban – An Area that:
 - a. is located within the boundaries of a metropolitan statistical area (MSA); or
 - b. does not meet the Rural Area definition.

For the HOME program, a county score is used for activities that will serve more than one Area within a county. If multiple counties or Areas in multiple counties will be served by an application, then the county scores will be averaged. Participating Jurisdictions (PJ) receive a score of zero.

² The definition of "population" in state law (Sec. 311.005(3), Government Code) is "the population shown by the most recent federal decennial census." Because of this requirement, the decennial census place population must be used to make the area type determination.

³ Applicants may petition TDHCA to update the "Rural" designation of an incorporated area within a metropolitan statistical area by providing a letter from a local official. Such letter must clearly indicate that the area's incorporated boundary touches the boundary of another incorporated area with a population of over 25,000. To treat all applicants equitably, such letter must be provided to TDHCA prior to the commencement of the pre-application submission period for HTC applications, or application submission period for HOME applications.

⁴ TDHCA utilizes the most recent list of designated places produced by the Texas USDA Rural Development State Office. Applicants may petition TDHCA to update the "Rural" designation of a development's location by providing a letter from a USDA Rural Development official clearly stating that the area is eligible for funding by USDA Rural Development. To treat all applicants equitably, such letter must be provided to TDHCA prior to the commencement of the pre-application submission period for HTC applications, or application submission period for HOME applications.

Exhibit A – Revisions to Undesirable Neighborhood Characteristics

(3) Undesirable Neighborhood Characteristics.

- (A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.
- (B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued

improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

~~(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.~~

~~(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.~~

(iv) The Development Site is located within the attendance zones of an elementary school, ~~a middle school or a high school~~ that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), ~~middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.~~ Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation or single room occupancy sites ~~is-are~~ considered exempt and ~~does~~ not have to disclose the presence of this characteristic.

[Note: Include choice district or charter school concept in mitigation.]

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent

- changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;
- (ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;
 - (iii) An assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;
 - (iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;
 - (v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;
 - (vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;
 - (vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and
 - (viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.
- (D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.
- (i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, , evidence of gentrification in the area which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.
 - ~~(ii) Evidence that crime rates are decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016~~

~~calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.~~

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

~~(iii)~~ (iii) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan, or evidence that a charter school nearby has a Met Standard rating, or that students at the site will have a choice to attend a school within 2 miles of the site with a Met Standard Rating. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) - (iii) of this subparagraph.

- (i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; and
- (ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.; or
- (iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics on the basis that the Development is ~~necessary~~ important to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order ~~and such documentation is submitted with the disclosure.~~

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TAAHP strongly opposes any changes to **10 TAC §10.101(b)(8)(B)** that would require housing tax credits to be used for additional visitability modifications. Texas already has very rigorous accessibility and visitability standards, and the proposed additional requirements will strain the financial feasibility of Low Income Housing Tax Credit (LIHTC) developments.

The federal government’s accessibility standards provide for adaptability and accessibility for people with disabilities. The Fair Housing Act (FHA) requires covered apartments to be adaptable, and Section 504 of the Rehabilitation Act of 1973 requires 5% of units to be accessible to a person using a wheelchair. The state’s already more restrictive requirement mandates that 20% of FHA-exempt units (e.g., townhomes) have an adaptable bathroom on the ground floor. In this respect, Texas is already going above and beyond federal accessibility requirements.

The new draft visitability rule is onerous for both developments with apartments covered by the FHA and for those with a high percentage of exempt units. For apartments covered by the FHA, adding the requirement for grab bars may seem possible at a nominal cost, but the cost can be significant for larger developments with 200-300 units. Additionally, adding grab bars lends an institutional feel that makes apartments feel like a hospital or nursing home. Grab bars hinder the marketability of apartments which must compete in a marketplace where grab bars are very uncommon. While requiring grab bars on a senior deal makes some sense, requiring grab bars in every unit of a family deal is wasteful and unwise.

For a development that contains a high percentage of FHA-exempt units, this proposed rule will drive up costs unnecessarily. The costs of building or modifying units to comply with the proposed bathroom requirements will threaten the financial feasibility of developments by increasing the costs associated with the square footage of a development. Many construction costs, including roofing and framing, are bid out based on square footage; therefore, enlarging the size of each unit by even a small amount can dramatically impact the overall cost of construction.

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Alternatively, if the developer chooses not to increase the overall size of the apartments, they will be less marketable because the larger bathrooms required will result in smaller living spaces. Additionally, the costs associated with ensuring that all ground floor and elevator-accessed units have accessible paths to common-use areas will be extremely high. Texas has diverse topography, and oftentimes LIHTC developments are built on sites with varying elevations and land features. Under the proposed rule change, modifications meant to be simple, such as wheelchair ramps, could become infeasible simply because the land is not flat.

Finally, tightening visitability standards now in the midst of a very volatile market without providing additional credits will widen the gap in financing that developers are already trying hard to close. Developers of both new construction and rehab developments are trying to put deals together with a lot of unknowns, and adding additional, unnecessary costs to deals will cause some to fail. There is no good reason for TDHCA to take actions that threaten the feasibility of affordable housing.

To conclude, as currently proposed the draft visitability rule will create an economic hardship for developers in the LIHTC program. The financial ramifications of this rule will put both new construction and rehab deals in jeopardy of not penciling out, and will result in diverting tax credits from their purpose of building more units to making burdensome construction modifications. While we agree that visitability is important, this draft rule goes too far and does not serve the best interest of Texans. We strongly oppose any changes that will increase Texas' already stringent visitability requirements for LIHTC developments and would be happy to discuss our concerns with you.

Thank you,

Frank Jackson
Executive Director

Exhibit C – Opportunity Index Comments

1. **Add 4th quartile to (4)(A)(ii).** We believe that this will help identify those areas that are gentrifying, but whose demographics may not have caught up to the conditions in the area:
(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third or fourth quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points).
2. **Items agreed upon at the TAAHP QAP meeting:**
 - a. delete accessible route requirement for playground
 - b. delete accessible route requirement to public transportation
 - c. delete crime statistics and use of neighborhood scout
 - d. delete associate's degrees item
 - e. decoupling grocery store and pharmacy – to become two individual items
3. **New Amenities for Consideration: (one mile urban/four mile rural to mirror existing distances)**
 - a. Restaurant – Full Service and Fast Casual
 - b. Public Library – needs defining, but not a Christian Science Reading Room – must be owned/operated by the municipality
 - c. General Purpose retail store – to be defined, but Dollar General, WalMart, Target type
 - d. Dentist Office
 - e. Official US Post Office (not FedEx type with PO Box)
4. **Language Changes**
 - a. Multi-use facilities. For places like a Super HEB that will have grocery, pharmacy, and bank, we don't see why it could not count for multiple categories. The most important thing is that the services are available – not that they be in different buildings.

(B) An application that meets the foregoing criteria may qualify for additional points (for a maximum of seven (7) points) for any one or more of the following factors. ~~Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:~~
 - b. (4)(B)(i)(IV) – Health Facility
(IV) The Development is located within 3 miles of a health-related facility, such as a general practitioner or primary care physician office, full service hospital, community

health center, minor emergency center, emergency room or urgent care facility.
Physician specialty offices are not considered in this category. (1 point)

- c. If we can't get rid of Neighborhoodscout, we would like to set a date by which it should be used so that it will not change from pre to full app. We are proposing Sept 1, but it could go up to December 1.

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local data sources. Neighborhoodscout information will be what is published as of September 1 2017. (1 point)

- d. Addition of technical/vocational schools:

(VIII) The Development Site is located within 5 miles of a University, or Community College, or technical/vocational school campus. To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. Technical/vocational schools must be accredited by the Accrediting Commission of Career Schools and Colleges (ACCSC). Universities, and Community Colleges, and technical/vocational schools must have a physical location within the required distance; online-only institutions do not qualify under this item. (1 point)

- e. (4)(B)(i)(IX) – Associate's Degree: We request TDHCA do research as to whether this caused clustering of applications before its continued use. We also request TDHCA determine whether this item should be different for rural and urban areas.

If this is kept as an item, we suggest the following.

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as reflected in the 2018 HTC Site Demographic Characteristics Report (based on ~~tabulated by the 2010~~ 2011-2014 American Community Survey 5-year Estimate). (1 point)

- f. The Development Site is located less than ½ mile from Public Transportation. We have a question to TDHCA regarding weekend service. In the event that the city as a whole only has a single weekend day or no weekend service, should a development still get public transportation points? If a site it no worse off that a site in another part of the city is that okay? Or is TDHCA's intent to drive development to cities have weekend service?

- g. Museums: we recommend elimination of this item. We believe that the items in this category should be those that will be used on a regular basis by a resident.

~~(IX) Development site is within 4 miles of a museum that is a government sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)~~

5. Definitions

We believe that several items in this section need more specific definitions, and that the Application Manual should also be revised to include examples of what TDHCA will accept as proof. Specifically:

- a. Indoor Recreation Facility
- b. Outdoor Recreation Facility
- c. Public Park
- d. Public Library
- e. Weekend Service for transportation
- f. If Museums is not removed, then Museums

6. Additional Quantitative Items to Consider

We think that there are some additional quantitative items that TDHCA should research and consider:

- a. Population increase for census tract or city: While we don't have a specific recommendation on how to implement this, we believe that in-migration in to an area is an indicator of a healthy community.
- b. Availability of jobs within the census tract: Again, we would leave this to TDHCA to develop, but believe that the availability of a diversity of jobs is an important consideration for our residents.

7. General Statement Regarding This Scoring Item

In our deliberations we had lingering questions about the intent and actual result of this scoring item. It seems to have taken on dual roles -- quantitative measures of HOA and available services for tenants. We question whether this should be broken into two scoring categories to allow for each to be more fully explored.

2012 Affordable Housing Needs Score Methodology

Background

The AHNS scoring criterion has been used to evaluate HOME, Housing Tax Credit (HTC), and Housing Trust Fund (HTF) applications. The formula is submitted annually for public comment. The final version is published in the SLIHP.

While not specifically legislated by the state, the AHNS has historically helped to address other need based funding allocation requirements by responding to:

- an IRS Section 42 requirement that the selection criteria used to award the HTC funding must include “housing needs characteristics.”
- State Auditor’s Office (SAO) and Sunset findings that called for the use of objective, need based criteria to award TDHCA’s funding.

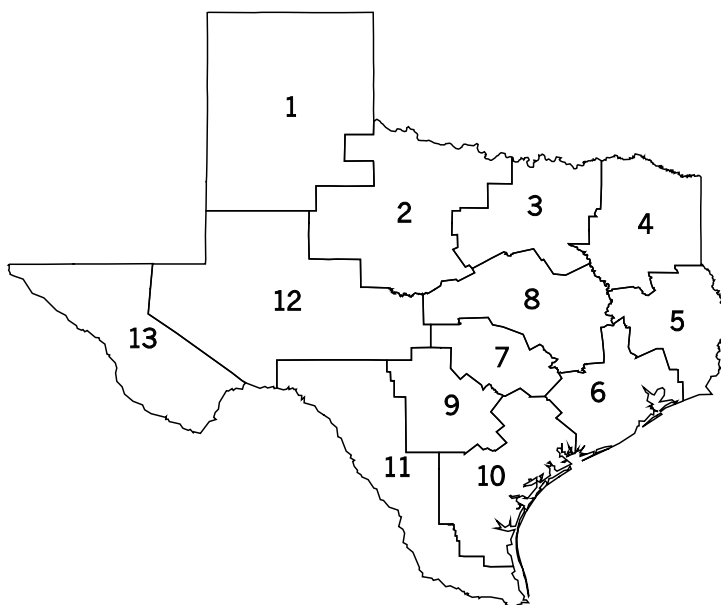


Figure 1. State Service Regions

The AHNS is an extension of the TDHCA

Regional Allocation Formula (RAF) in that it provides a comparative assessment of each area’s level of need relative to the other areas within its State Service Region. Through the AHNS, TDHCA is encouraged to request funding to serve communities that have a high level of need.

The HOME, HTF, and HTC programs use slightly modified versions of the AHNS because of different eligible activities, households, and geographical areas. Under §2306.111(c) of the Texas Code, at least 95 percent of HOME funding is set aside for non-participating jurisdictions. The HOME AHNS only uses need data for non-participating jurisdictions.

Add to consideration:
 *Extreme cost burden (give additional weight over just cost burden)
 *housing condition
 *ratio of renter to owner vs. region average
 *overcrowding

change to 60% AMFI to match program

Methodology

The following steps measure each area’s level of affordable housing need.

- 1) The Census number of households at or below 80% AMFI with cost burden establishes baseline for each area’s number of households in need of housing assistance. The type of household considered for this baseline varies by activity.
 - a) Renter data is used for the rental development (RD), tenant based rental assistance (TBRA), and down payment assistance (DPA) scores.
 - b) Owner data is used for the owner occupied rehabilitation (OCC) score.
- 2) For each activity, an adjusted number of households with cost burden is calculated based on the difference between the area’s population in the 2000 Census and the most accurate and recent population estimate data available.
- 3) The number of households assisted using TDHCA funding since the 2000 Census was taken (April 1, 2000) is subtracted from the adjusted number of households with cost burden. The resulting number shows the area’s estimated remaining need.
 - a) For HTC scores, RD activity is used;
 - b) For HOME and HTF TBRA and RD scores, TBRA¹ and RD activity is used;

¹ Because of the limited duration of TBRA, a conversion factor was used to equate the value of a voucher to an affordable housing unit. This factor equaled the voucher duration divided by the number of years since the Census. For 2011, this is 2 years/10 years or an approximate reduction in the number of households in need by 25 percent for each TBRA voucher.

- c) For HOME and HTF DPA scores, First Time Homebuyer and HOME DPA activity is used; and
 - d) For HOME and HTF OCC scores, HOME OCC activity is used.
- 4) The estimated remaining need measure is used to quantify the area's level of need for each scoring activity as measured by the ratio of the area's households in need to the area's total households. This ratio shows the concentration of need within an area.
 - 5) A sliding scale that compares each area's level of need to the region's other areas is used to assign points to each area based on its relative concentration of need (maximum of 6 points).

Rural and Urban Need

Section 2306.111(d) of the Government Code requires the RAF to consider rural and urban areas in its distribution of funds. To assist with this distribution, each area is classified using the RAF's geographic area definitions.

The RAF and AHNS use the following definitions to categorize rural and urban areas.

1. Area - The geographic area contained within the boundaries of:
 - a. an incorporated place, or
 - b. a Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census.
2. Rural – ~~An Area~~ Update per latest definition of Rural
 - a. outside a metropolitan statistical area (MSA); or
 - b. within the boundaries of a MSA, if the Area has a population of 25,000 or less² and does not share a boundary with an Urban Area.³
 - c. in an Area that is eligible for funding by the Texas Rural Development Office of the United States Department of Agriculture, other than an Area that is located in a municipality with a population of more than 50,000.⁴
3. Urban – An Area that:
 - a. is located within the boundaries of a metropolitan statistical area (MSA); or
 - b. does not meet the Rural Area definition.

For the HOME program, a county score is used for activities that will serve more than one Area within a county. If multiple counties or Areas in multiple counties will be served by an application, then the county scores will be averaged. Participating Jurisdictions (PJ) receive a score of zero.

² The definition of "population" in state law (Sec. 311.005(3), Government Code) is "the population shown by the most recent federal decennial census." Because of this requirement, the decennial census place population must be used to make the area type determination.

³ Applicants may petition TDHCA to update the "Rural" designation of an incorporated area within a metropolitan statistical area by providing a letter from a local official. Such letter must clearly indicate that the area's incorporated boundary touches the boundary of another incorporated area with a population of over 25,000. To treat all applicants equitably, such letter must be provided to TDHCA prior to the commencement of the pre-application submission period for HTC applications, or application submission period for HOME applications.

⁴ TDHCA utilizes the most recent list of designated places produced by the Texas USDA Rural Development State Office. Applicants may petition TDHCA to update the "Rural" designation of a development's location by providing a letter from a USDA Rural Development official clearly stating that the area is eligible for funding by USDA Rural Development. To treat all applicants equitably, such letter must be provided to TDHCA prior to the commencement of the pre-application submission period for HTC applications, or application submission period for HOME applications.



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August 25, 2017

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Goodwin & Members of the Board:

On June 27, 2017, the QAP Committee of the Texas Affiliation of Affordable Housing Providers (TAAHP) submitted several recommendations for modifications to the 2018 Multifamily Program Rules, as well as the Qualified Allocation Plan (QAP) and the Underwriting and Loan Policy. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

On August 11, 2017, TDHCA staff issued a draft QAP, but has yet to release the draft Multifamily Program Rules. This letter reviews certain areas of the QAP where TAAHP members have comments or concerns. This letter also reviews several TAAHP recommendations made in the June 27, 2017 letter that were not incorporated into the draft QAP. I will attempt to keep these comments focused on the larger policy issues for purposes of the discussion today, as opposed to the more technical issues which TAAHP can comment on during the public comment period. TAAHP will make further comment on the Multifamily Program Rules, once the draft is published.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on May 31, 2017 and in subsequent subcommittee meetings. With those comments as an introduction, please consider the following recommendations, which should be considered in conjunction with our prior comments submitted to you on May 12, 2017 and June 27, 2017, with regard to specific provisions of the rules:

Qualified Allocation Plan

As one global comment, there are several instances where staff is inserting its right to terminate applications that perhaps lose a tie breaker based on the two-mile rule, or based on whether it is adjacent to a same type tax credit development. TAAHP membership understand why staff will not review non-priority applications, but does not understand TDHCA's desire to be able to terminate these applications. TAAHP members feel strongly that these applications should be allowed to go to the waitlist as opposed to being terminated.

Section 11.2 Program Calendar. While we understand the policy behind moving the date up for submission of Third Party Requests for Administrative Deficiency (avoiding an onslaught of challenges late in the review process), TAAHP members simply do not feel like an earlier date is realistic given the amount of work that it takes to prepare these requests. Further, this date change may actually cause the number of requests to increase as challengers will have to make these requests on applications before staff even has a chance to complete the review.

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Section 11.4(a). Credit Amounts

TAAHP members are confused about the policy behind the exclusion of consultants, regardless of the amount of paid developer fee they receive, from the cap. If the policy is to discourage cap violations, this rule should revert to its old language with the cap on consultants' fees firmly in place.

Section 11.7 Tie Breaker Factors

TAAHP members are concerned that inserting poverty rate as a tie breaker creates two dynamics that are negative for the program. The first is that a census tract-based number creates a scenario where developers are finding multiple sites in smaller communities in the same census tract. This creates upward pressure on land prices and discourages city governments from issuing resolutions of support. The second is that this tie breaker disadvantages urban areas. While the urban core points are helpful in reversing the program's recent trend of favoring suburbs, this is a prominent tie breaker that incentivizes developers to choose sites in more remote areas that have low poverty rates.

With regard to the new tie breaker that involves two times per capita, TAAHP is not opposed to adding this as a tie breaker; however, the QAP committee consensus is to tweak this so that an application in a municipality that is under the two times per capita limit beats an application that is over the two times per capita limit. When both applications are either both under or both over the two times per capita limit, the tie is decided by the distance to the closest tax credit development, which is the last tie breaker.

Section 11.9(b)(4) Opportunity Index

TAAHP formed a subcommittee for this scoring item alone because it is of such critical importance to the selection of good sites. We offered several recommendations in our June 27, 2017 letter that were not incorporated into the draft. In regard to the draft, TAAHP's additional comments on this scoring item involve bifurcating the park from the playground, and perhaps adding a separate scoring item for a non-accessible playground for 1 point as an alternative to 2 points for a fully accessible playground. TAAHP members also feel strongly that the accessible route concept should be removed from this scoring item because it caused so much controversy and used so much staff and applicant time during last year's round.

Section 11.9(b)(5) Underserved Area

In our June 27th letter, we included several ideas to re-work this scoring category and added a new scoring category that would be complementary to this one. With regard to Underserved, TAAHP recommends deleting subsections (C), (D), and (E) because they consistently result in a clustering of applications that only serves to drive up the cost of land in those areas.

The two new concepts that TAAHP recommends for consideration are: 1) re-introducing a scoring category reflecting a need score, similar to the needs score which was included in the 2012 QAP; and 2) introducing a point disincentive for applications within places with populations less than 75,000 that received a 9% tax credit award in the previous cycle, regardless of the target population. This point disincentive would not

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apply to applications competing in the at-risk set aside, nor would at-risk developments awarded in the previous application round result in a point loss for new construction deals in cities of 75,000 people or fewer.

Reintroducing needs score will result in tax credit awards in places with the strongest markets, and is a much better barometer than rewarding census tracts solely because they have never had a tax credit award before. Often those census tracts have not had a tax credit award because there is insufficient population or infrastructure to support it. We have attached a prior needs score methodology with our proposed changes.

Introducing a point disincentive for smaller cities that have already been served creates more dispersion by allowing other markets a chance to compete for valuable tax credits. TAAHP believes that this is a better way to achieve dispersion than rewarding often remote census tracts that have never had a tax credit award.

Section 11.9(b)(7) Proximity to the Urban Core

TAAHP fully supports the proposed changes to this scoring item that are contained in the draft.

Section 11.9(d)(7) Concerted Revitalization Plan.

In our June 27th letter, TAAHP recommended creating a “safe harbor” provision for larger jurisdictions with populations of 150,000 people or more. In those cases, an applicant must submit a letter from the jurisdiction along with their pre-application in which the City identifies certain areas that it considers to be a “Concerted Revitalization Planning Area.” These areas must be defined in the letter with boundaries and an accompanying map. If an applicant submits this letter with its pre-application, and then later submits a full application for a site that is contained within one of the areas, the application is awarded 4 points under the Concerted Revitalization Plan scoring category without having to meet any other requirement. If the applicant does not submit the City letter with the pre-application or if the applicant is within a jurisdiction with a population of less than 150,000, the applicant can obtain 4 points for this scoring category by meeting the requirements of the 2017 rule.

As a comment to the recent draft, TAAHP would like the new requirement that the plan extend three years be deleted.

Section 11.9(e)(1) Financial Feasibility

There is a new aspect to this scoring item that TAAHP members oppose. While we understand the positive policy concern driving this change, we believe it will create some gray areas that may lead to problems such as the problem of determining exactly what a “firm commitment” is, and the timing problem of not being able to secure “firm” letters prior to submission of a tax credit application. There are also concerns about enforcement of the commitment to begin construction by Carryover, and implementation of award of bonus point to next year’s deals.

Section 11.9(e)(3) Cost of Development per Square Foot

In our June 27th letter, TAAHP recommended a simple increase factor of 15% for each dollar figure cited in the scoring criteria in the 2017 QAP and that the concept of NRA be

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replaced by gross square footage. The staff drafts did not make these changes, so we submit them again for consideration. In terms of the recent draft, TAAHP members have serious concerns over the change to the Adaptive Reuse or Rehabilitation provisions. Consensus was that the cost limits were too low.

Section 11.9(e)(4) Leveraging of Private, State and Federal Resources

In our June 27th letter, TAAHP recommended a simple revision, which reflected a one percentage point increase for each scoring category. The staff draft did not include this change, so we submit it again for consideration.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP Committee are happy to meet with your staff in order to discuss these recommendations more fully.

Thank you for your service to Texas.

Sincerely,

Frank Jackson
Executive Director

cc: Tim Irvine – TDHCA Executive Director
Brent Stewart – TDHCA Director of Real Estate Analysis
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QUALIFIED ALLOCATION PLAN AND MULTIFAMILY RULES COMMITTEE
COMMITTEE REPORT
SEPTEMBER 6, 2017

Discussion of education as a threshold item resulting from recently enacted legislation

House Bill 3574 amended language in Tex. Gov't Code §2306.6710(a) as follows:

(a) In evaluating an application, the department shall determine whether the application satisfies the threshold criteria required by the board in the qualified allocation plan. Educational Quality may be considered by the department as part of the threshold criteria but shall not be considered by the department as a scoring factor. The department shall reject and return to the applicant any application that fails to satisfy the threshold criteria.

(b) Effective September 1, 2019, Section 2306.6710(a), Government Code, is amended to read as follows:

(a) In evaluating an application, the department shall determine whether the application satisfies the threshold criteria required by the board in the qualified allocation plan. The department shall reject and return to the applicant any application that fails to satisfy the threshold criteria.

SECTION 2. The change in law made by this Act applies only to an application for low income housing tax credits that is submitted to the Texas Department of Housing and Community Affairs during an application cycle that is based on the 2018 qualified allocation plan or a subsequent plan adopted by the governing board of the department under Section 2306.67022, Government Code. An application that is submitted during an application cycle that is based on an earlier qualified allocation plan is governed by the law in effect on the date the application cycle began, and the former law is continued in effect for that purpose.

SECTION 3. Not later than September 1, 2019, the department shall report the outcome of considering Educational Quality in threshold and not as a scoring factor in an application.

SECTION 4. Except as otherwise provided by this Act, this Act takes effect September 1, 2017.

In response to this legislation, staff has removed the Educational Quality scoring item from the Qualified Allocation Plan, and from the tie breakers. In order to comply with Section 3 of the bill, applicants will continue to be required to supply information regarding school scoring in their applications, so that data will be available to compile the required report.