ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 7. TEXAS FINANCIAL EDUCATION ENDOWMENT FUND

7 TAC §§7.101, 7.103 - 7.105

The Finance Commission of Texas (commission) adopts amendments to §7.101 (relating to Applicability and Purpose), §7.103 (relating to TFEE Grant Program), §7.104 (relating to TFEE Gifts and Donations), and §7.105 (relating to TFEE Fund Management) in 7 TAC Chapter 7, concerning Texas Financial Education Endowment Fund.

The commission adopts the amendments to §§7.101, 7.103, 7.104, and 7.105 without changes to the proposed text as published in the November 8, 2024, issue of the *Texas Register* (49 TexReg 8812). The amended rules will not be republished.

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 7 govern the Texas Financial Education Endowment (TFEE). The Texas Legislature established TFEE in 2011, in order to support statewide financial education and consumer credit building activities and programs. The commission and the OCCC have established a grant program to promote the purposes of TFEE.

In general, the purpose of the rule changes to 7 TAC Chapter 7 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 7 was published in the *Texas Register* on August 2, 2024 (49 TexReg 5783). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review. The OCCC received no informal precomments on the rule text draft.

The Texas Legislature passed SB 1371 in the 2023 regular legislative session. SB 1371 modernized, clarified, and corrected provisions of the Texas Finance Code administered by the OCCC. In particular, SB 1371 relocated and amended the statutory provision that establishes TFEE. SB 1371 relocated this section from previous Texas Finance Code, §393.628 to current Texas Finance Code, §14.113. SB 1371 also amended Texas Finance Code, §14.113(b) to specify that funds in TFEE will be invested under the prudent business person standard described by the Texas Constitution, replacing previous language that referred to investing funds in the same manner as funds of the Employees Retirement System of Texas (ERS).

An amendment to §7.101(a) replaces a reference to Texas Finance Code, §393.628 with an updated reference to Texas Finance Code, §14.113. This amendment corrects the statutory reference and implements SB 1371's relocation of the section, as described earlier in this preamble.

Amendments to §7.103(g) specify requirements for the longitudinal report that grantees file after the end of a two-year grant cycle. The amendments specify that the longitudinal report is comprehensive, that the report must describe activity performed under the grant agreement, and that the report is due on June 30 following the end of the grant cycle. The amendments are intended to clarify requirements for grantees and to provide a more specific deadline for the report.

Amendments throughout §7.104(a) replace references to Texas Finance Code, §393.628 with updated references to Texas Finance Code, §14.113. These amendments correct statutory references and implement SB 1371's relocation of the section, as described earlier in this preamble.

An amendment to §7.105 replaces a reference to Texas Finance Code, §393.628(b) with an updated reference to Texas Finance Code, §14.113(b). Another amendment to §7.105 replaces the current reference to the ERS investment standard with a reference to the prudent person standard described by the Texas Constitution. These amendments implement the changes contained in SB 1371, as described earlier in this preamble.

The rule changes are adopted under Texas Finance Code, §14.113, which authorizes the commission to adopt rules to administer the Texas Financial Education Endowment. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 14.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406011
Matthew Nance
General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Effective date: January 2, 2025
Proposal publication date: November 8, 2024
For further information, please call: (512) 936-7660

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 6. COMMUNITY AFFAIRS PROGRAMS

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of Chapter 6, Community Affairs Programs, including Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; Subchapter D, Weatherization Assistance Program and Subchapter E. Low Income Household Water Assistance Program, without changes to the text previously published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7414) and will not be republished. The purpose of the repeal is to eliminate outdated rules that warrant revision while adopting new updated rules under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making a change to an existing activity, the administration of Community Affairs programs.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by new rules simultaneously to provide for revisions.

6. The action will repeal existing regulations, but is associated with a simultaneous readoption making changes to an existing activity, of the rules governing the administration of Community Affairs programs.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed rule would be an updated, more streamlined, and clearer version of the rules governing Community Affairs programs. There will not be economic costs to individuals required to comply with the repealed rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment from September 20, 2024, through October 20, 2024. No comment on the repeal was received.

The Board adopted the final order adopting the repeal on December 12, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§6.1 - 6.11

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405983
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 1, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT

10 TAC §§6.201 - 6.214

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405984
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 1, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §§6.301 - 6.313

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405985
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 1, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM

10 TAC §§6.401 - 6.417

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405986
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 1, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER E. LOW INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM

10 TAC §§6.501 - 6.503

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405987
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 1, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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CHAPTER 6. COMMUNITY AFFAIRS PROGRAMS

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 6. Community Affairs Programs, including Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; and Subchapter D, Weatherization Assistance Program, with changes to the text previously published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7416). Section 6.5 will be republished. All other rules will not be republished. The purpose of the proposed new chapter is to improve clarity, align rules with current guidance given to subrecipients by staff, update Federally mandated income exclusions, update benefit determinations for customers, remove the Low Income Household Water Assistance Program, and to correct identified areas of concern.

Tex. Gov't Code §2001.0045(b) does not apply to the new rules because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. The new rules will update, streamline, and make clearer the rules governing the administration of Community Affairs programs. The Department does not anticipate any costs associated with this rule action. Compliance with the rules are intended to ensure adherence to federal statute while operating federal grants.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rules would be in effect:

1. The new rules do not create any new programs, but do eliminate the subchapter that governed the Low Income Household Water Assistance Program; the program was a temporary federally funded program which has expired and will not be renewed.

2. The new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The new rules do not require additional future legislative appropriations.

4. The new rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rules are not creating a new regulation, except that they are replacing a rule being repealed simultaneously to provide for revisions.

6. The new rules will not expand, limit, or repeal existing regulation.

7. The new rules will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting the new rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306, Subchapter E.

1. The Department has evaluated the new rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The new rules relate to the Department's administration of all Community Affairs programs which include the Community Services Block Grant (CSBG), the Comprehensive Energy Assistance Program (CEAP) and the Weatherization Assistance Program (WAP). Other than a Subrecipient of funds for any of these programs who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes only provide greater clarity, aligns rules with current guidance given to subrecipients by staff, updates Federally mandated income exclusions, updates benefit determinations for customers, removes the Low Income Household Water Assistance Program and corrects identified areas of concern.

3. The Department has determined that because the new rules apply only to existing Subrecipients, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rules do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rules as to their possible effects on local economies and has determined that for the first five years the new rules will be in effect the new rules have no economic effect on local employment because the rules relate only to programs and processes which have already been in effect for existing Subrecipients; therefore, no local employment impact statement is required to be prepared for the new rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule..." Considering that the new rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of the new rules will be an updated, more streamlined, and clearer version of the rules governing Community Affairs programs. There will not be any economic costs to any individuals required to comply with the new rules because the rules have already been in place through the rules found at the chapter being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rules are in effect, enforcing or administering the new rules do not have any foreseeable implications related to costs or revenues of the state or local governments because the new rules relate only to programs and processes which have already been in effect for existing subrecipients.

g. SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment from September 20, 2024, through October 20, 2024. The Department received comments from Amanda Shelton, Executive Director of the Texas Association of Community Action Agencies, Inc. and Michelle Morehead, Executive Director of Community Services of Northeast Texas.

Commenter #1: Amanda Shelton, Executive Director, Texas Association of Community Action Agencies

Commenter #2: Michelle Morehead, Executive Director, Community Services of Northeast Texas

§6.4(d) Income Determination.

COMMENT SUMMARY: Commenter 2 states that the Women, Infants, and Children Supplemental Nutrition Program should not

be counted as income when determining a household's income eligibility.

STAFF RESPONSE: The Special Supplemental Food Program for Women, Infants, and Children is not counted as income. The subsection noted is a list of excluded categories of income and this particular category was merely moved on that list, but is still excluded income. The Department appreciates the comment, but no changes are needed.

§6.5(a)(1) Application Intake and Frequency of Determining Customer Eligibility.

COMMENT SUMMARY: Commenter 1 recommends removing "Accept applications at sites that are geographically accessible to all Households in their Service Area" because the language is too ambiguous which may be misinterpreted and cause interoperability issues, unintended error, and possible non-compliance. Commenter 1 believes the newly added language in the same paragraph stating "Applications may be accepted online if so elected by the Subrecipient, but must have a physical location within the Service Area" makes clear the expectations in addition to other areas of the TAC including §6.5(a)(2).

STAFF RESPONSE: The language recommended to be removed by Commenter 1 is language used in Section 2604 of the LIHEAP statute and reminds subrecipients receiving funding from Community Affairs programs, that they have a responsibility to locate their "sites" in areas that are "geographically accessible" to applicants throughout their service area (versus just one physical location), even if they accept applications online. The term "geographically accessible" is intentionally broad because it depends on the size and geographic makeup of each subrecipient's service area and it is left up to each subrecipient as to where to locate their physical sites. The Department appreciates the comment and will make a slight modification to the language by adding an (s) after "physical location" so as not to imply only one location is always necessary.

§6.309(e) Types of Assistance and Benefit Levels.

COMMENT SUMMARY: Commenter 2 requests that the benefit levels not be decreased because doing so will result in making it more difficult for the subrecipients to fully expend their allocation of CEAP funds. Commenter 1 supports a reduction in the benefit levels to serve a wider population, but not to the degree proposed. Instead of reducing the benefit from $2400/$2300/$2200 to $1800/$1500/$1200, Commenter 1 recommends a reduction to $2200/$1800/$1500. Commenter 1 recommends this higher amount because of the unusually hot summer temperatures and extreme weather events in the summer (and winter) which increase weather related deaths and illnesses (e.g., heat stroke) as well as increased prices in electricity rates due to growing demand, severe weather and Texas' aging energy infrastructure.

STAFF RESPONSE: The Department appreciates the comments, but will stay with the proposed benefit levels of $1800/$1500/$1200. While these proposed benefit levels are a reduction from what is in the current rule (i.e., $2400/$2300/$2200), they are however an increase over benefit levels that existed prior to the COVID-19 pandemic (i.e., $1200/$1100/$1000). During the pandemic, Congress authorized a large increase in LIHEAP funding, which was used for the CEAP and weatherization programs. As a result of the increased funding for CEAP, the Department doubled the benefit levels in order to ensure that the State expended Texas' LIHEAP allocation within the timeframes mandated. The additional LIHEAP funding that the State received during the pandemic also increased awareness of the CEAP program throughout Texas so many more households applied for and received utility assistance.

Unfortunately, now that Texas' funding level for LIHEAP funds has decreased to more typical pre-pandemic levels, in combination with a significant increase in households applying for assistance, the Department determined that it would be beneficial to decrease the benefit levels in order to provide assistance to as many low income households as possible. Another consideration is that in 2024, multiple CEAP subrecipients expended their CEAP allocations prior to July, which traditionally marks the hottest time of the year in Texas, leaving many households unable to apply for and receive utility assistance. While it is true that energy (electric and propane) rates have increased over the past several years, those rates have not increased substantially to a point that they've doubled. An analysis conducted by the U.S. Energy Information Administration indicates that the average retail price of electricity in Texas has increased from 11.76 cents/kWh in 2019 to 14.83 cents/kWh in 2024 which is a 30% increase. The proposed benefit levels of $1800/$1500/$1200 are an average of 35% greater than pre-pandemic levels. Finally, the Department has to ensure that Legislative Budget Board (LBB) targets on the number of persons served by Community Affairs Division programs are met which must also be taken into consideration when setting benefits levels. Higher benefit levels per household result in fewer households served and may put the Department in jeopardy of not meeting its LBB goals and benchmarks. In summary, the Department's intention is to fully utilize its allocation of CEAP funding year after year, but to also balance that with assisting as many households as possible, while also recognizing that funding is limited and only a small percentage of low income households can be assisted. This is why the benefit levels will be decreased to the $1800/$1500/$1200 levels. If, in the future, adjustments are needed, the Department will take the necessary action to do so.

§6.309(i)(1) Types of Assistance and Benefit Levels.

COMMENT SUMMARY: Commenter 1 recommends removing the term "remaining" from §6.309(i)(1) subparagraphs (B) and (C) to better align the TAC with CEAP program operations.

STAFF RESPONSE: The use of the term "remaining" in subparagraphs (B) and (C) is to allow subrecipients to forward pledge future energy bills as opposed to only being allowed to pay past or current bills. §6.309(i) states "Subrecipient shall provide only the types of assistance described in this subsection with funds from CEAP:" with §6.309(i)(1) further stating "Payments to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills..." Notice these rules state only past due or current bills may be paid. The term "remaining" used at §6.309(i)(1) Subparagraphs (B) and (C) allows future bills to be paid. The Department appreciates the comment, but will make no changes.

General Comment

COMMENT SUMMARY: Commenter 1 favors all other proposed changes to 10 TAC Chapter 6 to achieve the Department's goal of aligning the Community Affairs Program rules with current requirements, improving clarity, and correcting identified areas of concern.

STAFF RESPONSE: The Department appreciates the support.

The Board adopted the final order adopting the new rules on December 12, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§6.1 - 6.11

STATUTORY AUTHORITY. The new rules are made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rules affect no other code, article, or statute.

§6.5. Application Intake and Frequency of Determining Customer Eligibility.

(a) Subrecipient shall:

(1) Accept applications at sites that are geographically accessible to all Households in their Service Area (Applications may be accepted online if so elected by the Subrecipient, but must have a physical location(s) within the Service Area); and

(2) Provide a Household who has insufficient means to travel to an application intake site, are physically infirm, or are technically unable to submit applications electronically (e.g., computer illiterate, insufficient equipment, disability that prevents submitting the application) with an alternative means to submit an application.

(b) For CEAP and CSBG, income must be verified with a new application at least every twelve months.

(c) For WAP, income must be verified at the initial application. If the customer is on a waitlist for over 12 months since initial application, Household income must be updated within at least 12 months of the Dwelling Unit work start date, as defined within program forms.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405988
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 1, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT

10 TAC §§6.201 - 6.214

STATUTORY AUTHORITY. The new rules are made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405989
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 1, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §§6.301 - 6.313

STATUTORY AUTHORITY. The new rules are made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405990
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 1, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM

10 TAC §§6.401 - 6.417

STATUTORY AUTHORITY. The new rules are made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405991
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 1, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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CHAPTER 10. UNIFORM MULTIFAMILY RULES
SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.601 - 10.627

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 10 Subchapter F, Compliance Monitoring Rules, §§10.601 - 10.627 without changes to the proposed text as published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7444) and will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption, making changes to an existing activity, adding new requirements, deleting old references, including non-substantive changes to references and numbering, and codifying current policies and procedures to the Compliance Monitoring rule.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption, making changes to an existing activity, including adding new requirements and codifying current policies and procedures to the Compliance Monitoring rules.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be to eliminate an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The Department accepted public comment between September 20, 2024, and October 20, 2024. Comments regarding the proposed repeal were accepted in writing and by email. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein, the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406008
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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10 TAC §§10.601 - 10.627

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 10 Subchapter F, Compliance Monitoring Rules §§10.601 - 10.627. Sections §§10.601, 10.602, 10.604, 10.605, 10.607, - 10.609, 10.611 - 10.615, 10.618 - 10.620, and 10.622 - 10.625 are adopted with changes to the proposed text as published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7445). All other rules are adopted without changes and will not be republished. The purpose of the new rules is to provide compliance with Tex. Gov't Code §2306.053 and to update the rule to: add programs (HOME-Match, Preservation, Emergency Rental Assistance, TCAP and Exchange) throughout the rule,

provide consistency throughout the subsections, include safe harbor language regarding Average Income minimum set-aside, clarify the timeframe for updating CMTS after an ownership change, clarify Owners' oversight responsibilities, and include changes to verifications as a result of the implementation of HOTMA. Additional updates include adding QAP requirements for Developments located in a floodplain, after school programs if mitigation is required, updates to requirements for utility allowances including renewable sources, codifying existing policies and procedures with monitoring for social services, nonprofit, HUB and CHDO codifying the increase of physical inspections when a Development is low-scoring or deemed to be in poor condition, and providing consistent corrective action requirements when rent limits are violated. In addition, §10.624 was re-written to provide clear and concise 811 PRA program requirements and the §10.625 Figure was updated to include all new findings.

Tex. Gov't Code §2001.0045 does not apply to the new rule for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule, which makes changes to an existing activity, to ensure all requirements related to Compliance Monitoring are specified in writing.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule, through added clarifications and guidance, is creating changes that expand several regulations, and is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will expand an existing regulation to ensure that all applicable multifamily programs are covered by the compliance monitoring rules.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; however, it does clarify the programs to which these rules apply, to include additional programs being used for multifamily activity by the Department (ERA, Preservation and HOME-Match).

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that this rule provides specific details on how multifamily properties will be monitored and what events may result in noncompliance. Other than in a case of small or micro-businesses subject to the new rule, the economic impact of the rule is projected to be none. If rural communities are subject to the new rule, the economic impact of the rule is projected to be none.

3. The Department has determined that this rule provides specific details on how multifamily properties will be monitored and what events may result in noncompliance and that there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the new rule has no economic effect on local employment. The rule only describes how multifamily properties will be monitored and what events may result in noncompliance; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule..." Considering that there are no "probable" effects of the new rule on particular geographic regions, no impact statement is necessary.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be a clearer rule for Owners, management agents and property staff that are responsible for ensuring compliance with required rules and applicable regulations. There will not be any economic cost to any individuals required to comply with the new rule because the types of requirements and activities described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule relates to a process that already exists and is not being significantly revised.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 20, 2024, and October 20, 2024. Comments regarding the proposed rule were accepted in writing with comments received from:

1. Jim Beats, Diamond Property Consultants

2. Patrick Barbolla, President, Fountainhead Management, Inc.

3. Tanya Lavelle, Policy Specialist, Disability Rights Texas

4. Sidney Beaty, Research Analyst, Texas Housers

5. Sandy Hoy, Vice President & General Counsel, Texas Apartment Association

6. Jen Brewerton, Vice President of Compliance, Dominium

7. Roger Arriaga, Executive Director, Texas Affiliation of Affordable Housing Providers

§10.607, Reporting Requirements.

Comment Summary: Commenter 2 believes the requirement to notify tenants prior to the end of the affordability period is unreasonable because it is sometimes difficult to determine when that date is. In addition, they would like the Department to notify the owner 7 months prior to the end of the affordability period and, upon request, issue release or termination of the Land Use Restriction Agreement (LURA).

Staff Response: The term of the LURA is readily available to owners by reviewing both the LURA and forms 8609. In addition, staff is always available via email or phone to assist with questions related to affordability periods. The Asset Management division of the Department does issue release or termination of LURAs, upon request, at the end of the affordability period. No changes will be made to the proposed rule on the basis of this comment.

§10.608, Recordkeeping Requirements.

Comment Summary: Commenter 2 has concerns about the proposed requirement that, upon a change in owner/management, a current waitlist be submitted. They believe the reason for the proposed requirement is unclear and the word "current" needs to be defined and need not be more current than 6 months prior to the change.

Staff Response: Historically, when developments change owner/management, the Department receives an influx of complaints from prospective tenants and current residents about their status on the waitlist. In order to assist these tenants, the Department needs an up-to-date waitlist to ensure that applicants and tenants maintain their place, and sometimes the new owner/management does not receive a copy of this list. In conjunction with §10.406, Ownership Transfer Requirements, the Department considers "current" to be 45 days from the date of the ownership/management transfer. Staff has updated the proposed rule to define "current."

§10.611, Determination, Documentation and Certification of Annual Income.

Comment Summary: Commenter 2 and Commenter 7 would like clarification on the proposal that developments that are affiliated in any manner with a Housing Authority may not use the Section 8 Income Verification. Commenter 7 proposes alternative language that will create a clear line between the Housing Authority completing the Section 8 verification and the owners responsible for verification of income.

Commenter 2 has concerns regarding the Department rule on designation changes.

Staff Response: Staff agrees with comments about the Section 8 verification and accepts Commenter 7's proposed language.

In response to Commenter 2's comment on designation changes, staff believes the rule clearly outlines when designation changes are allowable under program rules. The example given by the commenter is an allowable designation change under both the current and proposed rules.

§10.612, Tenant File Requirements.

Comment Summary: Commenter 6 expressed concern with the proposed addition that each adult applicant, with the exception of a married couple, must complete a separate application. They observed that certain software companies are not currently set up to accommodate this requirement.

Staff Response: Staff strongly believes that applicants are entitled to privacy protections, including financial and personal information that are requested on the application. Roommates that are not married should not be required to share this information with each other. No changes will be made to the proposed rule on the basis of this comment.

§10.613, Lease Requirements.

Comment Summary: Commenter 2 would like the section on VAWA to be clarified so that the protection applies only to the victim of domestic violence and not the perpetrator. In addition, they have concerns with the statement that the Department will determine whether a person in a Multifamily Direct Loan (MFDL) or Section 811 unit qualifies for an emergency transfer. They wonder whether the Department will have staff available 24 hours a day/7 days a week to make these determinations. The commenter would also like the Department to drop the floodplain language from the Tenant Rights and Resources Guide because Texas Property Code already requires specific information be given to applicants regarding floodplains. Furthermore, they disagree that the requirement for flood insurance be applied retroactively to existing properties.

Commenter 4 supports the addition of the floodplain language to the Tenant Rights and Resources Guide.

Staff Response: Staff agrees that the VAWA section could be further clarified by referencing the victim in the first sentence. Staff believes the second sentence already references the injured party and does not need to be revised further. Regarding the emergency transfer requirements, the current rule does not require Department approval for transfers. The rule requires that tenant requests to terminate a lease without penalty be submitted to the Department within 3 days. Per the 2020 QAP (and subsequent QAPs), the floodplain language must be included in the Tenant Rights and Resources Guide. Staff agrees that the requirement for flood insurance should not be applied retroactively to developments awarded under prior QAPs and will add this language to the proposed rule, but then must also clarify that often flood insurance is federally required for MFDL. Staff appreciates Commenter 4's support.

§10.614, Utility Allowances.

Comment Summary: Commenter 1 disagrees with the proposed requirement to submit bills for 20% of the residents to evidence the benefits from renewable energy sources. They believe that bills will vary greatly and may not accurately reflect the resident benefit. Instead they propose allowing a licensed engineer to certify to the benefits.

Commenter 3 supports the proposal that any utility provider used must be listed on the Power to Choose website. In addition, they believe that some plans listed on the site are unfair to tenants as they are promotional rates and not available year-round. They propose that properties be required to use the average or median rate plan listed on the site.

Commenter 4 believes the HUD Utility Schedule Model (HUSM) is underestimating utility costs. They are concerned that the model has not been updated since 2016, and the tool allows owners to enter their own rates. They observe that this causes huge swings in utility allowance from year to year. They also provided analysis of specific property Utility Allowances.

Commenter 5 disagrees with the proposal requiring providers be listed on the Power to Choose website. They prefer that the Department accept any form of verification that the development is in a zip code serviced by the provider.

Staff Response: Staff disagrees with commenter 1. The requirement relating to providing 20% of bills is what HUD deems reasonable and requires for their programs when reviewing renewable energy sources. In addition, this is the current Department requirement for the Actual Use Method. Staff believes this is the most reliable way to determine the tenants' benefit. Staff reached out to renewable energy experts and were informed that for multifamily developments, it is common for the owner of the building to receive the benefit and not the tenants.

Staff appreciates Commenter 3's support. In addition, staff appreciates the suggestion to require owners to use a median rate and will take this into consideration during the next rule revision.

In response to Commenter 4's concerns, the HUSM is developed by HUD and is an approved methodology in §1.42-10. The Department does not have authority to manipulate HUD's model. Staff reviews all owner submissions to ensure the model has not been tampered with or miscalculated prior to approval.

Staff disagrees with Commenter 5's comment. The Power to Choose website is the "official and unbiased electric choice website of the Public Utility Commission of Texas." This site is available for all electric providers in Texas to post their rate. Tenants should have one reliable place to find rates available to them.

§10.618, Monitoring and Inspections.

Comment Summary: Commenter 3 states there are currently 1,365 HTC developments in TX that were built before 2008 and is concerned that accessible units could be out of compliance with federal law. Commenter 3 wants TDHCA to verify the accessibility in every development in their portfolio. She would like to add the following language: "Inspections for developments built prior to 2008 must include one mobility accessible unit and one hearing/visual accessible unit in the next physical inspection after this rule is adopted." They also advise that accessibility issues are a matter of health and safety for persons with disabilities and should be given the same deference as other serious findings of noncompliance. They propose the following language be added to §10.618(b)(6) which describes what would warrant an accelerated inspection schedule: "...or if noncompliance findings are related to accessibility."

Commenter 4 strongly supports the proposal codifying the accelerated inspection schedule for properties scoring a 70 or below or those in poor physical condition. They would like to clarify the frequency of an accelerated schedule. Specifically, they would like annual, in-person inspections for developments in poor condition. They agree with Commenter 3 that properties with accessibility issues also be subject to an accelerated schedule and that pre-2008 properties should be inspected for compliance with the mobility and hearing/visual unit requirements going forward. Commenter also wants the rule to require owners to notify tenants of a poor inspection score.

Commenter 5 would like the accelerated schedule to be limited to those developments scoring a 70 or below and requests the phrase "in poor physical condition" be removed from the rule as they feel it is a subjective term.

Staff Response: In response to Commenters 3 and 4, the Department's rules prior to 2008 required certification from an architect of the accessible unit(s) built. This certification included the Fair Housing Act and the Uniform Federal Accessibility Standards (for LIHTC only Developments this standard was only required for awards made on or after September 1, 2001). The Department relied on those certifications. The Department cannot retroactively apply the 2010 ADA Standards with HUD's 11 exceptions on existing developments that have not received new awards.

Beginning in 2010, the Department began completing a final construction inspection that includes a full accessibility review. Furthermore, a limited fair housing inspection has been done by the Department or its Contractors since 2001 as part of the Uniform Physical Inspection Standards. Finally, the Department enforces accessibility requirements for all developments through the complaint process. Therefore, staff does not believe this language is appropriate. In response to comments requesting developments with accessibility issues be put on an accelerated inspection schedule, the Department already has rules that require referral to the enforcement committee for such violations. Therefore, staff does not deem the accelerated schedule necessary. Staff appreciates the support of Commenter 4 and agrees that "in-person" can be added to describe inspections conducted on an accelerated schedule. Inspections may be conducted annually or even more frequently; however, development circumstances and staff availability may not allow for specific timeframes to be outlined in a rule. Staff appreciates the suggestion for tenant notification in the event of a low score and will take this into consideration for future rule revisions. Staff needs the ability to investigate complaints related to the physical conditions of a property regardless of the last inspection score. Keeping the term "poor physical condition" in the rule enables the Department to investigate such complaints. In addition, "poor physical condition" could include a variety of scenarios that negatively impact tenant health and safety, but may not be included in the NSPIRE protocol.

§10.622, Special Rules Regarding Rents and Rent Limit Violations.

Comment Summary: Commenters 3 and 4 would like to prohibit owners from increasing rent during a lease term. They support the proposal to require a method for payment of rent that does not impose additional fees on the tenant.

Commenter 5 would like the 75-day notification requirement for rent increases of more than $75 be reduced to a 30-day notification requirement.

Commenter 7 would like the Department to increase annually the allowable out-of-pocket cost for processing an application based on the Cost of Living Adjustment (as published by the Social Security Administration).

Staff Response: The Housing Tax Credit program allows for mid-lease changes in rent due to a change in utility allowance or rent limits. The Department recognizes that there have been several bills in the last few years that have been introduced in the legislature prohibiting mid-lease increases. The Department will defer to the legislative process. Staff appreciates the support of Commenters 3 and 4. In response to Commenter 5, staff be-

lieves a 30-day notice for larger rent increases is not sufficient for low income tenants to make alternate living arrangements if they are unable afford their new rent. Staff agrees with Commenter 7 that the allowable out-of-pocket cost to process applications should be revised annually based on the COLA. Language has been updated.

§10.623, Monitoring Procedures for Housing Tax Credit, TCAP, and Exchange Properties After the Compliance Period.

Comment Summary: Commenter 2 would like the Monitoring Review Questionnaire to be updated to clarify that Post-15 properties do not need to submit backup for application fees since this section of the rule states this will no longer be monitored.

Commenter 3 would like the language requiring accessible unit inspections for pre-2008 development to also be included in §10.623.

Staff Response: Staff appreciates Commenter 2's feedback and will incorporate an N/A option in the next revision of the questionnaire. For Commenter 3's remarks, the Department's response to §10.618 is also applicable here.

STATUTORY AUTHORITY. The new rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein, the new sections affect no other code, article, or statute. The new rule has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

§10.601. Compliance Monitoring Objectives and Applicability.

(a) The objectives of the Department in performing regular monitoring of affordable rental housing are:

(1) To provide for monitoring that meets applicable requirements of:

(A) The U.S. Department of Housing and Urban Development (HUD);

(B) The U.S. Department of the Treasury (Treasury);

(C) The Internal Revenue Service (the IRS); and

(D) Applicable state laws and rules;

(2) To enable the Department to report information to HUD, Treasury, the IRS, and the Governing Board, as required, regarding the condition and operations of such developments;

(3) To enable the Department to communicate with responsible persons regarding the condition and operation of their developments and understand clearly, with a documented record, how they are performing in meeting their obligations;

(4) To identify matters of noncompliance so that they can be appropriately addressed and to assist in targeting issues that may require compliance assistance education;

(5) To ensure that responsible persons understand the compliance status of their developments and the implications of such status;

(6) To articulate and communicate clear standards to promote the maintenance and operation of such developments in a manner that meets the high standards of the Department's affordable rental programs; and

(7) To provide a transparent system whereby all interested parties, including residents, community organizations, local governmental entities, and the affordable housing industry, may find accountability, consistency, and an awareness of the high quality standards of affordable housing in the State of Texas.

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1) - (11) of this subsection:

(1) The Housing Tax Credit Program (HTC);

(2) The HOME Investment Partnerships Program (HOME), inclusive of HOME Match Units;

(3) The Tax Exempt Bond Program (Bond);

(4) The Texas Housing Trust Fund Program (HTF, SHTF, or THTF), inclusive of Preservation;

(5) The Tax Credit Assistance Program (TCAP);

(6) The Tax Credit Exchange Program (Exchange);

(7) The Neighborhood Stabilization Program (NSP);

(8) Section 811 Project Rental Assistance (811 PRA or 811) Program;

(9) Tax Credit Assistance Program Repayment Funds (TCAP RF);

(10) The National Housing Trust Fund (NHTF)

(11) HOME American Rescue Plan (HOME-ARP); and

(12) Emergency Rental Assistance (ERA).(c) Monitoring activity evaluates the physical condition of the Developments and whether they are being operated in documented compliance with program requirements.

(d) The results of the Department's monitoring activities will be documented and, communicated to the owner in writing within 90 days of the monitoring visit.

(e) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, including allocations of housing tax credits, and appropriate state and federal laws, rules, regulations, orders, and other applicable legal requirements.

(f) The capitalized terms or phrases used herein are defined in this title. Any other capitalized terms in this subchapter shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

§10.602. Notice to Owners and Corrective Action Periods.

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §42 of the Internal Revenue Code. All such requirements are the Owner's responsibility, even if the Owner is using a manager or management company's services. Accordingly, Owners should ensure that they hire competent and properly trained managers or management companies, and that they exercise appropriate oversight of any manager or management company activities, including oversight of all responses to noncompliance identified by the Department.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a 30 day Corrective Action Period for noncompliance related to the AOCR, and a 90 day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the Owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: compliance.extensionrequest@tdhca.texas.gov. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional 10 calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) The Department will notify Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

(g) If another federal or state requirement applicable to funding or resources that the Department monitors stipulates that corrective action must be completed with less than a 90 day Corrective Action Period, the Department will inform the Owner in writing and enforce the applicable timeframe.

§10.604. Options for Review.

If, following the submission of corrective action documentation, Compliance staff continues to find the Owner in noncompliance, the Owner may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to the inclusion or exclusion of tenant income, assets, or appropriate household size, the National Center for Housing Management (NCHM) can be contacted. In order to obtain guidance from NCHM, the requestor must have an active Certified Occupancy Specialist designation. If no representative of the owner has this designation, Department staff may make the request on the owner's behalf.

(2) If the compliance matter is related to the Housing Tax Credit program, Owners may contact the IRS Program Analyst for guidance or request that Department staff contact the IRS for general guidance without identifying the taxpayer. The issue will be handled in accordance with the guidance received from the IRS.

(3) If the compliance matter is related to the HOME, NHTF, NSP, or HOME-ARP program, Owners may request that the Department contact the U.S. Department of Housing and Urban Development Texas Field Office for guidance. The issue will be handled in accordance with guidance received from a HUD official with oversight responsibility, provided it is clear and can be corroborated (e.g., such guidance is provided in writing).

(4) Owners may request Alternative Dispute Resolution (ADR). An Owner may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution). Note that even if the Department and Owner are engaged in ADR, the Department must meet Treasury Regulation §1.42-5 and file IRS Form 8823 within 45 days after the end of the Corrective Action Period. Therefore, it is possible that the Owner and Department may still be engaged in ADR when an IRS Form 8823 is filed. Should this happen, the form, including all Owner-supplied documentation, will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. Although the violation will be reported to the IRS within the required timeframes, it will not be considered part of an applicant's compliance history nor subject to administrative penalties pending the outcome of the ADR process.

§10.605. Elections under IRC §42(g).

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 (20% of the Units restricted at the 50% income and rent limits), 40/60 (40% of the Units restricted at the 60% income and rent limits), or the average income test.

(b) HTC projects must meet the required election under IRC §42(g) no later than the end of the first year of the Credit Period.

(c) An Owner that elects the average income test under IRC §42(g) must disperse 20%, 30%, 40%, 50%, 60%, 70%, and 80% Unit designations across all Unit Types to the greatest extent feasible, and in a manner that does not violate fair housing laws.

(d) Until and unless the Internal Revenue Service or the Treasury Department issues conflicting or additional guidance, the Department will examine the actual gross rent and income of all households to determine if a Project that elected the average income test is at or below the federal minimum average of 60% AMI.

(e) Under Section 1.42-19T(c)(4) of the Treasury regulations, the Department has broad authority to grant, on a case-by-case basis,

written relief of a taxpayer's failure to properly designate a group of units that meets the requirements of a qualified group under Section 1.42-19(b)(2) of the Treasury regulations. Under the Treasury regulations, the Department must grant such relief in writing within 180 days of the discovery of the failure by the taxpayer or the Department.

§10.607. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through CMTS and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be emailed to cmts.requests@tdhca.texas.gov for:

(1) 9% Housing Tax Credit Developments - no later than the 10% Test;

(2) 4% Housing Tax Credit Developments - no later than Post Bond Closing Documentation Requirements

(3) For all other rental Developments - no later than September 1st of the year following the award; or

(4) For all rental Developments that have received Department approval of Ownership transfer - no later than 10 days following the completion of Ownership transfer.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2022. The first report is due April 30, 2024, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and

(4) Part D "Form 8703." Tax exempt bond properties funded by the Department must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The Owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required, it must be uploaded to the Development's CMTS account. "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data represented in the Annual Owner's Financial Certification (AOFC).

(e) Parts A, B, C, and D of the AOCR and the AOFC must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit an accurate Unit Status Report prior to a monitoring review and/or a physical inspection.

(i) Housing Tax Credit and Tax Credit Exchange Developments must submit IRS Form(s) 8609 with Part II complete through CMTS by the second monitoring review. If an owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings within the project.

(j) Within six (6) months but at least 90 days prior to the end of the Affordability Period and/or the end of the Land Use Restriction Term, the Owner must provide written notice to the current tenants and applicants. If the Development Owner has been approved for new funding, through the Department, and/or awarded new credits such notice is not required. The Notice must contain the following: proposed new rents, any rehabilitation plans and information on how to access the Departments Vacancy Clearinghouse to locate other affordable housing options.

§10.608. Recordkeeping Requirements.

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §10.607 of this subchapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low-Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must retain records as required by the specific funding program rules and regulations and executed contracts or Land Use Restriction Agreements. In general, retention schedules include, but are not limited to, the provision of subsections (c) - (g) of this section.

(c) HTC records must be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Pe-

riod must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for TCAP-RF, HOME, ERA, and HOME-ARP rental Developments must comply with the provisions of 24 CFR §92.508(c), which generally require retention of rental housing records for five years after the Affordability Period terminates. HOME-ARP rental Developments must also comply with HUD CPD Notice 21-10.

(e) Retention of records for NHTF must comply with the provisions of 24 CFR §93.407(b), which generally require retention of rental housing records for five years after the Affordability Period terminates.

(f) Retention of records for NSP rental Developments must comply with the provisions of 24 CFR §570.506, which generally requires retention of rental housing records for five years after the Department has closed out the grant with HUD.

(g) THTF rental Developments must retain tenant files for at least three years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including, but not limited to, the Application and Development costs and documentation, must be retained for at least five years after the Affordability Period terminates.

(h) Section 811 PRA tenant records must be maintained for the term of tenancy plus three years. After the end of the record retention period, all Enterprise Income Verification (EIV) data must be destroyed.

(i) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by federal regulations, statute, rule, or deed restriction.

(j) All required records must be made available and accessible for a monitoring review, physical inspection, and whenever requested by the Department. The Department permits electronic records. Digital signatures of both property management and household are acceptable. Developments should have policies in place that allow the household to choose between electronic or hard copy documents. It is the responsibility of the Development Owner to maintain policies and procedures that mitigate fraud, waste, and abuse on an ongoing basis.

(k) Prior to completion of ownership and/or management agent change, a current (no earlier than 45 days prior to owner/management agent change) waitlist must be submitted to the Department through CMTS.

§10.609. Notices to the Department.

If any of the events described in paragraphs (1) - (7) of this section occur, written notice must be provided to the Department within the respective timeframes. Failure to do so will result in an Event of Noncompliance and may be taken into consideration during Previous Participation Reviews in accordance with Chapter 1 Subchapter C of this title, or in Enforcement actions in accordance with Chapter 2 of this title.

(1) Written notice must be provided at least 30 days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership, requiring that they complete and provide a Previous Participation Review Form, in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713));

(2) Notification must be provided within 30 days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster). Within 30 days of completion of all restorative repairs, the Owner must provide the executed Notice of Property Restoration accompanied by all supporting documentation. Supporting documentation can include, but is not limited to: Certificates of Occupancy, photographs of all restorative repairs completed on buildings and/or Units, invoices from contractors, insurance assessments and/or a written summary of restorative repairs required. The Department may require additional documentation not specified in this section on a case-by-case basis;

(3) Owners of Bond Developments shall notify the Department of the date on which 10% of the Units are occupied and the date on which 50% of the Units are occupied, and notice must occur within 90 days of each such date;

(4) Within 30 days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure;

(5) Within 10 days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses, phone numbers, and/or the name of the property as know by the public) for the Ownership entity, management company, and/or Development the Department's CMTS must be updated. Separate contact information must be provided for Ownership entity, management company, and onsite manager at the Development. A single contact may be used for the owner and management if they are the same entity.

(6) Within 30 days of completion of the American Institute of Architects form G704- Certificate of Substantial Completion, or Form HUD-92485 for instances in which a federally insured HUD loan is utilized, an Owner must request a Final Construction Inspection; and

(7) Development Owners that have agreed to participate in the Section 811 PRA program are required to notify the Department about the availability of Units as described in accordance with §8.6(l)(3) and §8.6(l)(4) of this title (relating to Program Regulations and Requirements).

§10.611. Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using the services of a manager or management company to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers or management companies and that they exercise appropriate oversight of any managers or management companies.

(b) For every certification, requiring verification of income and assets, of a household residing in a HOME, NHTF, NSP, TCAP RF, or HOME-ARP assisted Unit, Owners must examine at least two months (60 days) of source documents evidencing annual income (e.g.,

wage statement, interest statement, unemployment compensation). Qualified populations in HOME-ARP Units may not need to meet an income requirement upon move-in, but will have their income verified to determine rental portion of payment.

(c) Department administered programs are permitted to utilize the Section 8 Verification of income process, available on the Department website, for the verification of household income at initial or subsequent annual certifications. This permission is removed if any entity that is in the Control of the operation of the Development or is in any way associated with the certifying Housing Authority. This permission is only granted for households that currently are utilizing a Housing Choice Voucher. No other means tested verifications are allowable.

(d) A household's lowest designation, as recorded on the Income Certification, at the time of move in, cannot be increased unless the household was found to never have income qualified for the Unit, no longer income qualifies for the Unit, or program rules required the change. In addition, a household's low income status cannot be removed because of an increase in income at recertification unless the increase causes the Unit to go over income as defined in §10.615 of this subchapter (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments), IRC §42(g), or the HOME Final Rule.

(e) For all programs, for every certification that requires verification of income and assets, those verifications must be dated within 120 days of the certification effective date. The only exceptions are lifetime benefits (e.g. pension, annuities, Social Security).

§10.612. Tenant File Requirements.

(a) At the time of program designation as a low income household (or Qualified Population for HOME-ARP), typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low income household or Qualified Population, Owners must certify and document household income. In general, all low-income households and Qualified Populations for HOME-ARP must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the Development also participates in the USDA - Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications (one per adult or married couple), first hand or third party verification of income and assets, and documentation of student status (if applicable). The application must provide a space for applicants to indicate if they are a veteran. In addition, the application must include the following statement: "Important Information for Former Military Services Members. Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Air Force, Reserves or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at https://veterans.portal.texas.gov/";

(3) The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents; and

(4) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this subchapter (relating to Lease Requirements).

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP, and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, student status, and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form, the Income Certification form, HUD Income Certification form, USDA-Rural Development Income Certification form (as applicable).

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the Affordability Period for all Bond Developments and HOME, TCAP RF, and HOME-ARP Units Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original Income Certification and can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond Developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME, TCAP RF, and HOME-ARP Units an individual does not qualify as a low income or very low income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of Developments described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the 15 year Compliance Period.

(B) All Bond Developments with less than 100% of the Units set aside for households with an income less than 50% or 60% of area median income. If subsequent legislation allows for the use of the Average Income minimum set aside for the Bond program, the income threshold will increase to 80% area median income.

(C) THTF Developments with Market Rate Units. However, THTF Developments with other Department administered programs will comply with the requirements of the other program.

(D) HOME, TCAP RF, NHTF, and HOME-ARP Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME, TCAP RF, NHTF, and HOME-ARP Developments:

(1) HOME, TCAP RF, NHTF, and HOME-ARP Developments must complete a recertification with verifications of each assisted Unit every sixth year of the Development's Affordability Period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME, TCAP

RF, NHTF, HOME-ARP Development Affordability Period is the effective date in the HOME, TCAP RF, NHTF, and HOME-ARP LURA. Example 612(1): A HOME Development with a LURA effective date of May 2020, will have the following years of the affordability period:

(A) Year 1: May 15, 2020 - May 14, 2021;

(B) Year 2: May 15, 2021 - May 14, 2022;

(C) Year 3: May 15, 2022 - May 14, 2023;

(D) Year 4: May 15, 2023 - May 14, 2024;

(E) Year 5: May 15, 2024 - May 14, 2025;

(F) Year 6: May 15, 2025 - May 14, 2026;

(G) Year 7: May 15, 2026 - May 14, 2027;

(H) Year 8: May 15, 2027 - May 14, 2028;

(I) Year 9: May 15, 2028 - May 14, 2029;

(J) Year 10: May 15, 2029 - May 14, 2030;

(K) Year 11: May 15, 2030 - May 14, 2031; and

(L) Year 12: May 15, 2031 - May 14, 2032.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME, TCAP RF, NHTF, and HOME-ARP Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2025, to May 14, 2026, and between May 15, 2031, and May 14, 2032.

(3) In the intervening years the Development must collect a self-certification within 120 days before the anniversary of the effective date of the original Income Certification from each household that is assisted with HOME, TCAP RF, NHTF, and HOME-ARP funds. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self-certification that their annual income exceeds the current 80% applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

(d) Tenant File requirements for HOME-ARP Qualified Populations Units. Files for households assisted under the HOME-ARP program as Qualified Population must document evidence that the households meet the definition of:

(1) Homeless as defined in 24 CFR §91.5;

(2) At-risk of homelessness as defined in 24 CFR §91.5;

(3) Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking, as defined in CPD Notice 21-10;

(4) Other Families Requiring Services or Housing Assistance to Prevent Homelessness, which are households who have previously been qualified as homeless, are currently housed due to temporary, or emergency assistance, including financial assistance, services, temporary rental assistance or some type of other assistance to allow the household to be housed, and who need additional housing assistance or supportive services to avoid a return to homelessness;

(5) At Greatest Risk of Housing Instability as cost burdened, which are households who have an annual income that is less than or equal to 30% of the area median income, as determined by HUD and is experiencing severe cost burden (i.e. is paying more than 50% of monthly household income toward housing costs.); or

(6) At Greatest Risk of Housing Instability, which meets the definition of at-risk of homelessness as defined in 24 CFR §91.5, but with an income up to 50% AMI.

§10.613. Lease Requirements.

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action. For nonpayment of rent, HTC, TCAP, Exchange, and NHTF Developments require a thirty (30) day written notice. If the CARES Act is modified to eliminate the 30-day notice requirement, HUD or Treasury requirements will supersede this 30-day notice requirement for nonpayment of rent.

(b) HOME, ERA, TCAP RF, NHTF, NSP, and HOME-ARP Developments are prohibited from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), for households that were found to never have income qualified for the highest income designation under the program or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, NSP, and HOME-ARP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. For HOME-ARP, Owners may not terminate the tenancy or refuse to renew the lease of the Qualifying Household in any Unit that is supported by capitalized operating costs because of the household's inability to pay rent of more than 30 percent of the qualifying household's income toward rent during the longer of the federal affordability period or the time period identified in the Contract.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy of the victim(s). Additionally, it shall not be construed as a serious or repeated violation of a lease or action eligible for termination of tenancy if a person has opposed any act or practice made unlawful by the Violence Against Women Act 2022, or because that person testified, assisted, or participated in any matter covered by the Violence Against Women Act 2022.

(d) A Development must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC, TCAP, and Exchange Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, NSP, ERA and HOME-ARP Developments, properties that were initially built for

occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, NSP, ERA, and HOME-ARP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c), and Section 1018 of Title X, as applicable). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) An Owner may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2013.

(h) All NHTF, TCAP RF, NSP, HOME, and HOME-ARP Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, TCAP RF, or NHTF Units to an organization that, in turn, rents those Units to individuals is not permissible for Developments with contracts dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP and HOME-ARP Developments may only utilize Master Leases, if specifically allowed in the Development's LURA.

(j) Housing Tax Credit, TCAP, and Exchange Units leased to an organization through a supportive housing program where the owner receives a rental payment for the Unit regardless of physical occupancy will be found out of compliance if the Unit remains vacant for over 60 days. The Unit will be found out of compliance under the Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, Unit amenities, and services;

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure;

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received; and

(5) A Development Owner must state in the Tenant Rights and Resources Guide if part or all of the Development Site is located in the 100 year floodplain. Developments where all or part of the Development Site is located in a 100 year floodplain where the latest award from the Department is after 2019, under a Project-Based Voucher HAP Contract or 811 PRA Use Agreement with the Department, within any federal affordability period (including a HOME Match affordability period), that have a loan with the Department with an outstanding loan balance, or that has flood insurance as contractual or requirement in its LURA must maintain flood insurance, and provide evidence to the Department upon request.

(m) For Section 811 PRA Units, Owners must use the HUD Model lease, HUD form 92236-PRA.

(n) Except as identified in federal or state statute or regulation for Direct Loans, or as otherwise identified in this Chapter, the Department does not determine if an Owner has good cause or if a resident has violated the lease terms. Challenges to evictions or terminations of tenancy must be determined by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, and 12 of this title.

(1) Building Type. The HUD Office of Public and Indian Housing (PIH) characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator (URL)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: http://www.powertochoose.org/ (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service through Power to Choose. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved. It is the Owner's responsibility to ensure that a Development in a deregulated area, but within the boundaries of a regulated municipality, is using the appropriate provider.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). Any cost incurred for the actual unit of measure for the utility (e.g., base cost per kilowatt hour for electricity, TDU delivery charges, rate per gallon of water, etc.);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge);

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found http://comptroller.texas.gov/ (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (MFDL). Funds provided through the HOME, NSP, NHTF, TCAP RF, HOME-ARP, ERA, or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, CDBG, and Project Based Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (RUBS);

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility; and

(C) Tenants receiving a tenant-based Housing Choice Voucher or residing in a Housing Tax Credit Development may not be charged a service fee for submetered utilities. For MFDL Developments where tenants are being charged a service fee for submetered utilities, the fee must either be included in the Utility Allowance or be included in the gross rent calculation as a mandatory fee.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet. A utility allowance is considered implemented once the Unit Status Report is updated and rents are restricted.

(A) For HTC, TCAP, Exchange buildings, Bonds, and THTF include:

(i) Utilities paid by the household directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings. If the Utility Provider offers more than one rate plan, the plan selected must be available to all households in the building.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except most Developments funded with MFDL funds, which are addressed in subsection (d) of this section. HOME-ARP may use methods in this subsection or subsection (d) of this section, but cannot combine two methods in one building.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service (IRS), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority (PHA). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, 10 of which are Apartments (5+ units) and the other 10 buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is $8.63, Electric Heating is $5.27, Other Electric is $24.39, Water and Sewer is $15. The Utility Allowance in this example is $54.00. If the PHA schedule reflects a rounded amount, then the PHA method of rounding should be used.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at http://www.huduser.gov/portal/resources/utilallowance.html (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the zip code for the Development is not listed in "Location" tab of the workbook, the Department will default to the PHA code from the PHA that is closest in distance to the Development using online mapping tolls (e.g. Google Maps). If neither the zip code nor the PHA code is listed, a zip code that borders the Development's zip code will be used The Department will obtain the PHA codes from https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_TX.pdf (or successor Uniform Resource Locator (URL)).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. Energy Star certifications will require the certificates for each Unit at the time of the initial Utility Allowance review and a letter from a properly licensed engineer annually thereafter. The engineer letter will be accepted for a period of five (5) years and must be updated thereafter.

(I) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the owner may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the Units and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of $40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4): A monthly minimum usage fee of $9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types of costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The license of the engineer must be submitted along with the model. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20% of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100% of the Unit Type must be provided; and

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in described in subsection (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within 45 days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments with fixed MFDL Units, only one utility allowance may be used in buildings with MFDL units. For Developments with floating MFDL Units, only one utility allowance may be used for the entire Development.

(2) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(3) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods. Buildings for which the only source of MFDL funding is HOME-ARP and which contain no HOME-Match Units may calculate the Utility Allowance using the methodology described in subsection (c)(3)(A) of this section. The methodology must be annually reviewed and approved by the Department.

(4) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Monitor Review Questionnaires submitted with prior monitoring reviews; or

(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and, if requested, provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program Units thirty days after the Department notifies the Owner of the allowance.

(5) Buildings in which there are Units under an MFDL program are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. If the Department is the awarding entity, no other utility method described in this section can be used. If the Department is not the awarding jurisdiction, Owners are required to obtain, annually, the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year eight, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation. Developments may not start or stop charging residents for a utility during a lease term.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2022, and the notice to the residents was posted in the leasing office on July 5, 2022. However, the Owner failed to submit the request to the Department for review until September 15, 2022. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodology as described in subsection (c)(3)(A) of this section related to Methods, no posting is required, and any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue. Figure: 10 TAC §10.614(f)(3)

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA published effective date.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated pursuant to subsection (d) of this section.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated using the HUD Utility Model Schedule.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department's 811 division staff will approve the Utility Allowance for all 811 Units. On an annual basis, the Owner is responsible for submitting a Utility Allowance to the Department's 811 division for review. Once approved, the 811 division will provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance listed on the rent schedule only applies to 811 PRA Units, not the entire building, and is the only allowance approved for use on 811 PRA Units. Failure to obtain an updated rent schedule for changes in utility allowances and gross rents will result in noncompliance and will require the Department to monitor tenant rents using the current approved rent schedule.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with MFDL funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department. HOME-ARP may use subsection (c)(3)(A) of this section.

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding

jurisdiction. If the awarding jurisdiction does not respond or requests the Department calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods. If using the method described in subsection (c)(3)(B), (C), (D), or (E) of this section, applicants must submit their utility allowance to the Compliance Division prior to full application submission.

(A) Upon request, the Compliance Division will calculate or review an allowance for application. The request must be submitted to the Compliance Division no later than 21 days, but no earlier than 90 days, from when the application is due.

(B) Example 614(7): An application for a 9% HTC is due March 1, 2022. The applicant would like Department approval to use an alternative method by February 15, 2022. The request must be submitted to the Compliance Division no later than January 25, 2022, three weeks before February 15, 2022.

(C) Example 614(8): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2022, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2022, (90 days prior to August 11, 2022) and no later than July 21, 2022, (21 days prior to August 11, 2022).

(D) Any requests for new resources (either additional funds or tax credits) on a Development with an existing Department LURA must use the method that is in effect on the existing Development. If the Owner wishes to change or if for an MFDL application is required to change the methods for the purposes of the application, a request for the existing Development must first be submitted to the Compliance Division for approval.

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to UA-Application@tdhca.texas.gov. Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method. If back-up is not submitted the Utility Allowance will be calculated using the HUD Utility Schedule Model as described in subsection (d)(3) of this section.

(l) If Owners want to change to a utility allowance other than what was used for underwriting the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier. Once a request to change the utility allowance is approved or implemented, the utility allowance used at underwriting is no longer valid.

(m) Department review and approval of Renewable Sources (e.g. solar)

(1) Methods outlined in subsection (c)(3)(A), (B), (C), (D) and (E) of this section are allowable if the Utility Provider or PHA publishes a rate plan or schedule specific to Renewable Sources. The method outlined in subsection (c)(3)(E) of this section is allowable only after occupancy is established as outlined in subsection (c)(3)(E) of this section.

(2) Only buildings benefitting from Renewable Sources can use a Renewable Source utility allowance.

(3) Tenants (not Owners) must benefit from the Renewable Source in a manner that is not a discount or credit. To evidence the benefit, 20% of current tenant bills must be submitted with the request.

(4) Owners must submit both the Renewable Source allowance and the non-Renewable Source allowance for approval regardless of methodology or current occupancy. If the Renewable Source is damaged or inoperable for more than 30 days, the non-Renewable Source allowance must be implemented. At the time of the first review or the first annual utility allowance review, whichever is first, the Owner must be able to demonstrate with tenant bills that the tenants are benefitting from the Renewable Source; otherwise the non-Renewable allowance must be used.

(n) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(o) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

§10.615. Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments.

(a) Under the Code, HTC Development Owners may elect 20% of the Units restricted at the 50% income and rent limits (20/50), 40% of the Units restricted at the 60% income and rent limits (40/60) or the average income minimum set aside. Many Developments have additional income and rent requirements (e.g., 30%, 40% and 50%) that are lower than or in addition to the election requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA.

(b) A Development with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted Units. The Development's waitlist policy must inform applicants and current residents of the availability of lower rent Units and the process for renting a lower rent Unit. Unless otherwise approved at Application, underwriting, and cost certification, all Unit sizes must be available at the lower rent limits. The waitlist policy for Developments with lower rent restricted Units must address how the waiting list for their lower rent restricted Units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(c) The Department will examine the actual gross rent (tenant portion of rent plus utility allowance plus any mandatory fees) and income levels of all households to determine if the additional income and rent requirements of the LURA are met. The Department will examine the actual gross rent and income of all households to determine if Developments that elected the average income minimum set aside have met the federal requirements and any lower additional occupancy restriction reflected in the Development's LURA.

(d) The Department will monitor the Available Unit Rule in the following manner for Developments that elected the average income minimum set aside:

(1) If the income of the household who, at the last certification, had an income and rent less than the 60% limits exceeds 140% of the 60% limit, the household must be redesignated as over income.

(2) If the income of a household with an income or rent above the 60% level and less than or equal to the 70% limits exceeds 140% of the 70% limit, the household must be designated as over income.

(3) If the income of a household with an income or rent above the 70% level and less than or equal to the 80% limits exceeds 140% of the 80% limit, the household must be designated as over income.

(4) Owners are not required to terminate the tenancy of over income households. When the Unit occupied by an over income household is vacated, it must be reoccupied by a household with an income and rent level equal to or less than the rent level of the household that went over income. In addition, the Unit must be reoccupied by a household that restores the low income average of the project to 60% or less.

(e) Units at 80% area median income and rent on HTC Developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10% of the Development's Market Rate Units to households at 80% income and rents. This section provides guidance for implementation. If the LURA requires 10% of the Market Rate Units be leased to households at 80% income and rent limits, the Owner must certify the 80% households at the time of move in only. Recertifications will not be required. Student rules do not apply to Units occupied by 80% households. Noncompliance with the requirement to lease to 80% households is not reportable to the IRS on IRS Form 8823 but will be cited as noncompliance under the event "Development failed to meet additional state required rent and occupancy restrictions."

(f) The Department does not require Developments to lease more Units under the additional occupancy restrictions than established in their LURA. However, if a Development inadvertently designates more households than required under the additional rent and occupancy restrictions, they may only decrease to the minimum number through attrition and new move ins, not by removing designations.

(g) Developments where 100% of the households pay rent equal to 30% of their adjusted income are not required to comply with subsection (b) of this section regarding wait lists for lower designated Units. In addition, Developments where 100% of the households pay rent equal to 30% of their adjusted income will not be required to change designations if the tenant portion of rent increases because of an increase in household income. Compliance will be evaluated without regard for how the owner designated the households on the Income Certification or the Unit Status Report. Instead, for Developments where 100% of the households pay rent equal to 30% of their adjusted income, compliance with additional rent and occupancy restrictions will be determined by a review of the actual incomes and rents charged.

§10.618. Monitoring and Inspections.

(a) The Department may perform an onsite monitoring review, a mail in desk review and physical inspection of any Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform monitoring reviews and physical inspections of each low-income Development. The Department will conduct:

(1) The first review or inspection of HTC, TCAP, and Exchange Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) The first review or inspection of all Developments, other than those described in paragraph (1) of this subsection, as leasing commences;

(3) During the Federal Compliance Period subsequent reviews and inspections will be conducted at least once every three years;

(4) After the Federal Compliance Period, Developments will be monitored and inspected in accordance with §10.623 of this subchapter (relating to Monitoring Procedures for Housing Tax Credit, TCAP, and Exchange Properties After the Compliance Period);

(5) A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(6) A Development that scores a 70 or below or that is deemed to be in poor physical condition will be subject to an accelerated in-person physical inspection schedule;

(7) Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least 48 hours notice will be provided); and

(8) Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews or a mail in desk review and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records; and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) The LURA for most HOME, NSP, TCAP RF, NHTF, and HOME-ARP Developments specifies a required Unit Mix and income level. During the monitoring review it will be determined if the minimum number of affordable Units and exact square footage has been provided. Failure to provide the exact square footage listed in the LURA will be cited as "Failure to provide correct square footage". Failure to provide the required number of Units required by the LURA will be cited as "Household income above income limit upon initial occupancy".

(1) Example 618(1). A TCAP RF LURA requires eight low-income units at 60% AMI with the following Unit mix:

(A) Three one bedroom, one bath units with a Net Rentable Area (NRA) of 770 sq ft;

(B) One two bedroom one bath units with a NRA of 900 sq ft; and

(C) Four three bedroom two bath units with a NRA of 1000 sq ft.

(2) If during the monitoring review the Development has eight units designated as TCAP RF, but is not exactly the Units and square footage mix shown in subparagraphs (A) - (C) of this paragraph in Example 618(2) (even if the actual square footage provided is greater) the noncompliance "Failure to provide correct square footage" will be cited.

(e) At times other than monitoring reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low-Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.

(f) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice, as defined in Treasury Regulation 1.42-5, to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits and/or physical inspections.

(g) In order to prepare for monitoring reviews and physical inspections and to reduce the amount of time spent onsite, Department staff must review certain requested documentation described in the notification. Owners are required to submit documentation by the required deadline indicated in the notification. Failure to submit required documentation will result in a finding of noncompliance.

§10.619. Monitoring for Social Services.

(a) If a Development's LURA or application requires the provision of social services, the Department will confirm this requirement is being met in accordance with the LURA or application. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during monitoring reviews beginning with the first monitoring review. Planned services with specific dates may suffice as evidence of compliance during the first monitoring review. Evidence of services must be submitted to the Department upon request. The first monitoring review Example 619(1): The Owner's LURA requires provision of onsite daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services. Example 619(2): The Owner's LURA requires a monetary amount to be expended on a monthly basis for supportive services. The Owner maintains a copy of an agreement with a Supportive Service provider and documents the amount expended as evidence that this requirement is being met.

(b) A substantive modification of the scope of tenant services requires Board approval. Such requests must comply with procedures in §10.405 of this chapter (relating to Amendments and Extensions). It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

(c) If the Development's LURA or application requires a monthly expenditure for the provision of services, the Department will monitor to confirm compliance. Includable costs to support the expenditure include those costs directly related to providing the service(s). Such costs can include, but are not limited to, the cost of contracting the services with a qualified provider, cost of notification of such services (for example, a monthly newsletter), and other costs that can be documented and would only be incurred as a result of the service. An Owner cannot include any costs related to the normal expense of maintaining or operating a Development, utility bills of any kind, in-kind contributions or services, cleaning or contracted janitorial services, office supplies, cost of copier or fax, costs incurred for maintenance of machinery, or volunteer hours. This list is not inclusive, but any other costs identified by the Owner shall be reviewed for consistency with this subsection.

(d) If the Development's LURA or application requires an afterschool learning center for the Mitigation for Schools requirements, the Department will confirm this requirement is being met.

§10.620. Monitoring for Non-Profit Participation, HUB, or CHDO Participation.

(a) If a Development's LURA or application requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm whether this requirement is being met. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB so participating is in good standing with the Texas Comptroller of Public Accounts, Texas Secretary of State and/or IRS as applicable and that it is actually materially participating in a manner that meets the requirements of the IRS. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If the HOME funds were awarded from the Community Housing and Development Organization (CHDO) set aside on or after August 23, 2013, the Department will monitor that the Development remains controlled by a CHDO throughout the federal affordability period.

(c) If an Owner wishes to change the participating non-profit, HUB, or CHDO, prior written approval from the Department is necessary. In addition, the IRS will be notified if the non-profit is not materially participating on an HTC Development during the Compliance Period.

(d) The Department does not enforce partnership agreements or other agreements between third parties or determine fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction or other agreed resolution among the parties.

§10.622. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC, TCAP, and Exchange programs. Under the HTC, TCAP, and Exchange programs, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC, TCAP, and Exchange programs. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund

check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(c) Rent Violations of the maximum allowable limit due to application fees. Under the HTC, TCAP, and Exchange programs, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to $5.50 per Unit for their other out-of-pocket costs for processing an application without providing documentation. The $5.50 will be adjusted annually based on the Cost of Living increased published by the Social Security Administration. Example 622(1): A Development's out-of-pocket cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during monitoring reviews or upon request. The Department will review application fee documentation during monitoring reviews. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected Units back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on MFDL programs. The amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees and any rental assistance (unless otherwise described in the LURA) cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(e) Rent or Utility Allowance Violations on HTC, TCAP, and Exchange Developments after the Compliance Period, HTC, TCAP, and Exchange Developments for three years after the LURA is released as a result of a foreclosure or deed in lieu of foreclosure (as applicable), BOND Developments, and THTF Developments. The amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

(f) Trust Account to be established. If the Owner is required to refund rent under subsection (b), (d) or (e) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the household. If the violation effects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a four year period, until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(g) Rent Adjustments for HOME, TCAP RF, and HOME-ARP Developments:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments. If a household's income exceeds 80% at recertification, the Owner must charge a gross rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Developments with any Market Rate Units. If a household's income exceeds 80% at recertification, the Owner must charge a gross rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF/HOME-ARP Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge a gross rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by Qualifying Populations with incomes equal to or less than 50% will have gross rents equal to the lesser of 30% of the adjusted income of the household, or the Low HOME rent limit with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent not greater than the rent specified in 24 CFR §92.252(a), high HOME rent.

(3) Units restricted for occupancy by Qualifying Populations with incomes greater than 80% of median income will follow the rent adjustments of subsection (g) of this section.

(i) Employee Occupied Units (HTC, TCAP, Exchange, and THTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(j) Owners of HOME, NSP, TCAP-RF, NHTF, and HOME-ARP must comply with §10.403 of this chapter (relating to Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents) which requires annual rent review and approval by the Department's Asset Management Division or Department-procured vendor. Failure to do so will result in an Event of Noncompliance.

(k) Owners are not permitted to increase the household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a Unit with additional Bedrooms. If it is determined that the Development increases rent more than once in a 12-month period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

(l) If an Owner is increasing a household's rent $75 or more per month, the Owner is required to provide the household a 75-day written notice of such increase, unless the Unit or household is governed by a federal housing program that allows for such a change. If an Owner increases the household's rent $75 or more without providing a 75-day notice, any amounts in excess of $75 per month must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household.

(m) Owners must provide an option to pay rent in a manner that does not involve additional out of pocket costs to the household.

§10.623. Monitoring Procedures for Housing Tax Credit, TCAP, and Exchange Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least 30 years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC, TCAP, and Exchange Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department requests;

(2) At least once every three years the property will be physically inspected including the exterior of the Development, all building systems and 10% of Low-Income Units. No less than five but no more than 35 of the Development's Low-Income Units will be physically inspected to determine compliance with HUD's National Standards for the Physical Inspection of Real Estate;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this subchapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project-based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. Bond and THTF Developments layered with Housing Tax Credits, TCAP and Exchange no longer within the Compliance Period also include utilities paid to the Owner as part of the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded or credited to amounts owed. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc.), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required Low-Income Units can be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status student status and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first 15 years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15% of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue

to collect and report data in accordance with subsection (b)(13) of this section.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year 15 Monitoring Rules apply only to the HTC, TCAP, and Exchange Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§10.624. Compliance Requirements for Developments with 811 PRA Units.

(a) 811 PRA will be monitored for compliance with the HUD 4350.3 Handbook and HUD Notice 2013-24, as amended from time to time.

(b) Compliance with 811 PRA requirements may be monitored annually throughout the term of the Participation Agreement, either through an onsite review or a desk review.

(c) Program and property requirements:

(1) Development Owners that have agreed to participate in the Section 811 PRA program are required to notify the Department about the availability of Units, notices of termination, and outcomes of referred applications as described in accordance with §8.6 of this title (relating to Program Regulations and Requirements).

(2) Adjusted income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of adjusted income described in 24 CFR §5.611 as further described in the HUD Handbook 4350.3, as amended from time to time. During the following certifications, Owners must certify and document annual income, adjusted income, and tenant rents: Move-In, Interim, Annual, and Initial. A Unit designated for the 811 PRA program may not be designated at the 30% AMI for any other Department program.

(3) Files for households assisted under the 811 PRA program must document the household's eligibility for the program, the deductions for which the household qualifies and the following HUD forms (or any subsequent HUD form number):

(A) Development application,

(B) Documentation screening for eligible deductions,

(C) Verification(s) of income, assets, and eligible deductions,

(D) Verification(s) for students,

(E) Section 811 Project Rental Assistance Application,

(F) Self-certification of disposed of assets,

(G) Verification of Information Provided by Applicants and Tenants of Assisted Housing: HUD-9887-A

(H) Notice and Consent for the Release of Information: HUD-9887,

(I) Verification of disability: HUD-90102,

(J) Tenant acknowledgment of the "How your rent is determined" fact sheet,

(K) Tenant acknowledgment of the "Resident Rights and Responsibilities" brochure,

(L) Tenant acknowledgment of the "EIV and You" brochure,

(M) Tenant selection plan or acknowledgment page for the 811 PRA program,

(N) Verification(s) of age(s),

(O) Verification(s) of Social Security number(s),

(P) Screening for drug abuse, lifetime sex offender, and other criminal activity,

(Q) Supplement to Application for Federally Assisted Housing: HUD-92006,

(R) Annual Recertification Initial Notice,

(S) Annual Recertification First Reminder Notice,

(T) Annual Recertification Second Reminder Notice (when applicable),

(U) Annual Recertification Third Reminder Notice (when applicable),

(V) Notices of increases or decreases in tenant rents or utility reimbursements,

(W) Notices of change on house or pet rules,

(X) Race and Ethnic Data Reporting form: HUD-27061-H,

(Y) Annual unit inspection,

(Z) HUD model lease HUD-92236-PRA with required addenda,

(AA) Document evidencing compliance with occupancy requirements for households occupying bedroom sizes larger or smaller than normally appropriate,

(BB) Tenant ledger, including all transactions, and documentation supporting the actual out-of-pocket costs for permissible fees,

(CC) Documentation supporting HUD-50059 and HUD-50059-A certifications,

(DD) EIV Existing Tenant Search and documentation to resolve discrepancies,

(EE) Documentation to resolve any discrepancy from EIV master reports,

(FF) EIV Summary Report and documentation to resolve discrepancies,

(GG) EIV Income Report and Income Discrepancy Report and any documentation to resolve discrepancies,

(HH) Move-out paperwork:

(i) Notice of move-out inspection,

(ii) Move-out inspection,

(iii) Evidence of security and pet deposit refunding (when applicable),

(iv) Itemized list of any charges (unpaid rent, damages to the unit, etc.),

(v) Tenant rent ledger (including all debts, credits, and balances),

(vi) Correspondences between former tenant disputing charges,

(vii) Tenant notices related to moving out (notices to vacate, lease violations, etc.).

(4) The tenant file must contain an executed HUD model lease HUD-92236-PRA. No other lease contract or addenda is permitted, except those listed here. Attached to the HUD-92236-PRA, must be the following addenda:

(A) Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures: HUD-50059 (original and corrected versions),

(B) Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures: HUD-50059-A (original and corrected versions for unit transfers, move-outs, gross rent changes, etc.),

(C) Move-in inspection report and waiver of right to be present during move-in inspection when applicable,

(D) House rules,

(E) Lead-based paint disclosure form as further outlined in §10.613(f) of this Title (relating to Lease Requirements) (as applicable),

(F) Pet rules (if applicable),

(G) Live-in Aide, (if applicable),

(H) Bedbug addendum (if elected),

(I) 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum, and

(J) As a requirement of the 10 TAC §10.613 of this subchapter, there are no liens or lockouts for unpaid sums. As the HUD Model lease does not include these requirements, the Department-approved addendum must be included with the HUD Model Lease to incorporate these provisions in accordance with Texas Government Code 2306.6738.

(5) Household unit transfer requirements. For the 811 PRA program, tenants may transfer to any Unit within the Development with prior Department approval. At the time of a transfer, Owners must complete a HUD-50059-A, which may adjust rents. Although a certification of annual income may be required for other layered programs, a HUD-50059 and income certification should not be conducted at the time of transfer for the 811 PRA program. Annual recertifications are due on the anniversary date the household originally moved into the Development. Households that are under-housed or over-housed may be required to transfer to comply with occupancy requirements.

(6) Special rules regarding rents and fees. Tenants are required only to pay the Tenant Rent portion of rent and may not be held responsible for Assistance Payments. Owners may not charge application fees, must cap the security and pet deposits, and may not charge impermissible fees. An employee may not occupy an 811 PRA unit. Owners must adjust rent as required under the program.

(7) Monitoring for eligibility

(A) The household must include at least one person with a disability and who is 18 years of age or older and less than 62 years of age at the time of admission into the Development; and the person with a disability must be part of one or more of the target populations for the 811 PRA program.

(B) The household's income is less than the extremely low income limit at move in.

(C) The Owner must check the following criminal history of the household. Households in the 811 PRA program must not include:

(i) Any member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity;

(ii) Any member that is currently engaged in illegal use of drugs or for which the Owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents; and

(iii) Any member who is subject to a State sex offender lifetime registration requirement.

(D) Student Status. If the household includes a student, the student must meet all of the criteria described in HUD Handbook 4350.3 par. 3-13B, as modified by the September 21, 2016, Federal Register Notice 5969-N-01.

(8) Developments must prominently display 11 x 14 inch sized, as required by 24 CFR Part 110, Fair Housing Poster HUD-928.1 (English), HUD 928.1A (Spanish), and in other languages as required by Limited English Proficiency Requirements.

(9) Number, Unit Mix, and Segregation of Assisted Units. The Department will monitor that the Owners of Participating Developments have set aside and made available on a continuous basis for Eligible Applicants the required number of Assisted Units and unit mix of bedroom sizes as required under the Rental Assistance Contract, as amended. Owners may not segregate Eligible Tenants to one area of a building or in certain sections within the Development. If an Owner is not able to meet these requirements, documentation must be maintained and available upon request to demonstrate good faith efforts to meet their obligations.

(d) Eligibility for assistance and occupancy.

(1) Income limits. At Move-In and Initial Certification, the household must be at or below the current extremely-low limit (30 percent AMI) as published and updated annually by HUD. Income limits do not apply at Annual Recertification or Interim Recertification. An adult child is not eligible to move into a unit after initial occupancy unless they are performing the functions of a live-in aide and are eligible to be certified as a live-in aide for eligibility purposes; documentation under these circumstances must be kept in the file.

(2) Occupancy standards. Tenant files must maintain evidence that a tenant meets an exception when assigning a smaller or larger unit than required under normal circumstances or that a request for a transfer under these circumstances is denied.

(3) Verification of Family Type and Individual Status. To verify disability status, the tenant file must include a copy of the HUD-90102 (Verification of Disability) provided to the Owner at the time of referral from the 811 Administration Division at the Department.

(4) Verification of Income Eligibility. The tenant file must include a copy of the Section 811 Project Rental Assistance Program Application provided to the Owner at the time of referral from the 811 Administration Division at the Department. This document is not sufficient to screen for eligibility requirements under the program. An application that sufficiently screens for eligibility, income, assets, deductions and which complies with §10.612(a)(2) of this subchapter (relating to Tenant File Requirements) is required.

(5) A household may not be disqualified for participation in the program solely based on their citizenship status.

(e) Determining income and calculating rent.

(1) Total Tenant Payment (TTP) is the amount a tenant is expected to contribute for rent and utilities. TTP is based on the family's income. Calculation of the TTP is the greater of 30 percent of the monthly adjusted income or 10 percent of the monthly gross income. Welfare rent and a $25 minimum rent do not apply. By the effective date found in the Rent Schedule provided by the Department, the utility allowance must be applied when calculating Tenant Rent. Please refer to §10.614 of this subchapter (relating to Utility Allowances) for details.

(2) A tenant is not required to reimburse the Owner for undercharges caused solely by the Owner's failure to follow HUD's procedures for computing rent or assistance payments, including calculations of Annual Income, Adjusted Income, Tenant Rent, Utility Reimbursements, security deposits, or when the Owner fails to address timely discrepancies in income as indicated in an Enterprise Income Verification (EIV) System report.

(f) Lease requirements and leasing activities

(1) Lease term. The term of the initial lease must not be for less than twelve months. The lease will automatically be renewed for successive one-month terms if a new lease is not signed.

(2) Fees and deposits.

(A) Security deposits.

(i) At the time of move-in, the Owner may collect a security deposit from each family in an amount equal to one month's Total Tenant Payment or $50, whichever is greater.

(ii) The Owner must place the security deposit in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the household, plus any accrued interest. The Owner must comply with any applicable State and local laws concerning interest payments on security deposits and return the security deposit to the family as required.

(B) Pet deposits. Pet rules for a development may require tenants to pay a refundable pet deposit, but apply only to those tenants who own or keep cats or dogs in their units. The pet deposit must not exceed $300 for all pets. The deposit may be paid in full or in installments. If paid in installments, the initial deposit cannot exceed $50 at the time the pet is brought onto the premises. The pet rules must allow for gradual accumulation of the remaining required deposits, not to exceed $10 per month until the deposit is reached, but not prevent a tenant to pay more than $10 per month if the household chooses to do so.

(C) Owners may not charge any deposits other than security and pet deposits as outlined in the subparagraph above.

(D) Fees prior to occupancy. Owners may not charge application fees for any cost associated with accepting and processing applications, screening applicants, or verifying income and eligibility.

(E) Fees during occupancy.

(i) Owners cannot charge fees for late payment of rent.

(ii) Owners may not charge any impermissible fee, such as unpaid utility bills fees (reimbursement of utility bills is permitted), pet fees, etc.

(g) Notices to tenants.

(1) Initial and reminder notices for an annual recertification.

(A) Notices must not indicate a tenant will have their tenancy terminated for failing to recertify.

(B) Notices must indicate a tenant will have their assistance terminated for failing to recertify.

(C) The Third Reminder notice must indicate that if a tenant fails to recertify, their assistance will be terminated. The notice must also inform the tenant of the new rent they will pay without the assistance.

(2) Any change in Tenant Rent or Utility Reimbursements requires a notice to the tenant, with increases requiring the notice to be at least 30 days in advance of the increase. Owners may not begin to charge or retroactively charge Tenant Rent when failing to properly notify the tenant of an in increase in Tenant Rent.

(h) Terminations

(1) Termination of assistance. Tenants whose assistance is terminated may remain in the unit. Rent will be capped at the rent limit for the other Department-monitored programs under which the unit is restricted.

(2) Termination of tenancy. Refusal by a tenant to participate in or accept 811-specific services is not a basis for lease termination.

(i) Enterprise Income Verification (EIV)

(1) Owner must address discrepancies timely, which is within approximately thirty (30) days from the date of the EIV report.

(2) Owners must document attempts to address and resolve discrepancies between certification paperwork and data from the EIV system; however, Owners may not suspend, terminate, reduce, make a final denial of rental assistance, or take any other adverse action against an individual based solely on the data in EIV.

(3) Upon request by the Department, Owners must provide a list of staff with access to EIV systems or EIV reports. The list must provide the level of access and official title with the company for each staff member. EIV data may not be viewed or used by staff without a signed EIV Rules of Behavior, a certificate of completion dated within the last twelve (12) months for the Cyber-Awareness Challenge training (or the training required by HUD to replace this training), or without having an official and appropriate purpose for accessing the data.

(4) Upon request by the Department, Owners must provide for EIV Coordinators a Coordinator Authorization Access Form (CAAF) for initial access and annual recertification of access to EIV systems and for EIV Users a User Authorization Access Form (UAAF) for initial access and annual recertification of access to EIV systems. If a CAAF or UAAF printed from the EIV system is not available, a CAAF or UAAF executed by both the EIV user and HUD official may be accepted.

(5) Owners may not transmit to the Department EIV data or reports through the Department's Compliance Monitoring and Tracking System (CMTS).

(6) In a physical or electronic binder, Owners must maintain the following EIV Master Binder reports and summary of the resolution of any discrepancies identified:

(A) New Hires Report

(B) Multiple Subsidy Report

(C) Failed EIV Pre-screening Report

(D) Failed Verification Report (Failed SSA Identity Test)

(E) Deceased Tenant Report

(F) No Income Reported on 50059 (as outlined in Owner's policies and procedures)

(G) No Income Reported by HHS or SSA (as outlined in Owner's policies and procedures)

§10.625. Events of Noncompliance.

Figure: 10 TAC §10.625 lists events for which a multifamily rental Development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates whether the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.625

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406009
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP), without changes to the text previously published in the *Texas Register* (49 TexReg 7468) on September 20, 2024 and will not be republished. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

The proposed repeal does not require additional future legislative appropriations.

The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

The proposed action will repeal an existing regulation, but is associated with a simultaneous adoption of the subchapters in 10 TAC Chapter 11, the Qualified Allocation Plan, in order to better address the requirements of Tex. Gov't Code Ch. 2306 Subchapter DD.

The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

The proposed repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.

The proposed repeal does not contemplate or authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 20, 2024, to October 11, 2024, to receive stakeholder comment on the repealed section. No comments on the repeal were received.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406014
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406015
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406016
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406017
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406018
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1009

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406019
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the "Department") Adopts the new 10 TAC Chapter 11, Qualified Allocation Plan (QAP) with changes to the text previously published on September 20, 2024, in the *Texas Register* (49 TexReg 7470). The rules will be republished. The purpose of the adopted new section is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: clarify multiple definitions; update the Program Calendar; introduce a new tenant-focused tie breaker; revise underserved area and opportunity index so more potential Development sites will be competitive; increase Eligible building costs to respond to inflation; create a new scoring item to incentivize larger developments; eliminate Experience Certificates; Add automatic High-Quality Pre-Kindergarten awards for specified regions of the State; and provide for the use of 2024 State Housing Tax Credits.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action for two reasons: 1) the state's adoption of the QAP is necessary to comply with IRC §42; and 2) the state's adoption of the QAP is necessary to comply with Tex. Gov't Code §2306.67022. The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed rule changes do not require additional future legislative appropriations.

4. The rule changes will not result in any increases or decreases in fees, with the exception of proposed language that requires owners of certain Department-funded Developments that voluntarily request an ownership transfer to be responsible for any costs incurred for the preparation of those documents by outside bond counsel. The estimated cost of this fee is $5,000 per ownership transfer.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed rule has sought to clarify Application requirements.

Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2024 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022, among other federal and state requirements.

7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between $50,000 and $60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not,

on average, result in an increased cost of filing an application as compared to existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 100 to 150 small or micro-businesses subject to the proposed rule for which the economic impact of the rule may range from $480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of $10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,376 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. The proposed rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a takings by the Department. Therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed. Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. Other than the fees mentioned in section a4 above, there is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between $50,000 and $60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 20, 2024, to October 11, 2024, to receive public comment on the proposed new sections of rule. Comment was received from 54 commenters, and a summary of these comments and the Department's reasoned response is included with the Board Item.

§11.1(d)(125)(B)(ii) Definitions - Supportive Housing

COMMENT SUMMARY: Commenter 36 provided recommended language for Supportive Housing developments regarding the 30 SF per unit of Common Area requirement. The suggested language allows the space to be used for resident amenities in addition to supportive services and excludes property management offices and interior corridors.

STAFF RESPONSE: Staff appreciates Commenter 36 support of this item regarding the requirement for 30 SF per unit of Common Area for Supportive Housing developments. Staff concurs with

the suggestion to include resident amenities as an allowable use for the Common Area and a responsive change has been made to this extent.

Regarding excluding property management offices and interior corridors from Common Area, Staff does not currently review architectural plans to this specificity, and would recommend in future Roundtables to discuss increasing this 30 SF per unit requirement if this added language does not have the intended outcome.

§11.1(e) Data

COMMENT SUMMARY: Commenter 32 is requesting that Neighborhoodscout data be accepted at the time of the Full Application instead of the Pre-Application Delivery Date. Commenter 32 states now that Neighborhoodscout is not part of the Tie Breaker, the documentation submission should be consistent with the rest of the Full Application process.

STAFF RESPONSE: Staff appreciates Commenter 32's suggestion to create consistency among the Application in regard to the acceptance of data. Staff will make a responsive change.

§11.3(b) Two Mile Same Year

COMMENT SUMMARY: Commenters 6, 21, 42, and 44 support the proposed language in the 2025 QAP Draft, which prioritizes At-Risk over Regional Pools in the Two-mile Same Year rule.

STAFF RESPONSE: Staff appreciates Commenter 6, 21, 42, and 44 for their support on this change regarding the prioritization of At-Risk in the Two-mile Same Year rule.

§11.4(c) Tax Credit Request, Award Limits, and Increase in Eligible Basis

COMMENT SUMMARY: Commenter 40 requests 4% applications proposing new construction in low-poverty areas automatically qualify for a 30% Boost in eligible basis. Commenter 40 believes that this change would increase new construction in the 4% program.

STAFF RESPONSE: Staff acknowledges Commenter 40's suggestion allowing new construction 4% projects in low-poverty areas to qualify for the 30% Boost in Eligible Basis. Staff believes that this change is not allowable given federal regulation that limits under what criteria 4% transactions may qualify for the boost in Eligible Basis.

§11.5(3)(A)- At-Risk Set-Aside

COMMENT SUMMARY:

Commenter 27 suggests the proposed language in this section appears to be in conflict with 2306.6702. Commenter 27 states that the provision as drafted seems to eliminate eligible USDA-financed applications from competing as an At-Risk Development and appears to restrict certain subsidies from At-Risk when they are specifically listed as a qualifying subsidy in statute. Commenter 25 finds the proposed language highly concerning, and believes it will have a negative impact on rural Texans.

Commenters 5, 6, and 21 support the additional language proposed in in §11.5(3)(A).

Commenters 17 and 43 states that the proposed language in §11.5(3)(A) is inconsistent with state statute. Commenter 43 believes that the new language acts to treat one subsidy source differently than other subsidy sources listed under At-Risk, which diverts from the plain language of the statute. Commenter 43 recommends that if TDHCA wants to limit an applicant from trying to complete in both At-Risk and USDA set-asides, then TDHCA may limit an applicant through the application by choosing the set-aside to compete under. Commenter 43 recommends that the proposed changes be struck from the final QAP and allow the industry to work through the upcoming 2025 legislative session.

Commenter 32 states the proposed language in §11.5(3)(A) has unintended consequences of preventing an application that legitimately qualifies for both USDA and At-Risk to be funded in At-Risk. Commenter 32 provides suggested language to be added after the proposed changes in the 2025 QAP Draft.

Commenters 5, 6 and 21 support the additional language proposed in §11.5(3)(B)(ii). Commenters 6 and 21 suggest extending the eligible contract expiration date from 2 years after July 31 of the year the Application is submitted to 5 years.

Commenters 17 and 43 do not support the proposed language in §11.5(3)(B)(ii) and recommend the removal of the suggested language. Commenter 17 states it is in direct conflict with state statute. Commenter 43 states this language has never been necessary in the past and could have unintended consequences.

Commenters 17, 19, 27, 34, and 43 all suggest that the Department should allow the industry and advocates handle any clarification of the At-Risk set aside in the 2025 legislative session.

STAFF RESPONSE:

Staff acknowledges the concerns of 17, 19, 25, 27, 32, 34, and 43 regarding the proposed changes to At-Risk Set-Aside. Several responsive revisions have been made. Staff has removed the proposed language in §11.5(3)(A) and §11.5(3)(B)(ii). Staff will revisit these topics following the 2025 legislative session and further discussion at the 2026 QAP roundtables.

Staff appreciates the suggestion of Commenter 43 to instead limit Applicants that qualify for both the USDA and At-Risk set-asides from competing in both through the application by choosing the set-aside to compete under. A responsive revision has been made to §11.5(3)(A) to allow this.

In regard to Commenters 5,6, and 21, Staff appreciates support of the draft language but believes the responsive revisions will be effective while preventing any unintended consequences. Staff recommends discussing these items further at the 2026 QAP Roundtable Discussions.

§11.6(3)(C)(vi) Award Recommendation Methodology- Limitations on Supportive Housing Awards in Certain Regions

COMMENT SUMMARY: Commenter 42 does not support the proposed rule of limiting Urban and Rural subregions that do not contain a county with a population of at least 2,500,000 to one Supportive Housing award per cycle. Commenter 42 recommends that two or more Supportive Housing be eligible for an award in such regions.

STAFF RESPONSE: Staff acknowledges Commenter 42's recommendation to increase the number of Supportive Housing Applications allowed to compete in subregions that do not contain a county with a population of at least 2,500,000. Staff believes that with the point advantage allotted to supportive housing developments, this change is necessary to ensure a diverse array of target populations in all subregions.

§11.7 Tie Breaker Factors

COMMENT SUMMARY: Commenters 32 and 37 both believe that features under §11.7(2)(A) should be able to qualify for

multiple categories instead of just meeting the condition of one feature. Commenter 32 provided suggested language that requires local municipality approval for two or more features in the same location by Full Application Deadline. Commenter 37 states that proposed language is counterintuitive and does not benefit residents. Commenter 40 recommends adding back the Poverty Rate Tiebreaker from the 2023 QAP as the first tiebreaker. Commenter 47 suggests adding urgent care facilities as a fifth tiebreaker option.

STAFF RESPONSE: Staff acknowledges Commenter 32, 37, 40, and 47's suggestions to the Tie-Breaker Factors section. Staff believes that administering this item will be greatly simplified if each amenity counts in only one category and will refrain from allowing them to qualify in multiple categories. Staff appreciates Commenter 40 and 47's suggestion to include additional items in the Tie-breaker, but does not believe adopting these changes is necessary at this time.

§11.7(2)(A)(i) Tie Breaker Factors- Parks

COMMENT SUMMARY: Commenter 32 suggests clarifying language regarding admission fees in the Parks Tie Breaker Factor. The recommended language is to address parks that could be disqualified for charging admission on certain sections of the park, such as a pool, but not the entirety of the park itself.

STAFF RESPONSE: Staff appreciates Commenter 32's suggestion to revise language in the Tie-Breaker regarding the disqualification of parks that change admission from being used. Staff has made a responsive change to the item.

§11.6(3)(C)(iv) HUD Choice Neighborhood

COMMENT SUMMARY: Commenters 2, 22, and 46 all express support of lowering the population threshold of the HUD Choice Neighborhood program from 950,000 to 750,000.

STAFF RESPONSE: Staff appreciates the support from Commenter 2, 22, and 46 regarding the lowering the population threshold of the HUD Choice Neighborhood program from 950,000 to 750,000.

§11.6(5) Credit Returns Resulting for Force Majeure Events

COMMENT SUMMARY: Commenter 6 has requested additional language in regards to Force Majeure. Commenter 6 states that there are many surprises and issues out of developer control that cause delays for closing and that the Board should allow discretion on extenuating circumstances.

STAFF RESPONSE: Staff acknowledges Commenter 6's suggestion for providing additional language to allow for issues out of the developer's control in regards to Force Majeure. Staff does not believe this change is necessary, and believes the Applicant can submit a waiver if these circumstances arise.

§11.9(b) Competitive HTC Selection Criteria

COMMENT SUMMARY: Commenter 39 encourages the Department to consider creating point items for resilience housing construction. Commenter 39 states resilient construction is necessary in response to the number of severe weather and natural disasters the state of Texas has endured.

STAFF RESPONSE: Staff appreciates Commenter 39's suggestion to include language and point items related to resilient construction methods. Staff believes this is too significant of a change to make at this time as it could drastically impact the cost of prospective 2025 Applications. Staff recommends discussing these items at the 2026 QAP Roundtable Discussions.

§11.9(b)(3) Quantity of Low-Income Units

COMMENT SUMMARY: Commenters 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 24, 28, 30, 31, 32, 33, 34, 35, 37, 38, 41, 48, 49, 50, 51, 53, and 54 believe that points for quantity of low income units is unattainable with the current fixed credit maximum, which requires greater need for limited property tax exemptions and soft funding. Commenters 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 24, 28, 30, 31, 32, 33, 34, 35, 37, 38, 41, 48, 49, 50, 51, 53, and 54 suggest that the percentage increase for this item be lowered to 4% and 6% for 1 and 2 points respectively. Commenters 3 states that they prefer to leave the property taxes in place in order to support the communities that are servicing the project. Commenters 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 24, 28, 30, 31, 32, 33, 34, 35, 37, 38, 41, 48, 49, 50, 51, 53, and 54 cite that high construction and insurance costs, high interest rates, and a drop in equity pricing, have made it difficult to produce increased unit counts.

Commenters 17, 28, 34, 38, 45 cite additional issues that developers encounter when trying to reduce costs for construction to create greater unit counts. Commenters 17, 28, 34, 45 discuss a need to rely on the availability of soft funding or tax-exemptions when this was not as common as in prior years.

Commenter 29 opposes the quantity of low income units point item and urges TDHCA to abolish it. Commenter 29 cites a shortfall in their recent project and the lack of other funding sources to help fill it. Commenter 29 suggests that TDHCA could further its goal of maximizing the states dollars by working with cities and counties to provide gap funding.

Commenters 31, 41, and 45 state a desire by the applicant community to increase production of units, but the new language is problematic and challenging for financial feasibility.

Commenter 40 strongly encourages TDHCA to remove this point item as it will result in the further decline of housing quality. Commenter 40 states that this item forced developers to seek out high poverty and high crime areas.

Commenter 45 suggests the removal of this point item until it can be discussed further for the 2026 QAP. Commenter 45 has provided data that purports an increasing percentage of Elderly and Supportive Housing population, and projects a decreasing share of General population projects.

STAFF RESPONSE: Staff appreciates Commenter 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 24, 28, 30, 31, 32, 33, 34, 35, 37, 38, 41, 48, 49, 50, 51, 53, and 54's suggestion to lower the percentage increase for this item to 4% and 6% for 1 and 2 points respectively. Staff concurs that a decrease may be appropriate, but disagrees that the thresholds should be lowered to this extent. A revision has been made to decrease thresholds to 9% and 18%. Staff acknowledges the concerns around the current economic environment, the increasing needs for scarce soft funding, and the commenters that wish for this item to be removed in its entirety. Staff maintains its conclusion that this item is necessary in some form to ensure an appropriate number of Low-Income units are produced for Texans in 2025.

§11.9(c)(4) Section 811 Project Rental Assistance Program (811 PRA) and Residents with Special Housing Needs

COMMENT SUMMARY: Commenters 17 and 34 have concerns with this item specifically for rural areas where homeless service providers are lacking. Commenters 17 and 34 state that they were once exempt from this requirement and that having to hold units available for 6 months before being able to lease for other

residents can be financially problematic for developments. Commenters 17 and 34 request that USDA applications be exempt from this point category until appropriate coordinating agencies are available for rural developments to work with.

Commenter 47 recommends an update to the special needs populations to better reflect the special needs populations in statute. Commenter 47 has provided a list of these special needs populations, pointing out that statute includes two target populations; youth aging out of foster care and youth experiencing homelessness, should be added to this section.

STAFF RESPONSE:

Staff acknowledges Commenter 17 and 34's concerns regarding financial implications but is hesitant to make exclusions that will reduce this item's potential coverage. Staff recommends no change, but will monitor the impact of the language in the subsequent round and recommends discussing this further at the 2026 QAP Roundtable Discussions.

Staff appreciates Commenter 47's suggestion to expand the list of special needs populations to include youth aging out of foster care and youth experiencing homelessness. Because of the QAP requires providing a preference in admissions to Special Needs Populations, staff does not believe that including these groups in the scoring item is allowable under current Federal statute for Developments containing federal funding (which many LIHTC applications do), absent a specific federal funding source allowing such an age preference.

§11.9(c)(6) Underserved Area

COMMENT SUMMARY: Commenter 34 appreciates the changes to Underserved area with the attempt to broaden the areas to allow more development.

Commenter 44 appreciates the modification to this section that lowers the last award serving the same population in a given census tract from 30 years to 20 years. Commenter 44 states that this aligns both with the reality of site scarcity we are seeing and with the cadence of the scoring in the section.

Commenter 47 expressed minor concern with reducing the year threshold in item (C) from 30 to 20 as it will slightly weaken the provision while increasing the number of points. Commenter 47 suggests that if the goal is to make more areas eligible for underserved points, the clause "...that serves the same Target Population as the proposed Development" from items (C) and (F) could be added to other scoring items in the category.

Commenter 47 supports the new 5-point item for high income tracts as it allows for more concentration of HTC units in high-opportunity areas. Commenter 47 also states that this change will increase the number of areas eligible for underserved points.

STAFF RESPONSE: Staff appreciates the support from Commenter 34, 44, and 47 regarding the changes to Underserved Area. Staff acknowledges Commenter 47's concerns regarding the "weakening" of the item and will monitor impacts in 2025.

§11.9(c)(7)(A) Proximity to Jobs

COMMENT SUMMARY: Commenters 42 and 44 oppose widening the proximity to jobs radius to 5 miles, citing that it undermines the policy intent of the scoring item and is an unrealistic reflection of true access to job opportunities. Commenter 44 states that they previously opposed the expansion of the radius from 1 to 2 miles. Commenter 44 states that nearly anywhere within a large city is 5 miles from 10,000 jobs.

Commenter 47 appreciates staff reducing the increase in the distance between the development and jobs needed for points for rural areas from the Staff Draft. Commenter 47 is concerned that the more than doubled radius for urban areas in item (A) is still too large. Commenter 47 recommends a smaller increase, one mile like the rural increase, citing that a smaller increase will continue to encourage the placement of affordable housing near places of employment while opening additional areas for points

STAFF RESPONSE: Staff acknowledges Commenter 42, 44, and 47's concerns regarding widening the proximity to jobs radius and will monitor this item accordingly in the 2025 Application Round. Staff has not recommended a change at this time but encourages further discussion on the matter at upcoming Governing Board meetings and the 2026 QAP Roundtable Discussions.

§11.9(c)(7)(C) Access to Jobs

COMMENT SUMMARY: Commenter 44 supports the inclusion of additions that ensure a paved walkway between the development site and a nearby transit stop. Commenter 44 also supports the requirements for the sidewalk to consist of smooth hard surfaces, curb ramps, and market pedestrian crossings.

Commenter 47 strongly supports the added language to ensure that properties do not get credit for proximity to public transit without being fully accessible to anyone who needs it.

STAFF RESPONSE: Staff appreciates the support from Commenters 44 and 47 for this item regarding additions to the language that ensure a paved walkway between the development site and a nearby transit stop.

§11.9(d)(7) Concerted Revitalization Plan (CRP)

COMMENT SUMMARY: Commenter 1 suggests that points for this item should be available to new construction in rural markets. Commenter 1 proposes that we mirror the requirements for urban Concerted Revitalization Plans for rural in the new language as it will level the playing field and ensure an equal distribution of state resources.

In order to provide a "level playing field" for urban At-Risk developments, Commenter 32 proposes that (B) be revised to also include Rehabilitation developments in the At-Risk Set-Aside.

STAFF RESPONSE: Staff appreciates Commenter 1 and 32's suggestions regarding the Concerted Revitalization Plan point item. Staff is open to changes related to the Concerted Revitalization Plan scoring item, but recommends brining this item to the 2026 QAP Roundtable discussions given that there is not sufficient time to discuss the implications of this change for the 2025 Application Round.

§11.9(e)(1) Financial Feasibility

COMMENT SUMMARY: Commenter 34 supports the changes to financial feasibility scoring and related requirements in the threshold section.

STAFF RESPONSE: Staff appreciates Commenter 34's support for this item around changes to the financial feasibility point item.

§11.9(e)(4) Leveraging of Private, State, and Federal Resources

COMMENT SUMMARY: Commenters 17 and 34 support the increase in 1% leveraging for USDA applications stating that this will greatly benefit the preservation of USDA developments. Commenters 17 and 34 ask for a revision of the language to remove the 50 units or less limit for USDA applications citing that

this limit is only in place because of a bad actor and USDA applications should not be punished because of this.

STAFF RESPONSE: Staff appreciates Commenter 17 and 34's support for the 1% increase. In regard to the unit limit, Staff's understanding is this change addresses negative impacts of the scoring item felt most acutely by small Developments. Opening up the item to a wider range of Applications may warrant further discussion at the 2026 QAP roundtables.

§11.101(a)(2)(E)- Undesirable Site Features

COMMENT SUMMARY: Commenter 47 supports the added language specifying that developments with ongoing federal support or a current TDHCA LURA are not exempt from protections against environmental hazards. Commenter 47 also suggests additional language to a number of sections that would better protect tenants from environmental hazards, including increasing floodplain elevation requirements and protection from other disasters including wildfire, winter storms and tornados.

STAFF RESPONSE: Staff appreciates Commenter 47's support of the added language related to protections against environmental hazards. Additionally, staff appreciates the suggestions related to providing more advanced protections from other environmental hazards and recommends discussing these concerns in the 2026 QAP Roundtable discussions.

§11.101(a)(3)(i) & (ii) Neighborhood Risk Factors

COMMENT SUMMARY: Commenter 47 expressed that they previously opposed the exemption for rehabilitation developments from crime and poverty neighborhood risk factors. Commenter 47 specifies while the new language is not ideal, they support TDHCA's effort to balance the need for preserving affordable units with a need to locate new units in high opportunity areas that are not harmful to tenants.

STAFF RESPONSE: Staff appreciates both Commenter 47's concerns and general support on this item. Staff suggests bringing up any concerns related to improving this mechanism in the 2026 QAP Roundtable discussions.

§11.101(a)(3)(D)(iii) Neighborhood Risk Factors- TEA Accountability Rating

COMMENT SUMMARY: Commenter 23 states that Neighborhood Risk Factors associated with school ratings have an unintended consequence for housing affordability in rural communities. Commenter 23 additionally states that school Accountability Ratings have not be released yet given a pending lawsuit, so current language regarding 2024 Ratings cannot be used. Commenter 23 also cites unreliability with the scoring process and disproportionate impacts to schools with high-poverty student populations.

Commenters 31 and 38 request the reinstatement of 2022 language that provided an exemption for developments encumbered by a TDHCA LURA. Commenters 31 and 38 believe this is important as it will remove barriers to preserving existing affordable housing.

Commenters 32 and 37 believe this item should be suspended for 2025 as 2024 Accountability Ratings have not been released given a pending lawsuit. Commenter 37 cites that the currently available ratings are outdated and do not accurately reflect how schools are currently performing.

STAFF RESPONSE: Staff acknowledges Commenter 23, 31, 32, 37, and 38's concerns regarding the Neighborhood Risk Factor and the delayed release of TEA Accountability Ratings. Due to this uncertainty, Staff supports the reinstatement of 2024 language related to this item has made responsive changes to this extent. Staff appreciates hearing the concerns related to the reliability of TEA Accountability Ratings, but will not be suspending the item at this time as 2022 ratings can still be used. Regarding Commenters 31 and 38, staff understands that existing Developments have little control over their school district but nonetheless believe the mitigation is an important resource to residents.

§11.101(a)(3)(E)(iii) School Mitigation

COMMENT SUMMARY: Commenter 23 suggests that the proposed mitigation to provide a 15 hours/week after school learning center is a burden to the cost of the development and does not provide a viable resource for the tenants of a Development. Commenter 23 cites that service coordinators often lack specialized training and expertise needed to address gaps in learning and will not provide targeted support for students with disabilities.

Commenters 31, 38, and 41 suggest that an after school learning center should not be a baseline for mitigation for the entire Affordability Period given the disruptions to education and school ratings during the pandemic. Commenters 31, 38, and 41 suggest that after school learning centers should only be required until the subject school achieves an acceptable rating, as was the case in the 2022 QAP.

STAFF RESPONSE: Staff acknowledges the issues raised by Commenter 23 regarding the burden that providing an after-school learning center has on cost of the development and the lack of expertise that housing developers have in providing this resource. Additionally, staff appreciates the suggestion from Commenter 31, 38, and 41 that the after-school learning center should only be required until the subject school receives an acceptable rating. Staff nonetheless believes this item is significant for tenants and such significant changes should be discussed first during the 2026 QAP Roundtables.

§11.101(b) Development Requirements and Restrictions

COMMENT SUMMARY: Commenter 39 suggest that a new Resilient Construction section that requires all projects to be constructed with a Fortified designation with hail supplement. Commenter 39 cites preparedness and resilience from natural disasters and the adoption of these standards in other State's QAP.

Commenter 47 suggests incentivizing the use of resilient construction materials, fire-resistant designs, and reinforced structures.

STAFF RESPONSE: Staff appreciates Commenter 39 and 47's suggestions to implement the use of more resilient construction methods to help protect tenants from natural disasters. Staff believes this is too big of a change to make at this time and would suggest bringing up these items at the 2026 QAP Roundtable Discussions.

§11.101(b)(7)(C)(vii)- Eviction Prevention Program

COMMENT SUMMARY: Commenter 44 agrees with the intent and vision of the Eviction Prevention program scoring item and encourage the agency to make it an appealing option. Commenter 44 suggests that the requirement for a dedicated case manager with no more than 50 cases at a time is far too high. Commenter 44 supports the guidance on payment plans and flexibility for property managers to tailor these to individual resident's needs.

Commenter 47 has provided various revisions to this point item and has provided language to this extent. Commenter 47 has provided specific recommendations of the various changes for this point item related to; maintaining a six-month holdoff period, establish standards for case managers, forbid rent increases during six-month holdoff period, remind tenants of due dates, cap late fees at no more than 4% of tenants rent share, limit assessment of late fees to no more than three consecutive months and allow residents receiving fixed income to pay rent within three business days of receiving their payment without penalty. Commenter 47 has provided an explanation for each of these aspects as well as responded to concerns raised by other commenters on this item.

Commenter 47 suggests moving this item to the Definitions section as it will provide greater flexibility as the item evolves, avoid the need for future LURA amendments, and ensure consistent monitoring.

STAFF RESPONSE: Staff appreciates Commenter 44 and Commenter 47's suggestions. Staff believes it is too late in the QAP Development process to make significant changes to this item and would suggest bringing up these items at the 2026 QAP Roundtable Discussions.

In regard to Commenter 47's concern of the item's placement in the QAP, staff believes the location of the language within the document is immaterial in these respects. No change is recommended.

§11.101(b)(1)(A)(vii) Ineligible Developments- Efficiencies and One Bedroom

COMMENT SUMMARY: Commenters 31, 38 and 41 suggest that the limitation on one bedroom and efficiency units should be raised to 50%. Commenters 31, 38 and 41 believe this limitation should be determined on the needs of each individual market and that this policy may be preventing increased unit counts.

Commenter 45 supports staff's increase of the limitation from 30% to 35%, but believes this is still too restrictive for family population developments. Commenter 45 cites the desire to meet demand at the individual market level, which typically sites around 40%-50% for efficiency and one bedroom units.

STAFF RESPONSE: Staff appreciates the suggestions raised by Commenter 31, 38, 41, and 45 regarding the restrictions to the number of Efficiency and One Bedrooms in General population developments. Staff appreciates Commenter 45's limited support of the proposed change for 2025 bringing this limitation up from 30% to 35%. Staff believes this change is sufficient in balancing the needs of the development community, while also ensuring that ample units for families are being constructed.

§11.101(b)(1)(C) Ineligible Developments- School Attendance Zones

COMMENT SUMMARY: Commenter 32 has requested that this item be suspended for 2025 as the 2024 Accountability Ratings have not been released.

STAFF RESPONSE: Staff appreciates Commenter 32's concerns and acknowledges that the release of 2024 Accountability Ratings have been delayed. Existing language indicating that the item is suspended remains in place in the current draft.

§11.101(b)(6)(B)(VI) Green Building Features

COMMENT SUMMARY: Commenter 26 suggests revision of existing language related to Enterprise Green Communities. Commenter 26 believes the language outlined in the QAP is more stringent than other similar Green Certifications, as it requires the inclusion of all mandatory and optional features to score points for the item.

STAFF RESPONSE: Staff appreciates Commenter 26's suggestion to reduce the number of requirements needed to attain Green Certifications in out QAP to be at parity with other similar items. Staff supports the inclusion of this revision to the section, and has made a responsive change to this extent.

§11.203(14) Feasibility Report

COMMENT SUMMARY: Commenter 6 recommends removing the requirement for a Survey to be provided for Rehabilitation Developments. Commenter 6 cites added costs to an expensive Application process. Commenter 6 instead suggests only requiring a Site Plan or requiring a Survey that is within 10 years.

STAFF RESPONSE: Staff acknowledges Commenter 6's concerns but does not agree that the proposed language introduces a new requirement as surveys are required for cost certification. Providing a survey at Application will assist staff throughout the asset management process and reduce material amendments that can be necessary if key facts about the site are not known at that time. Regarding the allowable age of the survey, staff feels the current language of §11.203(14)(D) already states that the 24-month limit does not apply to Rehabilitation Developments.

Other Comments

COMMENT SUMMARY: Commenter 52 recommends prioritizing housing for youth and young adults age 18-25. Commenter 52 suggests implementing this through the creation of a Set-Aside or providing additional points, paired with supportive services.

STAFF RESPONSE:

Staff appreciates Commenter 52's suggestion to prioritize housing youth and young adults age 18-25. The QAP currently includes youth aging out of foster care as a specific needs type listed within the Supportive Housing definition. Regarding Commenter 52's suggestion to create a set-aside or new point item, Staff believes this is too big of a change to make at this time and would suggest bringing up these items at the 2026 QAP Roundtable Discussions.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

Except as described herein the new sections affect no other code, article, or statute.

§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 Competitive Housing Tax Credits, the state Housing Tax Credit, and the issuance of Determination Notices for non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive 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 and pursuant to Tex. Gov't Code, Chapters 171 and 233, the Department is assigned responsibility for the adoption of rules relating to the State Housing Tax Credit. 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 Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive 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 Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules) collectively constitute the QAP required by Tex. Gov't Code §2306.67022 and §42(m)(1)(B) of the Code. Unless otherwise specified, certain provisions in this section and §§11.2 - §11.4 of this title also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Subchapters B - E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), and other Department rules. This subchapter does not apply to operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program, except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter. This chapter is subject to change based on any changes in applicable rule or law.

(b) Due Diligence and Applicant Responsibility.

(1) Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports 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 is not a rule and is 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 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.

(2) Developments with Existing LURAs. Applicants proposing to submit an Application requesting an award of Housing Tax Credits or a Direct Loan for a Development that already has a LURA in place should review the existing LURA(s) on the Property to ensure there are no conflicts with the proposed Application. Where an Applicant has identified a potential conflict, it is incumbent upon the Applicant to consult with staff regarding the steps that may be necessary to resolve the conflict(s). This may include, but is not limited to, an Application amendment or LURA amendment, a waiver, or other action that may necessitate additional staff time for review or a Board determination. Depending on the timing constraints associated with the proposed Application, Applicants should be mindful that resolving issues relating to the existing LURA and for Direct Loans the existing Contract may not coincide with the timing needed for a new award if such requests are not submitted early in the process. A copy of the existing LURA must be included in the Application.

(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 §1.1 of this title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Competitive Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes, into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that at least 75% of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office, or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiency--Information requested by Department staff to clarify, explain, confirm, or restrict the Development proposal to a logical and definitive plan or to provide missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application. Administrative Deficiencies may be issued at any time while the Application or pre-application is under consideration by the Department, including at any time after award or allocation and throughout the Affordability Period. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. Applicants must intend that the pre-Application or Application is the final version to be reviewed by staff, and should not rely on the Administrative Deficiency process when applying for funding.

(A) The following issues will be treated by Department staff as Administrative Deficiencies that are curable through the Deficiency process only if the issues, when taken as a whole, do not constitute a Material Deficiency as defined in §11.1(d) of this chapter:

(i) For Applications that are substantially complete, a minor quantity of missing signatures, documents, or similar clerical matters, the curing of which will not create change within the Application, unless the missing documentation is required to have existed as of the appropriate deadline and did not, or is otherwise not susceptible to resolution. For Competitive HTC or Direct Loan Applications, this may include documents submitted to substantiate points claimed in the Application only if:

(I) The documents can be readily identified to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points; or

(II) For scoring items that are predicated solely on third-party data, characteristics inherent to the proposed Development Site, or are otherwise not influenced by the actions of the Applicant, the Application's eligibility for these points can be clearly established to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points.

(ii) Inconsistencies that exist between facts presented in the Application and/or its supporting documentation. A discrepancy between the requested points and the points supported by the Application will not be treated as an inconsistency if the facts presented within the Application are otherwise consistent.

(iii) At the Department's sole discretion, additional information that is necessary to assist in the review of the Application.

(B) The following issues will not be treated by Department staff as Administrative Deficiencies that are curable through the Deficiency process:

(i) Any matter that will materially change the Application, except for matters that must be addressed in accordance with 10 TAC §11.1(d) (relating to the definition of Administrative Deficiency) , in which case staff will direct the Applicant to resolve the inconsistency in the manner that creates the least change within the Application. Under no circumstance can the resolution of an Administrative Deficiency increase the Application's score from what was initially requested.

(ii) Changes to the Application that are submitted only to qualify for points claimed in the Application.

(iii) Except at staff's written request, changes to the Application that alter the amount of Housing Tax Credits or Direct Loan requested.

(C) In all cases, final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Department Staff and Board.

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

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction, and in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules, as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in Code, §42(b). For purposes of the Application, the Applicable Percentage will be:

(A) nine percent for 70% present value credits; or

(B) four percent for 30% present value credits.

(6) Applicant--Any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation subject to the requirements of this chapter or Chapters 12 or 13 of this title and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter --A document that may be issued to an awardee of a Direct Loan before the issuance of a Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than eight feet; is self-contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than two feet deep and three feet wide and high enough to accommodate five feet of hanging space. A den, study, or other similar space that could reasonably function as a Bedroom and meets this definition is considered a Bedroom. Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are not being altered will be exempt from the bedroom and closet width, length, and square footage requirements. Supportive Housing Developments will be exempt from the bedroom and closet width, length, and square footage requirements.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

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

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant

to §11.907 of this title (relating to Carryover Agreement General Requirements and Required Documentation).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

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

(18) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment Notice (also referred to as Commitment)--An agreement issued pursuant to §11.905(a) of this title (relating to General Information for Commitments or Determination Notices), setting forth the terms and conditions under which Competitive Housing Tax Credits from the Department will be made available. A Commitment or Commitment Notice does not mean commitment of federal funds under the Direct Loan Program.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Contract is executed between the Department and Development Owner. The Department's Commitment of Funds may not align with commitments made by other financing parties.

(21) Common Area--Enclosed space outside of Net Rentable Area, whether conditioned or unconditioned, to include such area contained in: property management offices, resident service offices, 24-hour front desk office, clubrooms, lounges, community kitchens, community restrooms, exercise rooms, laundry rooms, mailbox areas, food pantry, meeting rooms, libraries, computer labs, classrooms, break rooms, flex space programmed for resident use, interior corridors, common porches and patios, and interior courtyards. Common Area does not include individualized garages, equipment rooms, or storage.

(22) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of Bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services, and travel patterns), age, Unit amenities, utility structure, and common amenities.

(23) Competitive Housing Tax Credits --Sometimes referred to as Competitive HTC. Tax credits available from the State 9% Housing Credit Ceiling.

(24) Compliance Period--With respect to a building financed, in part with proceeds of Housing Tax Credits, the period of 15 taxable years, beginning with the first taxable year of the credit period, pursuant to Code, §42(i)(1).

(25) Continuously Occupied--The same household has resided in the Unit for at least 12 months.

(26) Contract--A legally binding agreement between the Development Owner and the Department, setting forth the terms and conditions under which Multifamily Direct Loan Program funds will be made available.

(27) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state, or local governmental agency.

(28) Contractor--See General Contractor.

(29) Control (including the terms "Controlling," "Controlled by," and "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Persons with Control of a Development must be identified in the Application. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder.

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent.

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries.

(D) For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual controlling such members, or any officer authorized to act on behalf of the limited liability company.

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(30) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period, and as described in §11.302(d)(4) of this chapter (relating to Operating Feasibility).

(31) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter (relating to Feasibility Conclusion).

(32) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(33) Determination Notice--A notice issued by the Department to the Development Owner of a Tax- Exempt Bond Development which specifies the Department's preliminary determination as to the

amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(34) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. The Developer may or may not be a Related Party or Principal of the Owner.

(35) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to Total Housing Development Costs) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member, or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

(36) Developer Services--A scope of work relating to the duties, activities, and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including, but not limited to:

(A) Site selection and purchase or lease contract negotiation;

(B) Identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;

(C) Coordination and administration of activities, including the filing of applications to secure such financing;

(D) Coordination and administration of governmental permits, and approvals required for construction and operation;

(E) Selection and coordination of development consultants including architect(s), engineer(s), third- party report providers, attorneys, and other design or feasibility consultants;

(F) Selection and coordination of the General Contractor and construction contract(s);

(G) Construction oversight;

(H) Other consultative services to and for the Owner;

(I) Guaranties, financial, or credit support if a Related Party or Affiliate; and

(J) Any other customary and similar activities determined by the Department to be Developer Services.

(37) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple Units that is financed under a common plan, and that is owned by the same Person for federal tax purposes, and may consist of multiple buildings that are located on scattered sites and contain only rent restricted Units. (§2306.6702(a)(6)).

(A) Development will be considered to be a scattered site if the Property where buildings or amenities are located do not share a common boundary and there is no accessible pedestrian route that the Development Owner controls (transportation in a motor vehicle will not meet the requirement for an accessible route).

(B) A Development for which several parcels comprise the Development Site and are separated only by a private road controlled by the Development Owner, or a public road or similar barrier where the Development Owner has a written agreement with the public entity for at least the term of the LURA stating that the accessible pedestrian route will remain, is considered contiguous. The written agreement with the public entity must be in place by the earliest of the 10% Test for Competitive HTC, the Determination Notice date for a Tax-Exempt Bond Development issued by the Department, Cost Certification for Tax-Exempt Bond Developments where the Determination Notice is issued administratively, or the execution of the Multifamily Direct Loan Contract, as applicable.

(38) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents, as required by the program.

(39) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation or Commitment with the Department. (§2306.6702(a) (7)).

(40) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service or the Department to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA, including access to that area or areas through ingress and egress easements.

(41) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management, or continuing operation of the Development, including any Development Consultant and Guarantor.

(42) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), HOME American Rescue Plan (HOME-ARP), Tax Credit Assistance Program Repayment Funds (TCAP RF), Texas Housing Trust Fund (THTF), or other programs available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule), the NOFA under which they are awarded, the Contract, and the loan documents. The tax-exempt bond program is specifically excluded.

(43) Educational Provider--A school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) Effective Gross Income (EGI)--As provided for in §11.302(d) (1) (D) of this chapter (relating to Operating Feasibility). The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions,

and rental income from employee-occupied units that is not anticipated to be charged or collected.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(47) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Existing Residential Development--Any Development Site which contains any type of existing residential dwelling at any time as of the beginning of the Application Acceptance Period.

(51) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) The date specified in the LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(52) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(53) Forward Commitment--the issuance of a Commitment of Housing Tax Credits from the State Housing Credit Ceiling for the calendar year following the year of issuance, made subject to the availability of State Housing Credit Ceiling in the calendar year for which the Commitment has been made.

(54) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) or (B) of this paragraph:

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) If more than 75% of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

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

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

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter (relating to Feasibility Conclusion).

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter (relating to Market Analysis Rules and Guidelines).

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

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

(62) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs, and contingency.

(63) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(64) HOME Match Eligible Unit--A Unit in the Development that may or may not be assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92 and CPD Notice 97-03 or subsequent HUD guidance.

(65) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(66) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(67) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department and the Board, if applicable, determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period.

(68) HTC Development (also referred to as HTC Property)--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(69) HTC Property--See HTC Development.

(70) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(71) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME and NHTF funding and progress, and which may be used for other sources of funds as established by HUD.

(72) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(73) Low-Income Unit (also referred to as a Rent Restricted Unit)--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(74) Managing General Partner--A general partner of a partnership (or, as provided for in the definition of General Partner in this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(75) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand, and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(76) Market Analyst--A real estate appraiser or other professional satisfying the qualifications in §11.303(c) of this chapter, and familiar with the subject property's market area who prepares a Market Analysis.

(77) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services, and travel patterns), age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

(78) Market Study--See Market Analysis.

(79) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements may be considered material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole, would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

(80) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents. The Manual is not a rule and is provided only as good faith guidance and assistance.

(81) National Standards for the Physical Inspection of Real Estate (NSPIRE)--As developed by the Real Estate Assessment Center of HUD.

(82) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, as provided for in §11.302(d)(3) of this chapter (relating to Operating Feasibility).

(83) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(84) Net Rentable Area (NRA)--The Unit space that is available exclusively to the tenant and is heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage may only be included in NRA if the storage area shares a wall with the residential living space. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(85) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(86) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(87) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(88) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(89) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for 12 calendar months.

(90) Owner--See Development Owner.

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

(92) Person or Persons with Disabilities--With respect to an individual, means that such person has:

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

(B) A record of such an impairment; or

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

(93) Physical Needs Assessment--See Scope and Cost Review.

(94) Place--An area defined as such by the United States Census Bureau which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town, or village will be considered as part of the incorporated area. Areas that are annexed by a city, town, or village through limited-purpose annexation are considered to be part of the incorporated area of that city, town, or village for purposes of this chapter. The Department may provide a list of Places for reference.

(95) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(96) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(97) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(98) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(99) Primary Market Area (PMA)--See Primary Market.

(100) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(101) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted Unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

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

(103) Qualified Census Tract (QCT)--those tracts designated as such by the U.S. Department of Housing and Urban Development.

(104) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(105) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F) and as further delineated in §10.408 of this title (relating to Qualified Contract Requirements).

(106) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(107) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(108) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42(h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(109) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the Property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5), including having a Controlling interest in the Development.

(110) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(111) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition, or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under §11.302(d)(2)(I) (relating to Operating Feasibility). More specifically, Rehabilitation is the repair, refurbishment, or replacement of existing mechanical or structural components, fixtures, and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible, and may include the addition of: energy efficient components and appliances; life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(112) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) The proposed subject Units; and

(B) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(113) Report--See Underwriting Report.

(114) Request--See Qualified Contract Request.

(115) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(116) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the minimum purchase price as defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(117) Rural Area--

(A) A Place that is located:

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

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area

has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B) of this chapter.

(118) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The SCR provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(119) Scoring Notice--Notification provided to an Applicant of the score for their Application after staff review. More than one Scoring Notice may be issued for a Competitive HTC or a Direct Loan Application.

(120) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(121) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(9) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(122) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(123) State Housing Credit Ceiling--The aggregate amount of Competitive Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.

(124) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(125) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (F) of this paragraph:

(A) Be intended for and targeting occupancy for households in need of specialized and specific non- medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Acceptance Date for Multifamily Direct Loan Applications;

(ii) provide no less than 30 square feet of Common Area space per Unit that is specifically used for the delivery of supportive services or an amenity for the residents.;

(iii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period;

(iv) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses;

(v) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period; and

(vi) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must also follow §1.204 of this title (regarding Reasonable Accommodations), and:

(I) The criminal screening criteria must not allow residents to reside in the Development who are subject to a lifetime sex offender registration requirement; and provide at least, for:

(-a-) Temporary denial for a minimum of seven years from the date of conviction based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance as defined in §102 of the Controlled Substances Act (21 U.S.C. 802); and

(-b-) Temporary denial for a minimum of three years from the date of conviction based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution;

(II) The criminal screening criteria must include provisions for approving applications and recertification despite the tenant's criminal history on the basis of mitigation evidence. Applicants/tenants must be provided written notice of their ability to provide materials that support mitigation. Mitigation may be provided during initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications, documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. In addition, the criteria must include provision for individual review of permanent or temporary denials if the conviction is more than 7 years old, or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last 7 years. The criteria must prohibit consideration of any previously accepted criminal history or mitigation at recertification, unless new information becomes available. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records; and

(III) Disqualifications in a Development's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development

must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect;

(C) Where supportive services are tailored for members of a household with specific needs, such as:

(i) homeless or persons at-risk of homelessness;

(ii) persons with physical, intellectual, or developmental disabilities;

(iii) youth aging out of foster care;

(iv) persons eligible to receive primarily non-medical home or community-based services;

(v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis;

(D) Supportive services must meet the minimum requirements provided in clauses (i) - (iv) of this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) must include readily available resident services or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) not financed with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions, except for the following:

(I) Construction financing;

(II) A direct Loan from the Department;

(III) A permanent foreclosable loan from a local, state, or federal government or instrumentality thereof if the loan is deferred-forgivable, deferred payable, or cash-flow contingent, the foreclosure provisions are triggered only by default on non-monetary default provisions, and the maturity date is after the end of the Affordability Period;

(IV) A permanent foreclosable loan from an Affiliate if the funds are originally sourced from charitable contributions, nonprofit equity, the Federal Home Loan Bank's Affordable Housing Program, Capital Magnet Fund, or pass-through government funds, if the loan is deferred-forgivable, deferred-payable, or cash-flow contingent, and if the foreclosure provisions are triggered only by default on non-monetary default provisions, and the maturity date is after the end of the Affordability Period;

(V) For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations.

(VI) Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of Work Out Development approved by the Asset Management Division.

(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or project-based operating subsidies for 25% of the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in subclauses (I) - (VI) of this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

(II) the Development is located less than 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VI) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(F) Supportive housing Units included in an otherwise non-Supportive Housing Development do not meet the requirements of this definition.

(126) Target Population--The designation of types of housing populations shall include Elderly Developments and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(127) Tax-Exempt Bond Development--A Development requesting or having been issued a Determination Notice for Housing Tax Credits and which receives a portion of its financing from the proceeds of Tax-Exempt Bonds which are subject to the state volume cap as described in Code, §42(h)(4).

(128) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(129) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's website (www.tdhca.state.tx.us).

(130) Third Party--A Person who is not:

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

(B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;

(C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or

(D) In Control with respect to the Development Owner.

(131) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee, and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(132) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, HOME-ARP or TCAP RF, and not layered with Housing Tax Credits that includes living Units with more limited individual kitchen facilities and is:

(A) Used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless to independent living within 24 months; and

(B) Is owned by a Development Owner that includes a Governmental Entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(133) Underwriter--The author(s) of the Underwriting Report.

(134) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the Department's Real Estate Analysis Division that contains a synopsis of the proposed Development and that reconciles the Application information, including its financials and market analysis, with the underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(135) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may, but are not required to, be used to satisfy the requirements of the applicable rule.

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

(137) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, bathrooms, features, or a square footage difference equal to or more than 120 square feet.

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

(139) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(140) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90% occupancy level for at least 90 days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends, and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(141) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described in paragraph (117)(A) of this subsection, definition of Rural Area. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

(142) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this title (relating to Utility Allowances).

(143) Work Out Development--A financially distressed Development for which the Owner or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of August 1 of the year prior to Application, unless specifically otherwise provided in federal or state law or in the rules, with the exception of census tract boundaries for which 2020 Census boundaries will be used, unless otherwise noted. All references to census tracts throughout this chapter will mean the 2020 Census tracts, unless otherwise noted. Applicants may need to provide Census tract information based on the 2020 boundaries as well as the ones defined by 2010 boundaries, if data based on 2020 tract boundaries are not available as of August 1, 2024 for the specific item in question. All American Community Survey (ACS) data must be 5-year estimates, unless otherwise specified and it is the ACS data that will be used for population determination. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as NeighborhoodScout, the data available after August 1, but before Full Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date. All references to QCTs throughout this chapter mean the 2025 QCTs designated by HUD to be effective in 2025. Where this chapter requires the division of Census tracts into quartiles, if the number of tracts is not evenly divisible by four, the Department shall divide the quartiles in the following manner:

(1) If the division of the tracts into quartiles leaves one excess tract, then the first quartile shall contain the excess tract.

(2) If the division of the tracts into quartiles leaves two excess tracts, then the first and second quartiles shall contain an excess tract each.

(3) If the division of the tracts into quartiles leaves three excess tracts, then the first, second, and third quartiles shall contain one excess tract each.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be received by the Department 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. Deadlines, with respect to both date and time, 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. 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.

(g) Documentation to Substantiate Items and Representations in a Competitive HTC 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 must 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, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. 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. 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.

(h) Board Standards for Review. Some issues may require or benefit from Board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(i) Scattered Site Applications. As it relates to calculating any distances (tie determinations, proximity to features, etc.), year of initial construction, or determining satisfaction of scoring, the site that scores or ranks the lowest will be the site used for that analysis. There is no opportunity for higher scoring or performing sites to elevate the score or performance of other sites in the scattered site Application.

(j) Public Information Requests. Pursuant to Tex. Gov't Code §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other information and documents to the Department, and for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(k) Responsibilities of Municipalities and Counties. In considering resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, 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.

(l) Request for Staff Determinations. Where the requirements of this chapter do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to the applicable rules. In no instance will staff provide a determination regarding a scoring item. Any such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter (relating to Appeals Process), if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged.

§11.2. Program Calendar for Housing Tax Credits.

(a) Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 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. Figure: 10 TAC §11.2(a)

(b) Tax-Exempt Bond and Direct Loan-only Application Dates and Deadlines. Applicants are strongly encouraged to submit the required items well in advance of published deadlines. Other deadlines may be found in Chapters 12 and 13 or a NOFA.

(1) Full Application Delivery Date. The deadline by which the Application must be received by the Department. For Direct Loan Applications, deadlines including the Application Acceptance Date will be defined in the applicable NOFA and for Tax-Exempt Bond

Developments, such deadlines are more fully explained in §11.201 of this chapter (relating to Procedural Requirements for Application Submission).

(2) Administrative Deficiency Response Deadline. Such deadline shall be five business days after the date on the deficiency notice, unless extended as provided for in §11.201(6) of this chapter (relating to Deficiency Process).

(3) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR) (if applicable), Appraisal (if applicable), Market Analysis and the Feasibility Report (if applicable)). For Direct Loan Applications, the Third Party reports meeting the requirements described in §11.205 of this title (relating to Required Third Party Reports) must be submitted in order for the Application to be considered complete, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department pursuant to §11.201(2) of this chapter.

(4) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than 14 calendar days before the Board meeting or prior to the issuance of the Determination Notice, as applicable. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(5) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later than 45 calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3. Housing De-Concentration Factors.

(a) 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.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) 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 §2306.6711(f), the following priorities will be used to determine which Application is reviewed:

(A) Priority will first be determined using the steps described in the Award Recommendation Methodology described in §11.6(3).

(B) In the event that two Applications are considered for review during the same step of Award Recommendation Methodology, then priority will be given to the higher-scoring Application, including consideration of tie breakers.

(C) Regardless of the priority established by (A) or (B), an Application that is not recommended for an award at the July Board meeting at which awards from the Application Round will be made will not be given priority over another Application that would otherwise be recommended for an award.

(2) This subsection does not apply if an Application is located in an area that meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes any municipality with a population of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient.

(c) Twice the State Average Per Capita (Competitive HTC and Tax-Exempt Bond Only). 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 Acceptance Period Begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins), 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(a) of this chapter (relating to Competitive HTC Deadlines) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Only Application Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule (Competitive HTC and Tax-Exempt Bond Only). (§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) A Development that serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A Development that has received an allocation of Housing Tax Credits or private activity bonds, or a Supplemental Allocation of credits, 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 in subparagraph (B) of this paragraph has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed 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(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Only Development Dates and Deadlines, as applicable.

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

(e) 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% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has adopted a resolution that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter or Resolutions Delivery Date in §11.2(b) of this chapter, as applicable.

(f) Proximity of Development Sites. (Competitive HTC Only) In a county with a population that is less than one million, if two or more HTC Applications, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring of the Application(s), including consideration of tie-breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications are proposing Developments in the same census tract in an urban subregion, the lower scoring of the Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under §11.5(2) of this chapter (relating to USDA Set-Aside) or §11.5(3) (relating to At-Risk Set-Aside).

§11.4. Tax Credit Request, Award Limits, and Increase in Eligible Basis.

(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 $6 million in a single Application Round. Prior to posting the agenda for the last Board meeting in June, an Applicant that has Applications pending for more than $6 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 $6 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, staff will first select the Application(s) that will enable the Department to comply with the state and federal non-profit set-asides, and will then select the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. All entities that are under common Control are Affiliates. For purposes of determining the $6 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 consultant or advisor that do not exceed $200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or $2,000,000 whichever is less. 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 annual release of the Internal Revenue Service notice regarding the credit ceiling (2306.6711(h)). 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 reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. While the Housing Tax Credit request amount for an Application may be reduced through the underwriting process or at the written request of staff, the Department shall otherwise consider the request amount final. The Tax Credit request amount cannot be changed through the Administrative Deficiency process.).

(c) Increase in Eligible Basis (30% Boost). Applications will be evaluated for an increase of up to 30% in Eligible Basis provided they meet any one of the criteria identified in paragraphs (1) - (4) of this subsection. 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 determined by the Department, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units. 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% Housing Tax Credit Units per total households in the tract as reflected in the Department's current Site Demographic Characteristics Report. New Construction or Adaptive Reuse Developments located in a QCT

that has in excess of 20% Housing Tax Credit Units per total households are not eligible for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging the Development is located in a census tract that has more than 20% Housing Tax Credits Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments where this rule is triggered are eligible for the boost and are not required to obtain such a resolution from the Governing Body. An acceptable, but not required, form of resolution may be obtained in the Multifamily Uniform Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Application Dates and Deadlines), as applicable. The Application must include a 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 as determined by the Secretary of HUD) or for Rural areas located in a Difficult Development Area (DDA) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA or DDA map that clearly shows the proposed Development is located within the boundaries of a SADDA or DDA as applicable.

(3) For Competitive HTC only, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

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

(B) The Development is entirely Supportive Housing and is in accordance with §11.1(d) of this chapter (relating to the definition of Supportive Housing);

(C) The Development meets the criteria for the Opportunity Index as defined in §11.9(c)(5) of this chapter (relating to Competitive HTC Selection Criteria);

(D) The Applicant elects to restrict 10% of the proposed low income Units for households at or below 30% of AMGI. These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;

(E) The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. 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; or

(F) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892). Pursuant to Internal Revenue Service Announcement 2021-10, the boundaries of the Opportunity Zone are unaffected by 2020 Decennial Census changes.

(4) For Tax-Exempt Bond Developments, as a general rule, a QCT, non-metro DDA or 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% boost in its underwriting evaluation. The Department acknowledges guidance contained in the Federal Register regarding effective dates of QCT, non-metro DDA and SADDA designations. Pursuant to the Federal Register Notice, unless federal guidance states otherwise, complete Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT, non-metro DDA or SADDA designation is not effective may be underwritten to include the 30% boost, provided a complete application was submitted to the bond issuer in the year the QCT, non-metro DDA or SADDA designation was effective. Where this is the case, the Application must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted. If the issuer is a member of the organizational structure then such certification must come from the bond counsel to the issuer.

§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(e)(3) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability). 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 USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)). At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) 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% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the manager of the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the Manager of 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 or to 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)). 5% 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 subregion unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111 (d-4)). A proposed or

Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under §§514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. §§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.

(B) All Applications that are eligible to participate 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 participate under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

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

(A) At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional 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) 5% of the State Housing Credit Ceiling associated with this Set-aside will be given as priority to Rehabilitation Developments under the USDA Set-aside; additional Applications that qualify under the USDA Set-Aside may compete within the At-Risk Set-Aside only if they meet the definition for an At-Risk Development, have submitted sufficient supporting documentation within the Application to demonstrate qualification as an At-Risk Development, and were not submitted under the USDA Set-Aside . Applications submitted under the USDA Set-Aside in excess of meeting the 5% priority do not qualify for the At-Risk Set-Aside.

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

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(, a Development must have received the benefit of 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 from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

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

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

(III) Section 202, Housing Act of 1959 (1 2 U.S.C. §1701q);

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

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 CFR Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 CFR Part 886, Subpart C; (VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486);

(VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or

(VIII) §42, Internal Revenue Code of 1986.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)((a) will be considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years after 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)((b) will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment.

(iii) Developments with existing Department LI-HTC 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 requirements under clause (i), (ii) or (iii) of this subparagraph and also meet the stipulations noted in clause (iv) of this subparagraph:

(i) Units to be Rehabilitated or Reconstructed 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 and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed or demolished within the two-year period preceding the date the Application is submitted, by a public housing authority or public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(iii) 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 that HUD has approved the Units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

(iv) 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) of this section 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)(i) 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 with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose at least the same number of restricted Units (the Applicant may, however, add market rate Units, and other rules, limitations, approvals, and potential conflicting requirements based on fund source, number and unit type may be implicated by creating more units than the original number); and

(iii) the new Development Site must either:

(I) qualify for points on the Opportunity Index under §11.9(c)(5) of this chapter (relating to Competitive HTC Selection Criteria); OR

(II) 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) of this chapter. Development Sites that cross jurisdictional boundaries must provide such resolutions 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, 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 of July 31 of the year the Application is submitted, and 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% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% 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.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under Code, §42. 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.

(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 during the Application Round 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 (subregion) Housing Tax Credits in an amount not less than $750,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve $750,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each 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 the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public 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 competitive ranking of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $6 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter (relating to Tax Credit Request, Award Limits and Increase in Eligible Basis). The Department will publish on its website on or before December 1 of each year, initial estimates of Regional Allocation Formula percentages and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated.

(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 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 subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. Consistent with the allocation process described in this section, credits that are returned to the USDA or At-Risk Set-Asides are not eligible to flow to another subregion or set-aside unless no eligible Applications remain in the Set-Aside to which the credits were returned. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to 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 reviews will be conducted in the order described in subparagraphs (A) - (F) of this paragraph 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 set of reviews 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 USDA Set-Aside requirement.

(B) At-Risk Set-Aside Application Selection (Step 2). The second set of reviews 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 (relating to At-Risk Set-Aside) 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 subregions to award under the remaining steps. If all eligible Applications participating in the At-Risk Set-Aside are awarded and the minimum requirement stated in §11.5(3) has not been met, the Department will award the highest scoring Applications in the USDA Set-Aside that are otherwise eligible to participate in the At-Risk Set-Aside until that threshold is met.

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application with the priorities in this subparagraph first prioritized. 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. In Urban subregions in which credits available do not allow for all of the priorities in clauses (iii) to (v) of this subparagraph to be achieved, the priorities will be followed in the order reflected in this subparagraph.

(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. 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..

(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)(iii)), is located in an Urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(iii) In Urban and Rural subregions, not including the calculation of At-Risk Applications awarded, no more than 50% of all credits in a subregion will be awarded to Applications proposing Rehabilitation or Reconstruction, unless all eligible New Construction Applications in that subregion have been awarded.

(iv) In Urban subregions containing a county with a population that exceeds 750,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that is located in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years from the date of Application submission and funds from the HUD Choice Neighborhood awardee are reflected in the Application's Sources and Uses.

(v) In Urban subregions containing a county with a population that exceeds 1,000,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that elects to provide a High-Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site that meets the requirements of items (a)-(c) of subparagraph (C)(i)(I) of §11.101(b)(5)-(related to Common Amenities). Developments serving a Target Population that is Elderly or Supportive Housing are not eligible for this item.

(vi) In Urban and Rural subregions that do not contain a county with a population of at least 2,500,000, no more than one Application with a Supportive Housing Target Population will be awarded unless there are no other eligible Applications in the subregion. Awards made in the At-Risk Set-Aside will not count towards this limitation.

(vii) In Urban subregions that contain a county with a population of at least 2,500,000, no more than two Applications with a Supportive Housing Target Population will be awarded unless there are no other eligible Applications in the subregion. Awards made in the At-Risk Set-Aside will not count towards this limitation.

(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 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 subregion as compared to the subregion's allocation, continuing with the priorities and limitations established in §11.6(3)(C). This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20% 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 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 subregion:

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

(ii) the 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 subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application, and continuing with the priorities and limitations established in §11.6(3)(C), in the most underserved subregion in the State compared to the amount originally made available in each 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 as calculated through the Regional Allocation Formula (RAF) for Elderly Developments, within an Urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award from the collapse. 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 that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 2024 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

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

(ii) the 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 Non-

profit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10% 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 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 next Application to award. If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they were originally awarded. 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. Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and changes to the Application as necessary to ensure to the extent possible that available resources are allocated by December 31. (§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 not be subject to the requirements of paragraph (2) of this section. The Board determination must indicate the year of the Multifamily Rules to be applied to the Development. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests to 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. In addition, requests will only be presented to the Board within 180 days of the applicable Placed in Service deadline. 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 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 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; unrelated party 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. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board;

(C) To be eligible for consideration, construction of the Development must have already commenced;

(D) 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;

(E) 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;

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

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

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

§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. For the purposes of this section, all measurements will include 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 subregions in the rural or statewide collapse.

(1) For Applications funded through the USDA Set-Aside

(A) Applications proposed to rehabilitate the Property with the earliest year of initial construction as a residential Development.

(i) Only the year of initial construction will be taken into consideration. The specific date of construction or conversion will not affect this tie breaker. A tie will persist if two Applications have the same year. In the event that a Development was constructed over a number of years, the earliest year will be used.

(ii) Year submitted must be evidenced by the initial USDA loan documentation. If such documentation does not exist or cannot be provided, the Application is ineligible for this tiebreaker.

(B) Once 5% or more of the State Housing Credit Ceiling has been allocated to USDA developments, no further applications with USDA financing shall receive preference under this tie breaker but may receive preference under subsections (2) and (3) of this section.

(2) For all other competitive Applications

(A) Applications proposed to be located in closest proximity to the following features as of the Full Application Delivery Date. Each feature's location may be used only once for tie breaker purposes regardless of the number of categories it fits:

(i) A park or a parcel of land dedicated for public use by either a governmental entity or an entity authorized or created by a governmental entity that is used as parkland or for a recreational purpose. This feature must have been designated by the relevant authority one year prior to the Full Application Delivery Date. Features that charge admission for the general public to access the entire property for the majority of the calendar year are not eligible for consideration. A school campus' facilities may not be used for this feature; however, a parcel of land that is owned by a school district may qualify so long as it meets all requirements.

(ii) The elementary school of attendance. In districts with district-wide enrollment or choice, the Applicant shall use the closest elementary. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools, the closest campus of attendance that serves any grade from kindergarten to fifth grade shall be used.

(iii) A full service grocery store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; 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.

(iv) A Public Library with indoor space, physical books that can be checked out and that are of general and wide-ranging subject matter, computers and internet access, and that is: Open 35 hours or more per week in an Urban Area and 25 hours or more per week in a Rural Area. The library must not be age or subject-restricted and must be at least partially funded with government funding.

(B) The linear measurement will be performed from closest parcel boundary of the Development Site to closest parcel boundary of each feature. The Department may prescribe a specific form to be used for the calculation of these distances using GPS coordinates provided by the Applicant.

(C) In calculating this proximity, each feature's distance will be required for submittal, with the sum of the three closest features being used to produce the result. The Application with the lowest sum of proximity will receive preference.

(D) In the event that one of the top three features is disqualified due to not conforming to the definitions provided or a substantial misrepresentation of distance from the development, the fourth will be used as an opportunity to replace the disqualified feature. If multiple features are disqualified, the Application will not receive preference. If the competing application(s) also has multiple disqualified features the tie will persist.

(E) In the event that the sum proximities described under §11.7(2)(B) for two tied Applications differ by 100 or fewer feet, the tie will persist.

(3) If the tie persists, preference will be determined using this final tiebreaker. Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded 15 or fewer years ago. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory from the Site Demographics Characteristics report from the current year. The specific month and date of the award are disregarded for this analysis. 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 according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

§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 13 state service regions, subregions, and (b) of this section.

(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 §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). 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 and for each Site Control document.

(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 the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as 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.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in §11.2(a) of this chapter.

(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 or contains at a minimum:

(A) Site Control meeting the requirements of §11.204(9) 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, or Rural);

(E) Total Number of Units proposed;

(F) Census tract number or numbers in which the Development Site is located, and a map of the census tract(s) 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;

(I) If points are to be claimed related to Underserved Area and/or Proximity to Jobs, documentation supporting those point elections;

(J) The name and coordinates of the nearest park, grocery store, and library meeting the criteria established in 10 TAC §11.7(2) as well as the name and coordinates of the elementary school of attendance;

(K) For Applications funded through the USDA Set-Aside; year of initial construction as evidenced by the initial USDA loan documentation;

(L) If a high-quality Pre-Kindergarten is to be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application; and

(M) The name and address of the nearest Housing Tax Credit assisted Development that serves the same Target Population and was awarded 15 or fewer years ago following the calculation established in 10 TAC §11.7(3) according to the Department's property inventory tab of the Site Demographic Characteristics Report.

(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 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development, where a reasonable search for applicable entities has been conducted.

(B) Notification Recipients. Developments located in an ETJ of a municipality are required to notify both 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 included in the Public Notification Template provided in the Uniform Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department 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; however, a mailed notification that is addressed to the entity or office-holder rather than a specific person is acceptable so long as it is mailed to the correct address and otherwise meets all requirements. Between the time of pre-application (if made) and full Application, the boundaries of an official's jurisdictions may change. If there is a change in jurisdiction between pre-application and the Full Application Delivery Date that results in the Development being located in a new jurisdiction, additional notifications must be made at full Application to any entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct entity constitutes notification. No later than the date the pre-application is submitted, notification must be sent to all of the entities prescribed in clauses (i) - (viii) of this subparagraph:

(i) Neighborhood Organizations on record with the state or county 30 days prior to 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) - (IX) 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.);

(VI) The approximate total number of Units and approximate total number of Low-Income Units;

(VII) The residential density of the Development, i.e., the number of Units per acre;

(VIII) Information on how and when an interested party or Neighborhood Organization can provide input to the Department; and

(IX) Information on any proposed property tax exemption.

(ii) 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 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.

(iii) 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 (relating to Criteria promoting the efficient use of limited resources and applicant accountability), 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.

(d) Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination on or before February 13, 2025. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under §11.9(e)(1)(F) of this chapter. Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full 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, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. 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. 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. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Applications will only be reviewed for point items specifically elected in the Application. Except for scoring items that are awarded based on tiered categories, if an Application is determined to not qualify for the points elected, Department staff will not evaluate the Application to determine whether it might qualify for alternative points.

(b) Criteria promoting development of high quality housing.

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

(A) Unit Sizes (6 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. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements:

(i) five-hundred (500) square feet for an Efficiency Unit;

(ii) six-hundred (600) 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, Development Construction, and Energy and Water Efficiency Features (9 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 §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(points if it meets the requirements of either subparagraphs (A), (B), or (C) of this paragraph.

(A) HUB. The ownership structure contains a HUB or HUBs certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date. The HUB or HUBs must have some combination of ownership interest in each of the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. When more than one HUB is included, each individual HUB is not required to participate in each category, nor is each HUB required to meet the minimum 5% in a category in which it does not participate. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB or nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories. Any Application that includes one or more HUBs must include a narrative description of each of the HUB's experience directly related to the housing industry.

(i) The HUB must 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 is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal or officer of the HUB cannot be a Related Party to or Affiliate, including the spouse, of any other Principal or officer of the Applicant, Developer or Guarantor (excluding another Principal of said HUB), regardless of Control. (2 points).

(iii) The HUB must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the HUB or nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer or Guarantor (excluding another Principal of said HUB or Nonprofit Organization). (1 point).

(B) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization provided the Application is submitted in the Nonprofit Set-Aside. The 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 50%, and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

(i) The Qualified Nonprofit Organization must 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 Qualified Nonprofit Organization is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (2 points).

(iii) The Qualified Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (1 point).

(C) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of IRC §42(h)(on the Application Delivery Date, with at least 51% ownership in the General Partner of the Applicant. (2 points)

(i) The nonprofit organization must maintain Control of the Development and materially participate in the operation of the Development throughout the Compliance Period. Nonprofit organizations that formally operate under a parent organization may assign Control of the Development to that parent organization, so long as it meets the requirements of IRC §42(h)(5)(C).

(ii) The nonprofit organization, or individuals with Control of the nonprofit organization, must provide verifiable documentation of at least 10 years' experience in the continuous operation of a Development that provides services similar to those in the proposed Development.

(iii) The Applicant will provide a minimum of 3 additional points under §11.101(7) of this chapter (related to Resident Supportive Services), in addition to points selected under subsection (c)(3) of this section.

(3) points under subparagraphs (A) or (B) of this paragraph. All calculations of averages shall be based solely on the July meeting of the Governing Board at which final awards of credits are authorized. Subsequent awards or withdrawals and supplemental credit allocations shall not be considered when calculating averages under this item. The only awards that will be included in the calculation of averages are 9% competitive tax credits, inclusive of any forward commitments made at the July meeting, and the average will only calculate housing tax credit units. If points are to be claimed under this item, Low-Income Units shall not be reduced after an award of tax credits. The Department shall publish relevant averages pertaining to this scoring item in the Site Demographics and Characteristics Report, and those figures shall be authoritative. These points are not available in the USDA or At-Risk Set-Asides, and Applications that were awarded in those Set-Asides will not be included in when calculating averages for this item.

(A) The Development is Urban and the Application proposes a number of Low-Income Units that is greater than the subregion average of the 2022 and 2023 competitive rounds.

(i) The proposed number of Low-Income Units is 5% greater than the subregion average of the 2022 and 2023 competitive rounds (1 point);

(ii) The proposed number of Low-Income Units is 10% greater than the subregion average of the 2022 and 2023 competitive rounds. (2 points);

(iii) The Application is proposing Rehabilitation of a Development that has no existing rent and income restrictions and does not receive any subsidy listed under §11.5(3)(B)(i). The proposed number of Low-Income Units is 50% greater than the subregion average of the 2022 and 2023 competitive rounds (3 points).

(B) The Development is rural and the Application proposes a number of Low-Income Units that is larger than the average of all rural awards in the 2022 and 2023 competitive rounds.

(i) The proposed number of Low-Income Units is 5% greater than the average of all Rural awards in the 2022 and 2023 competitive rounds (1 point);

(ii) The Development size is 80 units and entirely Low-Income or the proposed number of Low-Income Units is 10% greater than the average of all rural New Construction awards in the 2022 and 2023 competitive rounds (2 points).

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

(1) Income Levels of Residents. (§§2306.111(g)((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), (B), (C), or (D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 30% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 20% of all Low-Income Units at 50 %or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 20% of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 10% of all Low-Income Units at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or

(iii) The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or

(iii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 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. If selecting points from paragraph (1)(A) or paragraph (1)(B) of this subsection, these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from paragraph (1)(C) or paragraph (1)(D) of this subsection, these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation. Scoring options include:

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

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

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Supportive Services. (§2306.6710(b)(3) and (1)(G), and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of resident supportive services, which are listed in §11.101(b)(7) of this chapter (relating to Development Requirements and Restrictions) and meet the requirements of that section. (10 points).

(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 residents, 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) Section 811 Project Rental Assistance Program (811 PRA) and Residents with Special Housing Needs. (§2306.6710(b)(points by serving Residents with Special Housing Needs. Only Applications that are unable to meet the requirements of subparagraph (A) of this paragraph may qualify for points under subparagraphs (B) or (C) of this paragraph relating to Residents with Special Housing Needs. The point available under subparagraph (D) is available to all Applications that qualify. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program.

(A) Section 811 Project Rental Assistance Program (811 PRA). An Application may qualify to receive three (3) points by serving tenants with special housing needs through participation in the 811 PRA Program. Points will be awarded as described in clauses (i) through (ii) of this subparagraph.

(i) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Section 811 PRA Program, as referenced in 10 TAC §8.4, Qualification Requirements for Existing Developments. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 5% of the total Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Project Rental Assistance Rule (811 Rule), 10 TAC Chapter 8, limits the Existing Development to fewer Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8. (3 points)

(ii) In order to be eligible for points, Applicants must commit at least 5% of the total Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Rule, 10 TAC Chapter 8, limits the Development to fewer Section 811 PRA Program Units. The Applicant will comply with the requirements of 10 TAC Chapter 8. (3 points)

(B) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the

Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing 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 Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(C) If the Development has committed Units under subparagraph (B) of this paragraph, the Development must commit at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness. Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market the 2% of Units through the Continuum of Care and other homelessness providers local to the Development Site. In addition, the Department will require an initial minimum twelve-month period in Urban subregions, and an initial six-month period in Rural subregions, during which Units must either be occupied by Persons referred from the Continuum of Care or local homeless service providers, or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month or six-month period, the Development Owner will no longer be required to hold Units vacant but will be required to continue to provide quarterly notifications to the Continuum of Care and other homeless service providers local to the Development Site on the availability of Units at the Development Site. A Development is not eligible under this paragraph unless points have also been selected under subparagraph (B) of this paragraph. (1 point)

(D) If the Development is Supportive Housing and has a proposed occupancy preference or limitation for Veterans or a subgroup of only Veterans that is required or allowed by other federal or state financing by the Full Application Delivery Date. These points are only available to Developments that are proposed to be located on sites owned by the United States Department of Veterans Affairs (1 point).

(5) Opportunity Index. (42(m)(1)(C)(i)) The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. Based on the American Community Survey (ACS) data, a Development is eligible for a maximum of seven (7) opportunity index points from subparagraphs (A) and (B) of this paragraph.

(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 less than 20% or the median poverty rate among tracts for the region, whichever is greater, and meets the requirements in clause (i),(ii), or (iii) of this subparagraph:

(i) The Development Site is located entirely within a census tract that has:

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region whichever is greater; and

(II) a median household income in the two highest quartiles among Census tracts within the uniform service region (2 points); or

(ii) The Development Site is located entirely within a census tract that has:

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater, and

(II) a median household income in the third quartile among Census tracts within the region, and

(III) is contiguous to a census tract that is in the first or second quartile among tracts for median household income in the region, and has a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and the Development Site is no more than 2 miles from the boundary between the census tracts (1 point); or

(iii) The Development Site is located in a Rural Area and:

(I) is located entirely located within a Census tract that has a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater, and

(II) is located in a Place which experienced an increase in population since the 2010 Decennial Census according to the Site Demographics Characteristics Report; (1 point).

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the factors in clause (i) or (ii) of this subparagraph. Each 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 in 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. All amenities must be operational or have started 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.

(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 subclauses (I) - (XVI) of this clause.

(I) The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point).

(II) The Development Site is located on a route, with sidewalks for pedestrians, that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected:

(-a-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday) (1 point); or

(-b-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week (2 points).

(III) The Development Site is located within 2 miles of a full-service grocery store. 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; 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. (2 point).

(IV) The Development Site is located within 2 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (2 point).

(V) The Development Site is located within 4 miles of a health-related facility, such as 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).

(VI) The Development Site is within 3 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, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) 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)

(VIII) The Development Site is located within 2 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 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Development Site is located within 6 miles of 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, and to be considered for these purposes must confer at least associate's degrees. 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)

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

(XI) Development Site is within 2 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XII) Development Site is within 2 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XIII) Development Site is within 2 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, 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).

(XV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(XVI) If at Application, the Development is located in a county with a population of 1.2 million or more, but less than 4 million, and is located not more than two miles from a veteran's hospital, veteran's affairs medical center, or veteran's affairs health care center, (which include all providers listed under the Veteran's Health Administration categories, excluding Benefits Administration offices, listed at this link https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=TX&dnum=ALL), and has federal or state financing that requires or allows preference for leasing units in the Development to low income veterans, and agrees to provide that preference. (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 subclauses (I) - (XIV) of this clause.

(I) The Development Site is located within 5 miles of a full-service grocery store. 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; 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. (2 point).

(II) The Development Site is located within 5 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (2 point).

(III) The Development Site is located within 5 miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point).

(IV) The Development Site is located within 5 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, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point).

(V) 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).

(VI) The Development Site is located within 5 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 40 hours or

more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point).

(VII) The Development Site is located within 5 miles of a public park with a playground. (1 point).

(VIII) The Development Site is located within 15 miles of 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, and to be considered for these purposes must confer at least associate's degrees. 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).

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

(X) Development Site is within 4 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point).

(XI) Development Site is within 4 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XII) Development Site is within 4 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, 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).

(XIV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(6) Underserved Area. (§§2306.6725(a)(4) and (b)(2); 2306.127(3), 42(m)(1)(C)(i) and (ii)). Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph (5) of this subsection, then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory of the Site Demographic Characteristics Report from the current year. The specific month and date of the award are disregarded for this analysis. The Application must include evidence that the Development Site meets the requirements. An Application may qualify to receive up to five (5) points if the Development Site meets any one of the criteria described in subparagraphs (A) - (G) of this paragraph:

(A) (§2306.127(3)). 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 (5 points);

(B) (§2306.127(3)). The Development Site is located entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) (§2306.6725(b)(2)). The Development Site is located entirely within a census tract that does not have another Development that was awarded 20 or fewer years ago that serves the same Target Population as the proposed Development. Applications proposing Rehabilitation shall not consider the Development's prior allocation(s) as another development for the purposes of this scoring item (5 points);

(D) For areas not scoring points for subparagraph (C), the Development Site is located entirely within a census tract that does not have another Development that was awarded 15 or fewer years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (4 points);

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have another Development that was awarded 10 or fewer years ago according to the Department's property inventory in the Site Demographic Characteristics Report (3 points);

(F) The Development Site is located within a census tract and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded 10 or fewer years ago that serves the same Target Population as the proposed Development. Applications proposing Rehabilitation shall not consider the Development's prior allocation(s) as another development for the purposes of this scoring item. This item will apply to Development Sites located entirely in a Place, or its ETJ, with a population of 50,000 or more for Urban subregions and 10,000 or more for Rural subregions, and will not apply in the At-Risk or USDA Set-Asides; (5 points)

(i) The Development Site may intersect the boundaries of multiple Places so long as each has a population of at least 50,000 for Urban subregions, and 10,000 for Rural subregions.

(ii) Contiguous census tracts include those that touch at a point.

(G) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(H) The Development Site is located entirely within a Census tract with a median household income in the highest quartile among Census tracts within the uniform service region according to the Site Demographics Characteristics Report (5 points).

(7) Proximity to Job Areas. (§42(m)(1)(C)(i)) An Application may qualify to receive up to four (4) points if the Development Site is located in one of the areas described in subparagraphs (A), (B), or (C) of this paragraph, and the Application contains evidence substantiating qualification for the points. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. This determination will be based on the latest data set posted to the US Census website on or before August 1, 2024. The Development will use OnTheMap's function to import GPS coordinates that clearly

fall within the Development Site, and the OnTheMap chart/map report submitted in the Application must include the report date. This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(A) Proximity to Jobs. For Development Sites in Urban subregions a Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (iv) of this subparagraph.

(i) The Development is located within 5 miles of 10,000 jobs. (4 points)

(ii) The Development is located within 5 miles of 8,000 jobs. (3 points)

(iii) The Development is located within 5 miles of 6,500 jobs. (2 points)

(iv) The Development is located within 5 miles of 4,500 jobs. (1 points)

(B) Proximity to Jobs. For Development Sites in Rural subregions a Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (iv) of this subparagraph.

(i) The Development is located within 5 miles of 6,000 jobs. (4 points)

(ii) The Development is located within 5 miles of 4,500 jobs. (3 points)

(iii) The Development is located within 5 miles of 3,000 jobs. (2 points)

(iv) The Development is located within 5 miles of 1,500 jobs. (1 points)

(C) Access to Jobs. A Development site which qualifies for at least 2 points under subparagraph (A) or (B) may qualify for up to 2 additional points under this subparagraph if the Development Site is located on a route, with sidewalks for pedestrians, that is within one half-mile from the entrance of a public transportation stop or station with a route schedule that provides regularly scheduled service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (2 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(a) of this chapter, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. 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. If a Development site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. 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 points from either:

(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.

(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.

(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.

(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, the Application will receive points from either:

(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)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant. 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 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 $500 or more for Applications located in Urban subregions or $250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the 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. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H); §42(m)(1)(C)(i)) 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 Code §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §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. In addition, the Neighborhood Organization must be on record 30 days prior to the beginning of the Application Acceptance period with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. 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% 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 should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this 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 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;

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

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in only one of the 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.

(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, 2025. The Neighborhood Organization expressing opposition will be given seven 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. Should the Neighborhood Organization's statements be found to be contrary to findings or determinations of a local Government Entity, or should the Neighborhood Organization not respond in seven calendar days, then the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2); §2306.6710(f) and (g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must be on the State Representative's letterhead or submitted in such a manner as to verify the sender, be signed by the State Representative, identify 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(a) of this chapter (relating to Competitive HTC Deadlines). Letters received by the Department from State Representatives 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 or letters that do not specifically refer to the Development will receive zero (0) points. 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, or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under paragraph (1) of this subsection (relating to Local Government Support). If a Development site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

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

(I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph, and under subclause (IV) or (V) or (VI) of this subparagraph.

(I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development.

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development.

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

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

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(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 or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in subparagraph B(4)(C)(iv) or (v) of this subsection), 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), 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 Applicant must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. 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 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 formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, 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. (§42(m)(points under this paragraph only if no points are elected under subsection (c)(5) 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 geographically located within an area for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality.

(ii) A plan may consist of one or two complementary local planning documents that together have been approved by the municipality as a plan to revitalize the specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, including a consolidated plan or one-year action plan required to receive HUD funds does not equate to a concerted revitalization plan. However, a comprehensive plan may include plans for specific areas targeted for revitalization that would qualify so long as that plan meets all requirements of this section.

(iii) The proposed Development must be entirely located within the targeted revitalization area.

(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 plan must meet the criteria described in subclauses (I) and (II) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been published by the municipality or county in which the Development Site is located.

(II) The plan must be current at the time of Application. (v) If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded as follows:

(-a-) the proposed Development Site is located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(-b-) the proposed Development Site is not located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(-c-) the proposed Development Site does not have a letter described in items (-a-) and (-b-) of this subclause (5 points).

(B) For Developments located in a Rural Area, the Rehabilitation or demolition and Reconstruction of a Development that has been leased and occupied at 85% or greater for the six months preceding Application by low income households and which was initially constructed 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 SCR 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 Neighborhood Risk Factors. (7 points)

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

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) All eligible Applications are awarded twenty-six (26) points, conditioned upon the successful completion of underwriting in accordance with this chapter.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included 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 voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. 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 75 square feet per Unit, of which at least 50 square feet will be conditioned. The Department will annually compare the proportional cost increases from October of the prior year to October of the year being calculated based on the Construction Price Index for Multifamily Housing Units Under Construction (US Census Bureau) and increase the square foot cost targets in this item by that annual proportional amount of increase.

(A) Applications proposing New Construction or Reconstruction or Adaptive Reuse 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 or equal to $150.68 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $201.28 per square foot.

(B) 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 or equal to $160.80 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $211.40 per square foot.

(C) Applications proposing 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 or equal to $201.28 per square foot; or

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to $260.88 per square foot, located in an Urban Area, and that qualify for 5 or more points under subsection (c)(5)(A) and (B) 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 or equal to $260.88 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (K) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than 10% 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, or Rural);

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

(F) If points are claimed related to Underserved Area and/or Proximity to Jobs, the point elections may not change from what was reflected in the pre-application self-score and the supporting documentation for these points must be substantially similar to what was submitted with the Pre-Application;

(G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number or numbers 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

(H) The distance used to determine the Tie-Breaker established in 10 TAC §11.7(2) remains the same or does not decrease between pre-application and full Application. If closer features to the Development Site are identified that could potentially result in a lower distance used for the Tie-Breaker, Applicants may elect to continue using the higher distance submitted with the Pre-Application in order to not be disqualified from pre-application points;

(I) For Applications funded through the USDA Set-Aside; year of initial construction as a residential Development remains the same or is not earlier;

(J) If a high quality Pre-Kindergarten is to be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application.

(K) 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 5% of the total Units are restricted to serve households at or below 30% 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. Applications submitted in the USDA or At-Risk Set-Asides that propose 50 or fewer units may add an additional 1% of the Total Housing Development Cost to the levels described in clauses (i)- (iv):

(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% 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 9% of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (2 points); or

(iv) if the Housing Tax Credit funding request is less than 11% 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% 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) and (7); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total. (4 points)

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6); §42(m)(1)(C)(x)).

(A) An Application may qualify to receive five (5) points if;

(i) For Developments with under 100 total Units at least 55% of the residential Units shall be constructed fully or partially within the Certified Historic Structure.

(ii) For Developments with 100 total Units or more, at least 55 of the residential Units shall be constructed fully or partially within the Certified Historic Structure.

(B) To qualify for points, the Development must receive historic tax credits before or by the 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 and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)). An Application may receive points under subparagraphs (A) or (B) of this paragraph.

(A) 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).

(B) The Development at the time of LURA execution is single family detached homes on separate lots or is organized as condominiums under Chapter 81 or 82 of the Texas Property Code and commits to offer a right of first refusal to tenants of the property to purchase the dwelling at a selected term but no earlier than the end of the Compliance Period and no later than the Extended Use Period. A de minimis amount of a participating tenant's rent may be attributed to the purchase of a Unit. Such commitment will be reflected in the LURA for the Development. The Applicant must provide a description of how they will implement the 'rent-to-own' activity, how they will make tenants aware of the opportunity, and how they will implement the right at the end of the selected term. If a Development is layered with National Housing Trust Funds, HOME-ARP, or another MFDL source where homeownership is not an eligible activity, the right of first refusal may not be earlier than the end of the Federal Affordability Period. §42(m)(1)(C)(viii). (1 point)

(8) Funding Request Amount. The Application requests no more than 100% of the amount of LIHTC available within the subregion or set-aside as determined by the regional allocation formula on or before December 1, 2024. (1 point)

(9) Readiness to Proceed. The Application includes a certification that site acquisition and building construction permit submission will occur on or before the last day of March of the following year or as otherwise permitted under subparagraph (C) of this paragraph. These points are not available in the At-Risk or USDA Set-Asides. (1 point)

(A) Applications must include an acknowledgement from all lenders and the syndicator of the required Development Site closing date.

(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to acquire the site and submit construction permits by the March deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

(C) Applications that remain on the waiting list after awards are made in late July that ultimately receive an award will receive an extension of the March deadline equivalent to the period of time between the late July meeting and the date that the Commitment Notice for the Application is issued.

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was 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 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. The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1) of this subsection. (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraph (1), (2), (3), or (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

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

(2) If the Applicant or Affiliate failed to meet the federal commitment or expenditure requirements, deadlines to enter into a Contract or close a Direct Loan, or did not meet benchmarks of their Contract with the Department.

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the

deadline to both close financing and provide evidence of an executed construction contract under subsection (c)(9) of this section (related to Readiness to Proceed).

(4) If the Developer or Principal of the Applicant has violated or violates the Adherence to Obligations.

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

(a) 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 staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. While an Administrative Deficiency may be issued as the result of an RFAD, not all RFADs will result in an Administrative Deficiency being issued.

(b) Staff will consider each RFAD received and proceed as it deems appropriate under the applicable rules including, if the Application in question has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the award recommendation methodology as outlined in §11.6(3) of this chapter (related to Competitive HTC Allocation Process), not reviewing the matter further.

(c) If the assertion(s) in the RFAD describe matters that are part of the Application review process, and the RFAD does not contain information not present in the Application, staff will not review or act on it.

(d) The RFAD and any testimony presented to the Board regarding the result of an RFAD may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded.

(e) Requestors must provide, at the time of filing the request all 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. An RFAD that expresses the requestor's opinion will not be considered.

(f) 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 takes any formal action to accept the report. When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration, which may result in a reaffirmation, reversal, or modification.

(g) The results of a RFAD may not be appealed by the requestor, and testimony to the Board arguing staff's determination will not be considered unless the requestor can show that staff failed to follow the applicable rule.

(h) A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter, relating to Appeals Process.

(i) Information received after the RFAD deadline will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant a termination notice.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406020
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

Except as described herein the new sections affect no other code, article, or statute.

§11.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting NHTF funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME, HOME-ARP, or NSP PI funds from the Department must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, to the extent NHTF is not being requested from the Department. All Developments located within a 100 year floodplain must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider

getting appropriate insurance or take necessary precautions. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features.

(A) An Undesirable Site Feature will render an Application ineligible unless acceptable mitigation as determined by staff or the Board is undertaken. For Competitive HTC Applications, if staff identifies an undesirable site feature reflected in clause (i) - (x) of subparagraph (E) and it was not disclosed, the Application shall be terminated by staff. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under clause (xi) of subparagraph (E), staff may issue an Administrative Deficiency. In the event that staff cannot reasonably conclude whether a feature is considered undesirable, it may defer to the Board for decision.

(B) Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) and Developments encumbered by a TDHCA LURA the earlier of the first day of the Application Acceptance Period for HTC, Application Acceptance Date for Direct Loan, or date the pre-application is submitted (if applicable) may be granted an exemption by staff; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability) may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application.

(C) 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 a request for pre-determination at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand 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 Site Features become available while the 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 by staff and may result in an Administrative Deficiency or re-evaluation.

(D) If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.

(E) The Undesirable Site Features include those described in clauses (i) - (xi) of this subparagraph. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance.

(i) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;

(ii) Development Sites located within 300 feet of an active solid waste facility, sanitary landfill facility, waste transfer station, or illegal dumping sites (as such dumping sites are identified by the local municipality);

(iii) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(iv) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(I) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(II) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(III) the railroad in question is commuter or light rail;

(v) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or that maintain fuel storage facilities, to the extent that these qualifying items are consistent with the general characteristics of heavy industry. Gas stations and other similar facilities that are not consistent with the characteristics of heavy industry are not considered an undesirable site feature;

(vi) Development Sites located within 10 miles of a nuclear plant;

(vii) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(viii) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(ix) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily;

(x) Development Sites that are located in a Clear Zone, any Accident Potential Zone, or within any Noise Contour of 65 decibels or greater, as reflected in a Joint Land Use Study for any military Installation, except that if the Development Site is located

in a Noise Contour between 65 and 70 decibels, the Development Site will not be considered to have an Undesirable Site Feature if the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(xi) Any Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) A Neighborhood Risk Factor will render an application ineligible unless acceptable mitigation as determined by staff or the board is undertaken. If the Development Site has any of the characteristics described in subparagraph (D) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, should staff determine that the Development Site has any of the characteristics described in subparagraph (D) of this paragraph and such characteristics were not disclosed, the Application shall be terminated by staff.

(B) 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 subparagraph (E) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand 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 Neighborhood Risk Factors become available while the Tax-Exempt Bond Development or Direct Loan only 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 by staff and staff may issue an Administrative Deficiency.

(C) The presence of any characteristics listed in subparagraph (D) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit. Mitigation to be considered by staff is identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(D) The Neighborhood Risk Factors include those noted in clauses (i) - (iii) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraph (E) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor 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 Neighborhood Risk Factor disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13). Rehabilitation Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA), and Developments encumbered by a TDHCA LURA re exempt from this Neighborhood Risk Factor.

(ii) The Development Site is New Construction or Reconstruction and is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) 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. Rehabilitation developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA), and Developments encumbered by a TDHCA LURA are exempt from this Neighborhood Risk Factor.

(iii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that had a TEA Accountability Rating of "Not Rated: Senate Bill 1365" for 2022.

(I) 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. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site.

(II) 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.

(III) 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. Sixth grade centers will be considered as part of the middle school rating.

(IV) Elderly Developments, Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units, and Applications with USDA financing for Rehabilitation of existing properties are exempt and are not required to provide mitigation for this subparagraph, but are still required to provide rating information in the Application.

(E) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and should include the measures described in clauses (i) - (iii) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be

found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting.

(i) Mitigation for Developments in a census tract that has a poverty rate that exceeds 40% may include a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward. If the Development is located in the ETJ, the resolution would need to come from the county.

(ii) Evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, 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 yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. 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. The data must include incidents reported during the entire calendar year previous to the year of Application. 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 most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), 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. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates.

(iii) Evidence of mitigation for each of the schools in the attendance zone that has a TEA Accountability Rating of "Not Rated: Senate Bill 1365" for 2022 must meet the requirements of clause (iv) which will be a requirement of the LURA for the duration of the Affordability Period and cannot be used to count for purposes of meeting the threshold requirements under subparagraph (7)(B)(ii) of this paragraph.

(iv) Acceptable mitigation requires that the Applicant has committed that it will operate an after school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided to elementary, middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

(F) In order for the Development Site to be found eligible, including when mitigation described in subparagraph (E) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(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.

(ii) Determination that the risk factor(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.

(iii) No mitigation was provided, or in staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of Neighborhood Risk Factors on the basis that the Development is necessary 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.

(4) Site and Neighborhood Standards (Direct Loan and HOME-ARP only). A New Construction Development, as defined by the applicable federal fund source, requesting federal funds must meet the Site and Neighborhood Standards in 24 CFR §983.57(e)(2) or (3). A Development requesting NHTF funds that meets the federal definition of reconstruction in 24 CFR §93.2 must also meet these standards.

(b) Development Requirements and Restrictions. The purpose of this subsection is to identify specific restrictions on a proposed Development requesting multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply.

(A) General Ineligibility Criteria include:

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

(ii) any Development with any building(s) with four or more stories that does not include an elevator. Developments where topography or other characteristics of the Site require basement splits such that a tenant will not have to walk more than two stories to fully utilize their Unit and all Development amenities, will not require an elevator;

(iii) a Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) a Development that proposes population limitations that violate §1.15 of this title (relating to Integrated Housing Rule);

(v) a Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto;

(vi) a Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, 104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision; or

(vii) any New Construction or Reconstruction proposing more than 35.00% efficiency and/or one-Bedroom Units. This requirement will not apply to Elderly or Supportive Housing Developments. For Historic Developments, this requirement will not apply to any units constructed within the Historic structure. For any New Construction or Reconstruction undertaken as part of a Historic Application, those newly constructed or reconstructed Units must meet this standard. The Units that are part of the Historic structure will not be included in the total when determining if the Application meets this requirement.

(B) Ineligibility of Elderly Developments include:

(i) any Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

(ii) any Elderly Development with any Units having more than two Bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, or security officer. These employee Units must be specifically designated as such; or

(iii) any New Construction, Reconstruction, or Adaptive Reuse Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Due to uncertainty linked to the delayed release of TEA Accountability ratings, this item is suspended. Any Development that falls within the attendance zone of a school that has a TEA Accountability Rating of F for 2023 and a rating of "Not Rated: Senate Bill 1365" for 2022 is ineligible with no opportunity for mitigation. Developments that are encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or at the time of Pre-application (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units are exempt. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(D) Ineligibility of Developments within Areas of High Crime. Any Development involving New Construction or Adaptive Reuse located in an area described in (a)(3)(D(ii) of this paragraph still yields a Part I violent crime rate greater than 18 per 1,000 persons (annually) is ineligible with no opportunity for mitigation. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area must meet the Development size limitation and corresponding capture rate requirements in §11.302(i)(1)(C) of this chapter (related to Feasibility Conclusion). Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) - (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new USDA funding, staff may consider the cost standard under subparagraph (A) of this paragraph on a case-by-case basis.

(A) For Housing Tax Credit Developments with USDA financing the Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work.

(B) For Tax-Exempt Bond Developments, less than 20 years old, based on the placed in service date, the Rehabilitation will involve at least $20,000 per Unit in Building Costs and Site Work. If such Developments are greater than or equal to 20 years old, based on the placed in service date, the Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work.

(C) For all other Developments, the Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (O) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (L), (N), and (O) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (H) or (N) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence submitted with the request for amendment that the amenity has not been approved by the Texas Historical Commission or National Park Service, as applicable. Applicants for Multifamily Direct Loans should be aware that certain amenities are not eligible for Direct Loan funding, including without limitation, detached community spaces, furnishings, swimming pools, athletic courts, and playgrounds, as more fully described at §13.3 of this title (relating to General Loan Requirements). Amenities include:

(A) All Units must have connections available using current technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal (not required for USDA Rehabilitation);

(F) Energy-Star or equivalently rated dishwasher; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit;

(G) Energy-Star or equivalently rated refrigerator;

(H) Oven/Range;

(I) Blinds or window coverings for all windows;

(J) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(K) Energy-Star or equivalently rated lighting in all Units;

(L) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half spaces per Unit for non-Elderly Developments and one space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout the Affordability Period. If a waiver or variance of local code parking requirements has been requested then evidence to that effect must be included in the Application;

(N) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work); and

(O) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph:

(i) Developments with 16 to 40 Units must qualify for two (2) points;

(ii) Developments with 41 to 76 Units must qualify for four (4) points;

(iii) Developments with 77 to 99 Units must qualify for seven (7) points;

(iv) Developments with 100 to 149 Units must qualify for ten (10) points;

(v) Developments with 150 to 199 Units must qualify for fourteen (14) points; or

(vi) Developments with 200 or more Units must qualify for eighteen (18) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. A Development composed of non-contiguous single family sites must provide a combination of unit and common amenities to equal the appropriate points under subparagraph (A) of this paragraph for the Development size. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site, regardless of resident access to the amenity in another phase. All amenities must be available to all Units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Community Space for Resident Supportive Services includes:

(I) Except in Applications where more than 10% of the Units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under §11.101(b)(5)(A)(i) - (vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider Agreement. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) of this item, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement for Competitive HTC Applications.

(-1-) The agreement must be between the Owner and an Educational Provider.

(-2-) The agreement must reflect that at the Development Site the Educational Provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed

Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-) of this subclause.

(-c-) If an Educational Provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (4 points).

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (2 points).

(IV) Service provider office in addition to leasing offices (1 point).

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point).

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point).

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points).

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point).

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).

(iii) Health/Fitness/Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point).

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point).

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points).

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (V) of this clause is not selected.

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (IV) of this clause is not selected.

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point).

(VII) Swimming pool (5 points).

(VIII) Splash pad/water feature play area (3 points).

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Pickleball, Soccer, or Baseball Field) (2 points).

(iv) Design / Landscaping amenities include:

(I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points).

(II) Enclosed community sun porch or covered community porch/patio (1 point).

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (2 points).

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points).

(V) Porte-cochere (1 point).

(VI) Lighted pathways along all accessible routes (1 point).

(VII) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point).

(v) Community Resources amenities include:

(I) Community laundry room with at least one washer and dryer for every 40 Units (2 points).

(II) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills).

(III) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points).

(IV) Furnished Community room (2 points).

(V) Library with an accessible sitting area (separate from the community room) (1 point).

(VI) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points).

(VII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points).

(VIII) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points).

(IX) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 or more with coverage throughout the clubhouse or community building (1 point).

(X) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the Development (2 points).

(XI) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point).

(XII) Package Lockers or secure package room. Automated Package Lockers or secure package room provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points).

(XIII) Recycling Service (includes providing a storage location and service for pick-up) (1 point).

(XIV) Community car vacuum station (1 point).

(XV) Access to onsite bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per 25 Units (1 point).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements. The requirements are:

(i) four hundred fifty (450) square feet for an Efficiency Unit;

(ii) five hundred fifty (550) square feet for a one Bedroom Unit;

(iii) eight hundred (800) square feet for a two Bedroom Unit;

(iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of five (5) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. At least two (2) points must be selected from clause (iii), Energy and Water Efficiency Features, of this subparagraph.

(i) Unit Features include:

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

(VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

(X) Walk-in closet in at least one Bedroom (0.5 point);

(XI) 48-inch upper kitchen cabinets (1 point);

(XII) Kitchen island (0.5 points);

(XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

(XIV) Natural stone or quartz countertops in kitchen and bath (1 point);

(XV) Double vanity in at least one bathroom (0.5 point); and

(XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features include:

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

(II) Thirty year roof (0.5 point);

(III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);

(IV) Electric Vehicle Charging Station (0.5 points);

(V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and

(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate, at a minimum, all items necessary to obtain Enterprise Green Communities certification applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features include:

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, (1 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points);

(IX) A rainwater harvesting/collection system or locally approved greywater collection system (0.5 points);

(X) Wi-Fi enabled, Energy-Star or equivalently rated "smart" thermostats installed in all units (1 point); and

(XI) Solar panels installed, with a sufficient number of panels to reach a rated power output of at least 300 watts for each Low-Income Unit. (2 points).

(7) Resident Supportive Services. The resident supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) - (E) of this paragraph, the Development Owner may request an Amendment as provided in §10.405(a)(2) of this chapter (relating to Amendments and Extensions). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Unless otherwise specified, 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. These services are intended to be pro-

vided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services include:

(i) shuttle, at least three days a week, to a grocery store and pharmacy or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and

(ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point).

(B) Children Supportive Services include:

(i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of paragraph (5)(C)(i)(I) of this subsection. (Half of the points required under this paragraph); and

(ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).

(C) Adult Supportive Services include:

(i) Four hours of weekly, organized, in-person, hybrid, or virtual classes accessible to participants from a Common Area on site to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, homebuyer counseling, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(v) reporting rent payments to credit bureaus for any resident who affirmatively elects to participate, which will be a requirement of the LURA for the duration of the Affordability Period (2 points); and

(vi) participating in a non-profit healthcare job training and placement service that includes case management support and other need-based wraparound services to reduce barriers to employment and support Texas healthcare institution workforce needs (2 points).

(vii) An eviction prevention program operated by a case manager. The case manager may be an employee of the owner or a third-party social service provider and shall be responsible for no more than 50 cases at a time. On at least a monthly basis, the case manager will obtain contact information and past due balances for households that are at risk of eviction for nonpayment of rent. For households that voluntarily choose to participate, the case manager shall offer an eviction holdoff agreement providing a minimum of 6 months for the household to resolve the past due balance and forgiving any late fees associated with that balance, regardless of whether they have been paid, should the agreement be fulfilled. During the eviction holdoff period, the case manager will offer to meet with the household at least once every other week. The case manager will identify resources in the community that provide emergency rental assistance and other financial support and assist the household in applying for these programs (5 points).

(D) Health Supportive Services include:

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points); and

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).

(E) Community Supportive Services include:

(i) partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points); and

(ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730).

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (affected units) must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph. Visitability requirements include:

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units; and

(iii) Each affected unit must include the features in subclauses (I) - (V) of this clause:

(I) At least one zero-step, accessible entrance;

(II) At least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

(III) The bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

(IV) There must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

(V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, assuming all the Units have similar features only the number of Bedrooms and full bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and full bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type will be used. However, a single story Unit may be substituted for a townhome Unit, if the single story Unit contains the same number of Bedrooms and bathrooms and has an equal or greater square footage.

(F) Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406021
Bobby Wilkinson
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Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

Except as described herein the new sections affect no other code, article, or statute.

§11.201. Procedural Requirements for Application Submission.
This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Devel-

opment Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability). Withdrawal of an Application is permanent. Applicants are subject to the schedule of fees as set forth in §11.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be 5:00 p.m. on the third business day following the date of the deficiency notice and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the Multifamily Programs Procedures Manual. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials are fully readable by the Department.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. The PDF copy and Excel copy of the Application must match. If variations exist between the two copies, an Administrative Deficiency will be issued for the Applicant to identify which document to rely on. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. If an Applicant can view the files that were uploaded, then that shall serve as an indication that the Application was uploaded and received by the Department. Staff, may, as a courtesy, confirm that the Application files were uploaded, but shall not be obligated or required to confirm such submission. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline, the Application may be terminated.

(D) Applications must include materials addressing all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted to the Department as described in either subparagraph (A) or (B) of this paragraph. Applications will be required to satisfy the requirements of this chapter and applicable Department rules that coincide with the year the Certificate of Reservation is issued. Those Applications that receive a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place at the time the Application is received by the Department, unless determined otherwise by staff. Regardless of the timing associated with notification by the TBRB that an application is next in line to receive a Certificate of Reservation and the corresponding deadline to submit the Application pursuant to 34 TAC §190.3(b)(13), it is the Department's expectation that the requirements in this chapter are adhered to, and that care and attention are given to the compilation of the Application, or the Application may be terminated. Applications that intend to request other Department funding (e.g. Multifamily Direct Loan, HOME-ARP, etc) will require a minimum 120-day review period by staff before targeting a Board meeting date for consideration. If, at the time of Application submission, other Department funding is over-subscribed, the submitted Application cannot include a request for such funds.

(A) Lottery Applications. At the option of the bond issuer, an Applicant may participate in the TBRB lottery for private activity bond volume cap. Applicants should refer to the TBRB website or discuss with their issuer or TBRB staff, the deadlines regarding lottery participation and the timing for the issuance of the Certificate of Reservation based on lottery results. Depending on the Priority designation of the application filed with TBRB, the Application submission requirements to the Department under clauses (i) - (iii) of this subparagraph must be met. For those that participate in the Lottery but are not successful (i.e. a Certificate of Reservation will not be issued in January, but at some other time), the Application may not be submitted until a Certificate of Reservation has been issued (i.e. Priority 3 applications) or TBRB has sent an email stating the application is next in line (i.e. Priority 0, Priority 1 or Priority 2), but the Certificate of Reservation cannot be issued until the Application is submitted.

(i) Priority 0 applications for supplemental bond allocations: If an Applicant is seeking additional private activity bond volume cap pursuant to H.B. 1766 for purposes of meeting the 50% Test, upon notice from the TBRB that the Application is next in line to receive a Certificate of Reservation, a complete Application will not be required to be submitted and staff will notify TBRB accordingly. However, if there are changes to the Development that are different from what the Department originally approved that would constitute an amendment under §10.405 of this title (relating to Amendments and Extensions) a request for an Amendment must be submitted to the Department. Staff will not re-issue the Determination Notice associated with supplemental bond allocations.

(ii) Priority 1 or 2 applications: If the Certificate of Reservation will be issued in January, the Applicant may submit the complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter, within the timeframe allowed under the TBRB notice. Alternatively, upon notification from TBRB that an Applicant is next in line to receive a Reservation the Applicant may choose to only submit the complete Application (excluding all required Third Party Reports), for purposes of meeting TBRB requirements to have the Certificate of Reservation issued. In this case, the Application will not be scheduled for a Board

meeting or target date for the issuance of the Determination Notice, as applicable, until such time the Third Party Reports have been submitted, which should be on the fifth of the month. The Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the issuance of the Determination Notice, as applicable, approximately 90 days following the submission of such Third Party Reports. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. For Third Party Reports that are submitted after the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the issuance of the Determination Notice, as applicable. The Application must be submitted using the Uniform Application released by the Department for the upcoming program year.

(iii) Priority 3 applications: Once the Certificate of Reservation has been issued, the same Application submission requirements as indicated in clause (ii) of this subparagraph apply. Specifically, an Applicant may submit the Application including or excluding the Third Party Reports, however, only after the Application is considered complete (i.e. Application Fee and all Third Party Reports) will staff schedule the Application for a Board meeting or target date for the issuance of the Determination Notice. The timing of when a Priority 3 Application is submitted to the Department is up to the Applicant and if not submitted on the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the administrative issuance of the Determination Notice, as applicable.

(B) Non-Lottery Applications or Applications Not Successful in Lottery.

(i) Applications designated as Priority 1 or 2 by the TBRB must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, before the Certificate of Reservation can be issued by the TBRB. The Third Party Reports, if not submitted with the Application to meet the TBRB submission requirement, must then be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the administrative issuance of the Determination Notice, as applicable, approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. If the Third Party Reports are submitted on a date other than the fifth of the month, it will be at staff's discretion as to which Board meeting the Application will be presented, or what will be the target date for the administrative issuance of the Determination Notice, as applicable. Applicants may not submit the Application until staff receives notice from TBRB that the application is next in line to receive a Certificate of Reservation; or

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date or administrative issuance of the Determination Notice, as applicable.

(C) Generally, the Department will require at least 90 days to review an Application unless staff can complete its evaluation in sufficient time for earlier consideration. If the Application is layered with other Department funds the Department will require at least 120 days to complete its evaluation. An Applicant should expect this timeline to apply regardless of whether the Board will need to approve the issuance of the Determination Notice or it is determined that staff can issue the Determination Notice administratively for a particular Application. Applicants should be aware that unusual financing structures, portfolio transactions, the need to resolve Administrative Deficiencies and changes made by an Applicant after the Application has been reviewed by staff may require additional time to review. In instances where an Application necessitates more staff time to review than normal, where an Application is suspended due to the inability to resolve Administrative Deficiencies by the original deadline, or an extension to respond to an Administrative Deficiency is requested, staff is not obligated to ensure the Application meets the original target date for a Board Meeting or administrative issuance of a Determination Notice, as applicable. Moreover, such review period may be longer depending on the volume of Applications under review and statutory program timing constraints associated with such Applications. The prioritization of Applications will be subject to the review priority established in paragraph (5) of this section.

(D) Withdrawal of Certificate of Reservation. Applications under review by the Department that have the Certificate of Reservation withdrawn and for which a new Certificate of Reservation is not expected to be issued within a reasonable amount of time, as determined by staff, the Department will consider the Application withdrawn and the Applicant will be provided notice to that effect. Once a new Certificate of Reservation is issued, it will be at the Department's discretion to determine whether the existing Application can still be utilized for purposes of review or if a new Application, including payment of another Application Fee, must be submitted. The Department will not prioritize the processing of the new Application over other Applications under review once a new Certificate of Reservation is issued, regardless of the stage of review the Application was in prior to the withdrawal of the Certificate of Reservation, or that it maintain the originally selected Board meeting or targeted administrative issuance date for the Determination Notice, as applicable.

(E) Direct Loan Applications must be submitted in accordance with the requirements in this chapter, §13.5 (relating to the Application and Award Process), and the applicable Notice of Funding Availability (NOFA).

(F) The Department has contracted with a third party for the development of an online Multifamily Management System (MMS), which may enable for the online submission of Applications. The Department may invite a limited number of Applicants to submit Applications through that system. Should that occur, staff may provide reasonable relief from non-statutory deadlines and other requirements of this chapter to facilitate that testing. No advantage will be provided to Applicants that participate in this testing.

(3) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. To the extent a Direct Loan award is returned after Board approval, penalties may be imposed on the Applicant and Affiliates in accordance with §13.11(a) of this title (relating to Post Award Requirements).

(4) Competitive Evaluation Process. Applications believed likely to be competitive will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be conducted based upon the likelihood that an Application will be competitive for an award based upon the region, set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applications, but no

Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule) as applicable. The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). The reviews by the Multifamily Finance Division and the Real Estate Analysis Division will be conducted to meet the requirements of the Program or NOFA under which the Application was submitted. Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §11.101(a)(3) (relating to Neighborhood Risk Factors). The Department may provide a scoring notice reflecting such score to the Applicant which will trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process). For an Application for which the selection criteria are reviewed, the scoring notice for the Application will be sent to the Applicant no later than 21 days prior to the final Board approval of awards.

(5) Order of review of Applications under various Programs. This paragraph identifies how ties or other matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general order of review of Applications submitted under different programs.

(A) De-concentration. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) for Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application associated with the Traditional Carryforward Designation is submitted to the Department;

(ii) for all other Developments, the date the Application is considered received by the Department; and

(iii) notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Order of reviews of Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed.

(6) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. The deficiency process does not require staff to request information from the Applicant in order to complete the Application. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules 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 and eligibility requirements. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files and must be uploaded to the Application's ServU http file. Emailed responses will not be accepted. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning they are Material Deficiencies not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Department staff and Board.

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information, there is an expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address the matter in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions, suspension, or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party, the documentation involves Third Party signatures needed on certifications in the Application, or an extension is requested as a reasonable accommodation. A Deficiency response may not contain documentation that did not exist prior to submission of the pre-application or Full Application, as applicable.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. Points deducted for failure to timely respond to a deficiency will not impact the Pre-Application score. If deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be termi-

nated, subject to the Applicant's right to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) Applicants may not use the Deficiency Process to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. If an Applicant appeals a staff termination to the Board, Board decisions on terminations are final and an Applicant will not be allowed to re-apply under the same Certificate of Reservation due to the limited timeframe allowed under the existing Reservation.

(D) Deficiencies for Direct Loan-only Applications. Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application may be terminated and the Applicant will be provided notice to that effect. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved during the suspension period, the date by which the final deficient item is submitted shall be the new Application Acceptance Date pursuant to §13.5(c) of this title (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. Should an Applicant still desire to move forward with the Development after Termination, a completely new Application must be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application, which will have a new Application Acceptance Date.

(7) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the Applicant may request a limited review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires correction or clarification, staff will request such through the Deficiency process as stated in paragraph (6) of this section, if deemed appropriate. A limited review is intended to address:

(A) Clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) Technical correction of non-material information that would cause an Application deemed non- competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(8) 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 comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven 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 by staff will be provided to a fact finder, chosen by the Department, for review and a determination. The fact finder will not make determinations as to the accuracy of the statements presented, but only regarding 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.

§11.202. Ineligible Applicants and Applications.

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. The items listed in this section include those requirements in Code, §42, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules, federal statutes or regulations, or a specific program NOFA. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those listed in the U.S. government's System for Award Management (SAM); (§2306.0504)

(B) Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material

fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the received date of Application or Pre-Application submission (if applicable);

(C) Is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by FINRA; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

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

(F) Has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation Review);

(G) Is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans, and for which no repayment plan has been approved by the Department;

(H) Has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least 10 days prior to the Board meeting at which the decision for an award is to be made;

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) Has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully Deobligated during the 12 months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment or Determination Notice, or Direct Loan Contract for a Development;

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid;

(M) Fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) - (v) of this subparagraph as considerations:

(i) the amount of resources in a Development and the amount of the benefit received from the Development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) Fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) A violation of Tex. Gov't Code §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (i.e. any contact other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed;

(B) The Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) For any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code §2306.6703(a)(1);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or

(iii) the Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

§11.203. Public Notifications. (§2306.6705(9)).

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications generally must not be older than three months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications generally must not be older than three months prior to the date the complete Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. Should the jurisdiction of the official holding any position or role described in paragraph (2) of this section change between the submission of a pre-application and the submission of an Application in a manner that results in the Development being within a new jurisdiction, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism. A template for the notification is included in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those in office at the time the Application is submitted; however, a mailed notification that is addressed to the entity or officeholder rather than a specific person is acceptable so long as it is mailed to the correct address and otherwise meets all requirements. Note that between the time of pre-application (if made) and full Application, the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification. Recipients include:

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire Development Site;

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

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

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

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

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

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

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (ix) of this subparagraph:

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

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

(iii) a statement indicating the program(s) to which the Applicant is applying 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.);

(vi) the total number of Units proposed and total number of Low-Income Units proposed;

(vii) the residential density of the Development, i.e., the number of Units per acre;

(viii) information on how and when an interested party or Neighborhood Organization can provide input to the Department; and

(ix) Information on any proposed property tax exemption.

(B) 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 target, provide a preference, or serve a Target Population exclusively, unless such population limitation, targeting, or preference is documented in the Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

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

§11.204. Required Documentation for Application Submission.

The purpose of this section is to identify the threshold documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. Unless stated otherwise, all documentation identified in this section must not be dated

more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program.

(1) Certification, Acknowledgement, and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may publish them on the Department's website and release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title, relating to Administrative Penalties), in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code §2306.6734.

(G) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations and will specifically market to the public housing authority (PHA) waitlists for any PHA in the city and/or county the Development is located within and the PHA of any City within 5 miles of the Development. The Development Owner will be required to identify how they will specifically market to veterans and the PHA waiting lists and report to the Department in the annual housing report on the results of the marketing efforts to veterans and PHA waiting lists. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also meeting the definition of Control. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Engineer/Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements, and including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department consideration for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter (relating to Public Notifications (§2306.6705(9)).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an Application with a Development Site that is:

(i) within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) within the ETJ of a municipality, the Applicant must submit both:

(I) A resolution from the Governing Body of that municipality; and

(II) A resolution from the Governing Body of the county; or

(iii) within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §11.2(b) of this chapter (relating to Tax-Exempt Bond Dates and Deadlines). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The representations regarding the Development made to the applicable Governing Body to obtain the resolution must remain accurate, as reflected in the submitted Application. If material aspects of the Development have changed from when the Governing Body adopted the resolution, it is incumbent upon the Applicant to obtain a new resolution in order to satisfy this requirement. No resolutions older than four years will be accepted. The resolution(s) must certify that:

(i) notice has been provided to the Governing Body in accordance with Tex. Gov't Code §2306.67071(a);

(ii) the Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) the Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code §2306.67071(b); and

(iv) after due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the current Application Round, such requests must be made no later than December 15 of the previous year. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board. The factors include:

(i) the population of the political subdivision or census designated place does not exceed 25,000;

(ii) the characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% contiguity with urban designated places is presumptively rural in nature;

(iv) the political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) the political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) the boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title (relating to Multifamily Direct Loan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive housing tax credits.Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) - (iv) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing.

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company must:

(I) be current, non-expired, and have been signed or otherwise acknowledged by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or for non-amortizing loan structures a term of not less than 30 years;

(IV) include either a committed and locked interest rate, or the lender estimated underwritten interest rate;

(V) include the "up to" principal amount of the loan; and

(VI) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable;

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming the outstanding loan balance on a specified date and confirming that the Preliminary Assessment Tool has been submitted by the Applicant to USDA. The loan amount that is reported on the Schedule of Sources (tab 31 in the MF Uniform Application) and that is used to determine the acquisition cost must be the Applicant's estimate of the projected outstanding loan balance at the time of closing as calculated on the USDA Principal Balance Amortization exhibit.

(iv) For Direct Loan Applications or Tax-Exempt Bond Developments with TDHCA as the issuer that utilize FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made to an available fund source. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of, and therefore added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a non-profit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

(iv) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and

(E) Financing Narrative. (§2306.6705(1)) A narrative should be submitted that describes any special, complex, or unique aspects of the financing plan for the Development, including as applicable any operating subsidies, project-based assistance, replacement reserves, or interest rate swaps; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the term sheets for soft or other government sources, including the funding source; and any refinancing or loan assumptions for USDA loans, etc. For Applicants requesting Direct Loan funds and 9% LIHTC, Match, as applicable, must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds.

(7) Operating and Development Cost Documentation.

(A) Fifteen-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses (or longer, if required by the NOFA), in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must include a description. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must meet the requirements of clauses (i) - (vi) of this subparagraph. The income and corresponding rent restrictions will be reflected in the LURA for the duration of the Affordability Period and for Tax-Exempt Bond Developments, in accordance with the Applicant's election under Tex. Gov't Code §1372.0321. The requirements are:

(i) indicate the type of Unit restriction based on the Unit's rent and income restrictions;

(ii) reflect the rent and utility limits available at the time the Application is submitted;

(iii) reflect gross rents that cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements;

(iv) have a Unit mix and net rentable square footages that are consistent with the site plan and architectural drawings;

(v) if applying for Direct Loan funds:

(I) Direct Loan-restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules or as specifically allowed in a NOFA;

(II) if HOME, TCAP RF, and/or NSP PI are the anticipated fund source, the Application must have at least 90% of the Direct Loan-restricted Units be available to households or families whose incomes do not exceed 60% of the Area Median Income;

(III) in which HOME or TCAP RF are the anticipated fund source have at least 20% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;

(IV) in which NHTF is the anticipated fund source, have 100% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed the greater of 30% of the Area Median Income or whose income is at or below the poverty line;

(V) in which NSP PI is the anticipated fund source, have at least 25% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;

(VI) in which HOME-ARP is the anticipated fund source, during the State Affordability Period have at least 20% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 60% of the Area Median Income and 100% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 80% of the Area Median Income; and

(vi) if proposing to elect income averaging, Units restricted by any fund source other than housing tax credits must be specifically identified, and all restricted Units, regardless of fund source, must be included in the average calculation.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph. For Applications that include a scope of work that contains a combination of new construction and rehabilitation activities, the Application must include a separate development cost schedule exhibit for only the costs attributed to the portion of rehabilitation activities.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer. If Site Work costs (excluding site amenities) exceed $20,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then an Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes and the source of their cost estimate. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the Application includes a request for Direct Loan funds, Applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents. Failure to follow URA or 104(d) requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under §13.11(b) of this title (relating to Multifamily Direct Loan Rule). If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non- applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) Historical monthly operating statements of the Existing Residential Development for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period; or

(II) The two most recent consecutive annual operating statement summaries; or

(III) The most recent consecutive six months of operating statements and the most recent available annual operating summary; or

(IV) All monthly or annual operating summaries available; and

(ii) a rent roll not more than six months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and any vacant units;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the URA and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(8) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all Developments a site plan must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

(i) states the size of the site on its face;

(ii) includes a Unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(iii) includes a table matrix specifying the square footage of Common Area space on a building by building basis;

(iv) identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;

(v) shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) clearly delineates the flood plain boundary lines or states there is no floodplain;

(vii) indicates placement of detention/retention pond(s) or states there are no detention ponds;

(viii) describes, if applicable, how flood mitigation or other required mitigation will be accomplished;

(ix) indicates the location and number of parking spaces, garages, and carports;

(x) indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) includes information regarding local parking requirements; and

(xii) indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area.

(C) Unit floor plans for each Unit Type must be included in the Application and must include the square footage. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-Bedroom, or two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% from the typical floor plan.

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(9) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the 36 month period prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. To meet the requirements of subparagraph (B) of this paragraph, Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer, must certify in the Application that the Site Control submitted with the TBRB application for the Certificate of Reservation to be issued is still valid. Tax-Exempt Bond Developments involving Acquisition and Rehabilitation or identity of interest land acquisitions must submit Site Control documents in order to verify the site acquisition cost as required in §11.302 of this chapter.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department. Site Control items include:

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); or

(ii) a contract or option for lease with a minimum term of 45 years that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date.

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §11.302 of this chapter (relating to Underwriting Rules and Guidelines), then the documentation required as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement by the time of Commitment, Determination Notice or Contract (as applicable).

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated to remove a right of way or similar dedication, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment or Contract (as applicable).

(10) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice. Letters evidencing zoning status must be no more than 6 months old at Application submission, except where such evidence is for an area where there is no zoning and such letters must be updated annually by the political subdivision.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning. This requirement does not apply to a Development Site located entirely in the unincorporated area of a county, and not within the ETJ of a municipality.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change, or a Specific or Special Use Permit. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning, including any necessary specific or special use permits,must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

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

(ii) the applicable destruction threshold;

(iii) that it will allow the non-conformance;

(iv) Owner's rights to reconstruct in the event of damage; and

(v) penalties for noncompliance.

(11) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted. Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer are exempt from this requirement.

(A) The title commitment must list the name of the Development Owner as the proposed insured and list the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(12) Ownership Structure and Previous Participation.

(A) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and Chapters 12 and 13, as applicable.

(B) Organizational Charts. A chart must be submitted that clearly illustrates the organizational structure of the proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries, whether or not they have Control. Persons having Control should be specifically identified on the chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. In the case of Housing Tax Credit Applications only in which private equity fund investors are passive investors in the sponsorship entity, the fund manager, managing member or authorized representative of the fund who has the ability to Control, should be identified on the organizational chart, and a full list of investors is not required. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(C) Previous Participation. Evidence must be submitted that each individual and entity shown on the organizational charts described in subparagraph (B) of this paragraph has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title (relating to Previous Participation Review). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information must authorize the parties overseeing such assistance to release compliance histories to the Department.

(D) Direct Loan. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180 and 2424, when completing the organizational chart and the Previous Participation information.

(13) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness of the organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided. For Tax-Exempt Bond Developments, if the bond issuer is the sole member of the General Partner, a copy of the executed inducement resolution will meet the resolution requirement in this paragraph.

(A) Competitive HTC Applications for the Nonprofit Set-Aside. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in clauses (i) to (v) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the Nonprofit 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, only need to submit the documentation in subparagraph (B) of this paragraph. Required documents include:

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) That the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) and the basis for that opinion;

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. If the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member;

(V) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(VI) That the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

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

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under their respective chapters of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(14) Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph. For Acquisition and Rehabilitation Applications that are only requesting 9% Housing Tax Credits, or 4% Housing Tax Credits for which the Department is not the bond issuer, only subparagraph (D) of this paragraph is required to be submitted. If an Application involves Acquisition and Rehabilitation along with other activities, the Feasibility Report is required for the entire Development. Tax-Exempt Bond Developments where the Department is the bond issuer, or Direct Loan Applications, a report that meets all of the criteria provided in subparagraphs (A) to (F) of this paragraph must be submitted.

(A) For all Applications, careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) An Executive Summary must provide a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off- Site Construction costs. It should specifically describe any atypical or unusual factors that will impact site design or costs, including but not limited to: Critical Water Quality Zones, habitat protection requirements, construction for environmental conditions (wind, hurricane, flood), and local design restrictions.

(C) The Report should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain:

(i) a summary of zoning requirements;

(ii) subdivision requirements;

(iii) property identification number(s) and millage rates for all taxing jurisdictions;

(iv) development ordinances;

(v) fire department requirements;

(vi) site ingress and egress requirements; and

(vii) building codes, and local design requirements impacting the Development.

(D) Survey as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys (excluding those for Rehabilitation Developments) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set- back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(F) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§11.205. Required Third Party Reports.

The Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this title (relating to Competitive HTC Deadlines Program Calendar) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application may be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than 12 months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating that those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating that the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six months prior to the date of Application submission, or Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) For Acquisition/Rehabilitation or Reconstruction projects that meet the following criteria, a comprehensive market study as outlined in IRS Section 42(m)(1)(A)(iii) shall mean a location map and a written statement by a disinterested Qualified Market Analyst certifying that the project meets these criteria:

(i) All of the Units in the project contain existing project based rental assistance that will continue for at least the Compliance Period, an existing Department LURA, or the subject rents are at or below 50% AMGI rents;

(ii) The Units are at least 80% occupied at time of Application; and

(iii) Existing tenants have a leasing preference or right to return to the Development as stated in a relocation plan.

(B) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §11.303 of this chapter.

(C) Applications with USDA financing proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))(D). It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Scope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original SCR. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original SCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the Department's website. For Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must include a Scope of Work Narrative as described in §11.306(j) of this chapter (relating to Scope and Cost Review Guidelines).

(4) Appraisal. This report prepared in accordance with the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines), is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter. The Appraisal must not be dated more than six months prior to the date of Application submission, the Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable. Notwithstanding the foregoing, if the Application contains a Market Analysis and the appraisal is not required to fulfill purposes other than establishing the value of land or buildings, an appraisal is not required if no acquisition costs are entered in the development cost schedule.

§11.206. Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv)).

The Board's decisions regarding awards or the issuance of Determination Notices, if applicable, shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the Housing Tax Credit or Direct Loan recommendation, or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207. Waiver of Rules.

An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request to remedy an error in the QAP or other Multifamily rules, provide necessary relief in response to a natural disaster, or address facets of an Application or Development that have not been contemplated. The Applicant must submit plans for mitigation or alternative solutions with the waiver request. Any such request for waiver submitted by an Applicant must be specific to an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this section.

(1) A waiver request made at or prior to pre-application or Application must establish that the need for the waiver is not within the control of the Applicant or is due to an overwhelming need. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph, unless the Applicant demonstrates that all potential options have been exhausted.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any Forward Commitments, unless due to extenuating and unforeseen circumstances as determined by the Board. The Board may not waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending statutory or regulatory requirements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406022
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

Except as described herein the new sections affect no other code, article, or statute.

§11.301. General Provisions.

This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Director and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

§11.302. Underwriting Rules and Guidelines.

(a) General Provisions.

(1) Pursuant to Tex. Gov't Code §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notices 15-11 and 21-10 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(2) Oversourcing of Funds. The total amount of Department-allocated funds combined with any additional soft funds that are specifically provided for the financing of affordable housing from other units of government may not exceed the total cost of all non-market Units at the development, calculated on a per-unit basis. For purposes of this subsection, soft funds include any grants, below-market interest rate loans, or similar funds with a total cost to the Applicant that is below commercial-rate financing, but does not include payable loans provided at commercial rates with deferred payments. If the Department determines that a Development is oversourced in accordance with this subsection, the Applicant will be required to reduce the soft funds provided by other units of government so as to no longer be oversourced.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in this chapter, Chapters 11, 12, or 13, or in a Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the amounts determined using the methods in paragraphs (1) - (3) of this subsection:

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio (DCR) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income (NOI) to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with

the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 80% AMI.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase. Tenant-based vouchers or tenant-based rental assistance are not included as Income.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (relating to Utility Allowances). Utility Allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent- assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $30 per Unit per month range. Projected income from tenant-based rental assistance will not be considered. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). 100% project-based rental subsidy developments (not including employee-occupied units) may be underwritten at a combined 5% vacancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's database is available on the Department's website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. (G&A)--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. The Underwriter will

use the Applicant's proposed Management Fee if it is within the range of 4% to 6% of EGI. A proposed fee outside of this range must be documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title (relating to Documentation Submission Requirements at Commitment of Funds). At the underwriter's discretion, such documentation may be required prior to Commitment or Determination Notice if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all other Developments. The Underwriter may require an amount above $300 for the Development based on information provided in the Scope and Cost Review (SCR) or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. Resident services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount. The state or local government documentation must be provided in the Application and the dollar amount of the financial obligation must be included in the DCR calculation on the 15-year pro forma at Application. ; or

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area.; and

(iii) On-site staffing or pro ration of staffing for coordination of services only, and not the provision of services, can be included as a supportive services expense.

(L) Total Operating Expenses. The total of expense items described in subparagraphs (A) - (K) of this paragraph (relating to Operating Feasibility). If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates of EGI, Total Operating Expenses, or NOI. The Applicant's NOI will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of the debt service payments on all permanent or foreclosable lien(s) with scheduled and periodic payment requirements, including any required debt service on a Direct Loan subject to the applicable Notice of Funding Availability (NOFA) or other program requirements, and any on-going loan related fees such as credit enhancement fees or loan servicing fees. If executed loan documents do not exist, loan terms including principal and interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide the base rate index or methodology for determining the variable rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than 30 years and not more than 40 years. Up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 40 years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Direct Loans will be fully amortized over the same period as the permanent lender debt.

(C) Repayment Period. For purposes of projecting the DCR over a 30 year period for Developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(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 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).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the priority order presented in subclauses (I) - (IV) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) A reduction to the interest rate of a Direct Loan;

(II) An increase in the amortization period of a Direct Loan;

(III) A reduction in the principal amount of a Direct Loan; and

(IV) An assumed reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the priority order presented in subclauses (I) - (III) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) an increase to the interest rate of a Direct Loan up to the lesser of the maximum interest rate pursuant to a Direct Loan NOFA or the interest rate on any senior permanent debt or if no senior permanent debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period on a Direct Loan but not less than 30 years; and

(III) an assumed increase in the permanent loan amount for non-Department proposed financing based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) In order to comply with TDHCA's agreement with HUD, Developments financed with a Direct Loan subordinate to FHA financing will have to meet a combined DCR of 1.0 using 75% of surplus cash after the senior debt service is deducted from Net Operating Income (NOI). To calculate the combined DCR: *75%))) / (FHA senior debt service + amortized MDL debt service)A mathematical example is provided in the Multifamily Procedures Manual.

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and may limit total debt service if the Direct Loan is the senior primary debt.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria provided in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based on the estimated cost provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to SCR Guidelines); the Underwriter may make adjustments to the SCR estimated costs. If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost. For Competitive Housing Tax Credit Applications, the Underwriter will adjust an Applicant's cost schedule line item to meet program rules. Underwriter will not make subsequent adjustments to the application to meet feasibility requirements as a result of the initial adjustment required to meet program rules.

(1) Acquisition Costs. All appraised values must be based on as-is values at the time of Application as further stated in §11.304 of this chapter (relating to Appraisal Rules and Guidelines).

(A) Land, Acquisition and Rehabilitation, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition with no building acquisition cost in basis or when the acquisition is not part of the Direct Loan eligible cost and not subject to the appraisal requirements in the Uniform Relocation Assistance and Act of 1970, the underwritten acquisition cost will be the amount(s) reflected in the Site Control document(s) for the Property. At Cost Certification, the acquisition cost used will be the actual amount paid as verified by the settlement statement.

(ii) For an identity of interest acquisition or when required by the Uniform Relocation Assistance and Acquisition Act of 1970 the underwritten acquisition cost will be the lesser of the amount reflected in the Site Control documents for the property or the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). An appraisal is not required if the land or building are donated to the proposed Development, and no costs of acquisition appear on the Development Cost Schedule. For an identity of interest transaction where the most recent arms-length transaction occurred within five years of the application submission date, the settlement statement for the most recent third party acquisition must be included with the site control documents. An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, or a Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property as of the first date of the Application Acceptance Period or the Application Acceptance Date for Direct Loans; or

(II) has or had within the prior 36 months the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period or in the case of a tax-exempt bond or 4% tax credit application the Application Date.

(iii) For all identity of interest acquisitions, the cost used at cost certification will be limited to the acquisition cost underwritten in the initial Underwriting of the Application.

(iv) In cases where more land will be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s) or the appraisal, if an appraisal is required. An appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage may be used by the Underwriter in making a proration determination based on relative value. The Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the transfer value approved by USDA.

(C) Eligible Basis on Acquisition of Buildings. Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). If the acquisition cost in the Site Control documents is less than the appraised value, Underwriter will utilize the land value from the appraisal and adjust the building acquisition cost accordingly.

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work, including site amenities, that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. Costs for multi- level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all Off-Site Construction, Site Work, and building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it must generally be arranged consistent with the line-items on the SCR Supplement and must also be consistent with the Development Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement if adequately described and substantiated in the SCR report as the basis for estimating Total Housing Development Costs.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14% on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16% on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18% on Developments with Hard Costs at $2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General

Contractor Fee limitations. Any General Contractor fees above this limit will be excluded from Total Housing Development Costs. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15% of the project's eligible costs, less Developer Fee, for Developments proposing 50 Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less. If the Development is an additional phase, proposed by any Principal of the existing tax credit Development, the Developer Fee may not exceed 15%, regardless of the number of Units.

(B) For Housing Tax Credit Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs. Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee. All costs for general and administrative expenses for the Developer, including, but not limited to, travel, dining, and courier fees will be considered part of the Developer Fee.

(C) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(D) For non-Housing Tax Credit Developments, the percentage can be up to 7.5%, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to 24 months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount presented in the Applicant's Development Cost Schedule up to twelve months of stabilized operating expenses plus debt service (up to twenty-four months for USDA or HUD-financed rehabilitation transactions). Reserve amounts exceeding these limits will be excluded from Total Housing Development Costs. Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally, the Applicant's costs are used; however the Underwriter will use comparative data and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates for Building Cost or Soft Costs. The Applicant's Total Housing Development Cost and Total Eligible Cost will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the Target Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities must be included in the LURA.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements as found in Chapter 2 of this title (relating to Enforcement);

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of NSPIRE violations and other information available to the Underwriter;

(C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and

(D) Adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the Development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being determined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny an Application for a Grant, Direct Loan or Housing Credit Allocation is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be proposed to be designed to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(4) Direct Loans. In accordance with the requirements of 24 CFR §§92.250 and 93.300(b), a request for a Direct Loan will not be recommended for approval if the DCR exceeds 1.50 any year during the longer of the term of the Direct Loan or the Federal Affordability Period, unless the Applicant elects to commit 25% of annual Cash Flow to a special reserve account, in accordance with §10.404(d) of this title, for any year the DCR is over 1.50. Annual Cash Flow will be calculated after deducting any payment due to the Developer on a deferred developer fee loan and any scheduled payments on cash flow loans. The Department will calculate the total special reserve amount based on the Cash Flow at Direct Loan Closing underwriting. The deposits into the special reserve account must be made annually from 25% of remaining annual cash flow until the total special reserve amount is reached. Alternatively, Applicant may request the Direct Loan interest rate be increased by Underwriter at Direct Loan Closing underwriting if financially feasibility is still met. If the Direct Loan is not recommended for approval, the remaining feasibility considerations under this section will be based on a revised sources schedule that does not contain the Direct Loan. This standard will also be used when the Development Owner is seeking approval for a request for a subordination agreement or a refinance, except the total special reserve amount will be based on the Cash Flow reflected in the underwriting at that time. A special reserve account is not eligible for Developments layered with FHA financing that is subject to HUD's Multifamily Accelerated Processing Guide.

(h) Work Out Development. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) or (4) of this subsection, applies unless paragraph (5)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). The Underwriter will verify the conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) Is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad capture rate exceeds 10%; or

(B) Is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) Is in a Rural Area and targets the general population, and:

(i) contains Housing Tax Credit Units of 120 or less, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(ii) contains more than 120 Housing Tax Credit Units, and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; or

(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%; and

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply:

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference; or

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMGI rents, which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(4) Long Term Feasibility. The Long Term Pro forma reflects:

(A) A Debt Coverage Ratio below 1.15 at any time during years two through fifteen; or

(B) Negative Cash Flow at any time throughout the term of a Direct Loan, or at any time during years two through fifteen for applications that do not include a request for a Direct Loan.

(5) Exceptions. The infeasibility conclusions will not apply if:

(A) The Executive Director of the Department finds that documentation submitted by the Applicant at the request of the Underwriter will support unique circumstances that will provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3)(of this subsection. The Development:

(i) will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50% of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application;

(ii) will receive rental assistance for at least 50% of the Units in association with USDA financing;

(iii) will be characterized as public housing as defined by HUD for at least 50% of the Units;

(iv) meets the requirements under §11.1(d)(124)(E)(i) of this chapter (relating to the Definition of Supportive Housing); or

(v) has other long term project based restrictions on rents for at least 50% of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§11.303. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Development rental rates or sales price, and state conclusions as to the impact of the Development with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least 30 calendar days prior to the first day of the competitive tax credit Application Acceptance Period or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list. Submission items include:

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships);

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis;

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis;

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed;

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted; and

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as

described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Development's address or location, description of Development, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Real Estate. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year history of ownership for the subject Development.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) How the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) Whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) What are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

(IV) What are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(V) If the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) For rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(VII) Discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) Other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

(i) development name;

(ii) address;

(iii) year of construction and year of Rehabilitation, if applicable;

(iv) property condition;

(v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area including:

(I) monthly rent and Utility Allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities;

(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and

(xii) for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph, if applicable:

(i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

(iii) Affordable housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support the overall demand conclusion for the proposed Development. State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports must include:

(i) All demographic reports must include population and household data for a five year period with the year of Application submission as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Elderly Developments, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit Type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. For HOME-ARP, demand for Qualifying Populations must be identified in accordance with Section VI B.10.a.ii of CPD Notice 21-10. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category based on 2 persons per Bedroom or one person for Efficiency Units.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 2 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Elderly Developments:

(-a-) minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) For Supportive Housing:

(-a-) minimum eligible income is $1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (Project Based Vouchers, Project-Based Rental Assistance, Public Housing Units):

(-a-) minimum eligible income for the assisted units is $1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(iv) For External Demand, assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(v) For Demand from Other Sources:

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (J) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §11.302(i) of this chapter (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category. For HOME-ARP, Units for Qualified Populations will be underwritten at $0 income, unless the Unit has project-based rental assistance or subsidy, or is supported by a capitalized operating reserve agreement.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15% must be supported with additional narrative.

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) For Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI);

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once; and

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and Unstabilized Comparable Units includes:

(i) the proposed subject Units to be absorbed;

(ii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days. Approved Developments should be determined by:

(I) the HTC Property Inventory that is published on the Department's website as of December 31, 2024, for competitive housing tax credit Applications;

(II) the most recent HTC Property Inventory that is published on the Department's website one month prior to the Application date of non-competitive housing tax credit and Direct Loan Applications.

(iii) Unstabilized Comparable Units that are located in close proximity to the subject PMA if they are likely to share eligible demand or if the PMAs have overlapping census tracts. Underwriter may require Market Analyst to run a combined PMA including eligible demand and Relevant Supply from the combined census tracts; the Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i) (relating to Feasibility Conclusion).

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §11.302(i) of this chapter (relating to Feasibility Conclusion).

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(11) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(12) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(13) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in subsection (c)(1)(B) and (C) of this section (relating to Market Analyst Qualifications).

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and Unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used by the Underwriter as the basis for a feasibility conclusion.

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

§11.304. Appraisal Rules and Guidelines.

(a) General Provision.

(1) An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(2) If an appraisal is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the appraisal must also meet the requirements of 49 CFR Part 24 and HUD Handbook 1378. (b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(b) Appraiser Qualifications. The appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(c) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the

past three years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and any deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner, or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead- based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable:

(I) Property rights conveyed;

(II) Financing terms;

(III) Conditions of sale;

(IV) Location;

(V) Highest and best use;

(VI) Physical characteristics (e.g., topography, size, shape, etc.); and

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the Underwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics for the comparables must be calculated in the same manner. It should be disclosed if reserves for re-

placement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. All appraised values must be based on as-is values at the time of Application. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by the appraisal. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the current restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(d) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§11.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by

ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) Assess the potential for the presence of Radon on the Development Site, and recommend specific testing if necessary;

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities (does not include liquified petroleum gas containers with a capacity of less than 125 gallons on-site or within 0.25 miles of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) Include a vapor encroachment screening in accordance with the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (E2600-10 or any subsequent standards as published).

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

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

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

§11.306. Scope and Cost Review Guidelines.

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018, or any subsequent standards as published)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work and potentially impact costs. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points. It is the responsibility of the Applicant to inform the report author of those requirements in the scope of work; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead- Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title (relating to Site and Development Requirements and Restrictions) and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports; and

(4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and

Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(j) Scope of Work Narrative. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must provide a Scope of Work Narrative, consisting of:

(1) A detailed description of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced;

(2) For historic structures, a description of each aspect of the building(s) that qualifies it as historic, including a narrative explaining how the scope of work relates to maintaining the historic designation of the Development; and

(3) a narrative of the consolidated scope of work for the proposed rehabilitation for each major system and components.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406023
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

Except as described herein the new sections affect no other code, article, or statute.

§11.901. Fee Schedule.

Any unpaid fees, as stated in this section, will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. Applicants will be required to pay any insufficient payment fees charged to the Department by the State Comptroller. The Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, unless prohibited by other parts of this chapter, provided the Applicant submits a written request for an extension to a fee deadline no later than five business days prior to the deadline associated with the particular fee. For any payment that must be submitted in accordance with this chapter, staff may grant relief of the associated deadline for that payment for unusual or unpredictable circumstances that are outside of the Applicant's control such as inclement weather or failed deliveries. Applicants must submit any payment due under this chapter and operate under the assumption that the deadline for such payment is final.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Competitive HTC Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a Competitive HTC pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. For Applicants having submitted a Competitive Housing Tax Credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services

and if Direct Loan funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the Direct Loan Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. For Competitive HTC Applications, in no instance will a refund of the Application fee be made after final awards are made in July.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (6) and (7) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, unless an extension was requested, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50% of the Determination Notice Fee may be issued upon request. The refund must be requested no later than 30 days after the Certificate of Reservation expiration deadline.

(8) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 than what was reflected in the Determination Notice for Tax-Exempt Bond Developments must be submitted with a fee equal to 4% of the amount of the credit increase for one year.

(9) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than 30 days in advance or after the original deadline must be accompanied by an extension fee of $2,500. Fees for each subsequent extension request on the same activity will increase by increments of $500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity. An extension fee of the deadline to submit the Determination Notice and associated documents will not be required, provided a written request was submitted to the Department.

(10) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500 in order for the request to be processed. Fees for each subsequent amendment request related to the same Application will increase by increments of $500. A subsequent request, related to the same Application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000. Amendment fees and fee increases are not required for the Direct Loan programs during the Federal Affordability Period.

(11) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(12) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(13) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of $3,000.

(14) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000. Ownership Transfer fees are not required for Direct Loan only Developments during the Federal Affordability Period. For Developments that were previously issued bonds by the Department and for which an Assignment, Assumption, and Consent Agreement will need to be executed, the ownership transfer must be accompanied by a written acknowledgement that the requestor will be responsible for the costs incurred by TDHCA for preparation of documents by outside bond counsel.

(15) Unused Credit or Penalty Fee for Competitive HTC Applications. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. A penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), or if no Application Round is pending, the

Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than 14 calendar 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 penalties.

(16) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments, HTC Developments that are layered with Direct Loan funds, or upon the completion of the Development Period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. For HTC only the amount due will equal $40 per low-income unit. For Direct Loan Only Developments the fee will be $34 per Direct Loan Units, including HOME Match Eligible Units. Developments with both HTCs and Direct Loan, including HOME Match Eligible Units, will only pay one fee equal to $40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of after Project Completion. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. For Direct Loan only Developments, the fee must be paid prior to the release of final retainage. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(17) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(18) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the Housing Tax Credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§11.902. Appeals Process.

(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan Developments (not layered with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals). Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, and underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a requested change to a Commitment or Determination Notice;

(6) Denial of a requested change to a loan agreement;

(7) Denial of a requested change to a LURA;

(8) Any Department decision that results in the termination or change in set-aside of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be made by a Person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than 14 calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While information can be provided in accordance with any rules related to public comment before the Board, full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal must be disclosed in the appeal documentation filed with the Executive Director.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715(d).

(f) If there is insufficient time for the Executive Director to respond to a Competitive Housing Tax Credit Application appeal prior to the agenda being posted for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda prior to the Executive Director's issuance of a response.

(g) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the Department's records.

(h) The decision of the Board regarding an appeal is the final decision of the Department.

(i) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§11.903. Adherence to Obligations. (§2306.6720).

Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title (relating to Administrative Penalties) the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; or

(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§11.904. Alternative Dispute Resolution (ADR) Policy.

In accordance with Tex. Gov't Code §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title (relating to Alternative Dispute Resolution).

§11.905. General Information for Commitments or Determination Notices.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount in accordance with §42(m)(2)(A) or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and the Department's rules, all provisions of Commitment, Determination Notice, and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

§11.906. Commitment and Determination Notice General Requirements and Required Documentation.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein by the Department. For Tax-Exempt Bond Developments utilizing a local issuer, the Determination Notice expiration date may be extended for a period not to exceed 5 calendar days, upon request. For Tax-Exempt Bond Developments utilizing TDHCA as the bond issuer, the expiration date may be extended to coincide with the closing date. If the requirements of the Determination Notice, and any conditions of the Determination Notice are met, the Determination Notice shall be valid for a period of one year from the effective date of the Determination Notice, without distinction between a Certificate of Reservation or Traditional Carryforward Reservation. In instances where the Certificate of Reservation is withdrawn after the Determination Notice has been issued and a new Certification of Reservation is issued, staff will not re-issue the Determination Notice. After one year from the effective date of the Determination Notice, if a new Certificate of Reservation or Traditional Carryforward Reservation is issued, the Applicant will be required to contact the Department in order to have a new Determination Notice issued and a new Application must be submitted. Such Application submission must meet the requirements of §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission). If more than a year has not passed from the effective date of the Determination Notice, yet an Applicant desires to have a new Determination Notice issued that reflects a different recommended credit amount, then a new Application must be submitted that meets the requirements of §11.201(2) of this chapter.

(c) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (7) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded.

(1) For entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect.

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect.

(3) Evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application.

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan.

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions provided for in Chapter 1, Subchapter C of this title (relating to the Previous Participation Review, or any other conditions of the award required to be met at Commitment or Determination Notice.

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this title (relating to Amendments and Extensions).

(7) For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (PILOT) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(8) For Competitive HTC Applications, for any documentation that must be submitted in accordance with this section, staff may grant relief of the associated deadline, for unusual or unpredictable circumstances that are outside of the Applicant's control such as inclement weather or failed deliveries. Applicants must submit any payment due under this chapter and operate under the assumption that the deadline for such payment is final.

(d) Post Bond Closing Documentation Requirements. Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in paragraphs (1) - (6) of this subsection.

(1) Training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than three years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates. The Development Owner individual reflected on the certificate must be identified on the organizational chart as having Control.

(2) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than three years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates.

(3) Evidence that the financing has closed, such as an executed settlement statement.

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this title (relating to Reporting Requirements).

(5) An initial construction status report consisting of items from 10.401(b)(1)-(6) of this title (relating to Construction Status Reports).

(6) A current survey or plat of the Development Site prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the floodplain areas and show all easements recorded against the Property and encroachments.

§11.907. Carryover Agreement General Requirements and Required Documentation.

Carryover (Competitive HTC Only). All Developments that received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this title (relating to Amendments and Extensions).

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406024
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1008

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

Except as described herein the new sections affect no other code, article, or statute.

§11.1001. General.

(a) This subchapter applies only to 2025 State Housing Tax Credits to supplement Competitive HTC awards during the July Board meeting of the Department at which final awards of credits are authorized or to supplement Tax-Exempt Bond Developments.

(b) For Competitive HTC Applications, submissions required to make a request for State Housing Tax Credits are considered a supplement to the original Application. Requests for State Housing Tax Credits are not considered Applications under the 2025 HTC Competitive Cycle nor are they part of the 2025 Application Round.

(c) For Competitive HTC Applications, an allocation of State Housing Tax Credits will be processed as a Material Amendment to the Application under §10.405 of this title (relating to Amendments and Extensions).

(d) For Competitive HTC Applications, revisions to costs included in a request for State Housing Tax Credits will not have an impact on points originally awarded for Costs of Development per Square Foot or Leveraging (§§11.9(e)(2) and (4) of this title, respectively).

(e) Tax-Exempt Bond Developments shall meet the requirements of §11.1009 of this chapter (relating to State Housing Tax Credits for Tax-Exempt Bond Developments).

(f) Developments with HOME funds from the Department or another Participating Jurisdiction, will enter into a Contract and a LURA for HOME Match Eligible Units.

§11.1002. Program Calendar for State Housing Tax Credits Associated with Competitive HTC Applications.

Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 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.
Figure: 10 TAC §11.1002

§11.1003. State Housing Tax Credit Allocation Process Associated with Competitive HTC Applications.

(a) Intent to Request State Housing Tax Credit Allocation. Only those Applicants who elect to request an allocation of State Housing Tax Credits from the Department by the Full Application Delivery Date specified in §11.2(a) or §11.2(b) of this subchapter (relating to Program Calendar) are eligible to submit a Request for State Housing Tax Credits.

(b) Requests for State Housing Tax Credits must be received by the deadline specified in §11.1002 of this subchapter (relating to Program Calendar for State Housing Tax Credits) in the format required by the Department.

(c) Third Party Requests for Administrative Deficiency. Due to the nature of the State Housing Tax Credit process and reliance on the Original Application and scores, the Third Party Request for Administrative Deficiency process will not be utilized during the State Housing Tax Credit process under this subchapter.

§11.1004. Procedural Requirements for Requests for State Housing Tax Credits Associated with Competitive HTC Applications.

(a) The procedures and requirements of §11.201 of this chapter (relating to Procedural Requirements for Application Submission) will generally apply to Requests for State Housing Tax Credits, unless otherwise specified in this Subchapter.

(b) The Original Application will be relied upon, as deemed final and reviewed by staff as part of the original award; the request for State Housing Tax Credits must only include the items authorized in this subchapter. Architectural drawings, or other documents that relate to changes to the Application other than revisions to the financing structure may not be submitted. The Applicant must submit the required documents as a single PDF document and all spreadsheet exhibits must also be provided in a usable spreadsheet format as further specified in the Department's released materials, which will be incorporated into the Original Application by staff, and become the full Request for State Housing Tax Credits.

§11.1005. Required Documentation for State Housing Tax Credit Request Submission Associated with Competitive HTC Applications.

(a) The purpose of this section is to identify the threshold documentation that is specific to the Request for State Housing Tax Credits submission, unless specifically indicated or otherwise required by Department rule. Only those documents listed herein may be submitted.

(b) Certification, Acknowledgement, and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must certify that there has been no change to the Applicant Eligibility or Original Owner Certification since the Original Application was submitted.

(c) Site Requirements and Restrictions. The Applicant must certify that there have been no changes from the Original Application

that would require additional disclosure or mitigation, or render the proposed Development Site ineligible. Any change must be addressed under the requirements of §10.405 of this title (relating to Amendments and Extensions).

(d) Site Control. Applicants must certify that there has been no change to Site Control, other than extensions or purchase by the Applicant, since the Original Application was submitted. If the nature of Site Control has changed, State Housing Tax Credit Request must submit the appropriate documentation as described in §11.204(9) of this chapter.

(e) Zoning. (§2306.6705(5)) If the zoning status of the Development has changed since the Original Application, the Request for State Housing Tax Credits must include all requirements of §11.204(10) of this chapter (relating to Zoning).

(f) Applicants who elect to request an allocation of State Housing Tax Credits must include a term sheet from a syndicator that, at a minimum, includes:

(1) An estimate of the amount of equity dollars expected to be raised for the Development;

(2) The amount of State Housing Tax Credits requested for allocation to the Development Owner

(3) Pay-in schedules;

(4) Syndicator consulting fees and other syndication costs; and

(5) An acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

§11.1006. State Housing Tax Credits Underwriting and Loan Policy Associated with Competitive HTC.

Requests for State Housing Tax Credits will only be reviewed for items addressed in this subchapter. In requests for State Housing Tax Credits the Total Developer Fee and Developer Fee included in Eligible Basis cannot exceed the Developer Fee amounts in the most recently published Real Estate Analysis report for the Application. The Real Estate Analysis Division will publish a memo for the State Housing Tax Credit allocation serving as a supplement to the report for the Original Application.

§11.1007. State Housing Tax Credits Selection Criteria Associated with Competitive HTC Applications.

(a) For Qualified Developments not financed through tax exempt bonds, for years in which the Department receives requests for more State Housing Tax Credits than are available, the Department shall prioritize applications proposing the most additional low income Units for households at or below 30% of AMGI relative to the State Housing Tax Credit Request. Units for households at or below 30% of AMGI proposed in the original application shall not be considered. The Department will award based solely upon new Units proposed in exchange for tax credit equity. The initial State Housing Tax Credit award shall be made to the Applicant with the lowest request amount per additional Units provided. Subsequent awards shall be made using the same metric until the Department can no longer fund a full credit request. In the case of a tie, preference shall be determined based upon the Original Application scores under §11.9 and, if applicable, the tie breaker factors established under §11.7.

(b) An Application shall be ineligible for selection if the Development is located in an area with any Neighborhood Risk Factor described in §11.101(a)(3), and it did not receive an allocation of federal tax credits under the QAP issued by the department for 2022 or 2023.

§11.1008. State Housing Tax Credits for Tax-Exempt Bond Developments.

(a) The request for State Housing Tax Credits shall be reflected in the Uniform Multifamily Application, as prescribed by the Department and further explained in the Multifamily Programs Procedures Manual, and shall include a term sheet from a syndicator that includes the amount of State Housing Tax Credits requested and pricing information.

(b) For Applications that will receive a Certificate of Reservation from the Texas Bond Review Board in January, an Applicant may submit the complete Application (which may or may not include Third Party Reports, as more fully described under §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission)), from January 2 through January 31. The Department shall utilize a first-come, first-served system for establishing priority of requests for the portion of the State Housing Tax Credit available for Tax-Exempt Bond Developments.

(c) Once the number of Applications submitted exceed the amount of State Housing Tax Credits for Tax-Exempt Bond Developments the Department can allocate, Applicants for those Applications will be provided notice to that effect and be given the opportunity to modify their Application through the Administrative Deficiency process to exclude the request for the State Housing Tax Credit.

(d) Should there be an amount of State Housing Tax Credits to allocate to an Application and that Application is withdrawn or terminated, or the Certificate of Reservation is withdrawn from the Bond Review Board, the next Application in line, based on the received date will be notified that their Application will be underwritten with the State Housing Tax Credit. Alternatively, in cases where staff can make seamless adjustments to other line items to account for the lack of State HTC, staff may make such adjustments automatically and notify the Applicant accordingly.

(e) Applications submitted after January 31 and for which a Certificate of Reservation has been issued, may include a request for State Housing Tax Credits only if the Department has not reached the maximum amount of State Housing Tax Credits to allocate for Tax-Exempt Bond Developments.

(f) Qualified Developments will be issued an Allocation Certificate, pursuant to Tex. Gov't Code Chapters 171 and 233 that will reflect the State Housing Tax Credit Amount recommended by the Department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406025
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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CHAPTER 21. MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR SINGLE FAMILY CONSTRUCTION ACTIVITIES

10 TAC §21.4

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to Chapter 21, MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR SINGLE FAMILY CONSTRUCTION ACTIVITIES, 10 TAC §21.4, New Construction and Reconstruction Activities with changes to the text previously published on September 20, 2024, *Texas Register* (49 TexReg 7565). The rule will be republished. The purpose of the amendment is to comply with new guidelines mandated by the United States Department of Housing and Urban Development (HUD) that require the use of the 2021 International Energy Conservation Code (IECC) in new construction of single family homes constructed under certain federally funded Programs, such as HOME.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendment to the rule would be in effect, the amendment to the rule will not create or eliminate a government program. The amendments provide assurance that covered single family homes are constructed in compliance with updated guidelines required by the funding source;

2. The amendment to the rule will not require a change in work that would require the creation of new employee positions, nor are the amendment significant enough to reduce workload to a degree that eliminates and existing employee positions;

3. The amendment to the rule will not require additional future legislative appropriations;

4. The amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The amendment to the rule does update a regulation with additional requirements to ensure federal program compliance;

6. The amendment to the rule will not repeal an existing regulation;

7. The amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The amendment to the rule will neither positively nor negatively affect this state's economy.

b. ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amended section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the amended section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amended rule is in effect, enforcing or administering the amended rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between September 20, 2024, and October 21, 2024. Comments regarding the amendments were accepted in writing and by e-mail with comment received from (1) Cyrus Reed, Legislative and Conservation Director of the Lone Star Chapter of the Sierra Club and (2) Noah Oaks, Policy Manager for the South-central Partnership for Energy Efficiency as a Resource.

10 TAC §21.4(a)

Commenter 1 recommends adding that local standards are also required for compliance if they are more stringent than the state or federal standards.

Reasoned Response: Staff agrees with this comment, and changes have been made to the rule in response.

10 TAC §21.4(b) and (c)

Commenter 1 recommends that Chapter 11 of the 2021 International Residential Code be added as a pathway to compliance as the standards are the same as the federal requirement to utilize the 2021 International Energy Conservation Code (2021 IECC).

Reasoned Response: Staff appreciates this comment; however, Chapter 11 of the 2021 International Residential Code was not named by HUD as a compliant pathway. If these standards are, in fact, equivalent, then compliance with the 2021 IECC should sufficiently address their concerns. No changes are made in response to this comment.

Commenter 2 submitted comment in general support of the amendment.

The Board adopted the final order adopting the amendment on December 12, 2024.

STATUTORY AUTHORITY. The amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

§21.4 New Construction and Reconstruction Activities.

(a) Single family residential dwellings, as defined in §388.002 of the Texas Health and Safety Code, that are newly constructed or reconstructed shall comply with the more stringent of §388 of the Health and Safety Code (Texas Building Energy Performance Standards), or the standards adopted by the local jurisdiction.

(b) Effective September 1, 2016, the Texas State Energy Conservation Office adopted the 2015 International Residential Code (Chapter 11) as the state-mandated energy code for all residential construction, which includes one- and two-family residences of three stories or less above grade.

(c) For federally-funded single family residential dwellings for which funds are committed on or after November 28, 2024, and that are covered under FR-6271-N-03 (inclusive of the HOME program, but excluding CDBG) housing must comply with the 2021 International Energy Conservation Code (IECC); or must comply with a federally approved alternative compliance pathway.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406007
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2025
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 174. ECONOMIC DEVELOPMENT ADVISORY COMMITTEES

10 TAC §174.1, §174.2

The Office of the Governor, Texas Economic Development and Tourism Office ("Office") adopts new 10 TAC §174.1 and §174.2, concerning Economic Development Advisory Committees, without changes to the proposed text as published in the November 1, 2024, issue of the *Texas Register* (49 TexReg 8643). The rules will not be republished.

REASONED JUSTIFICATION OF ADOPTED NEW RULES

The Office is authorized by section 481.0211, Texas Government Code, to establish by rule advisory committees to make recommendations to the Office on programs, rules, and policies administered by the Office. This adopted rulemaking establishes provisions for the governance of all advisory committees created under this new chapter, as well as the specific purposes and composition of a new economic development advisory committee.

Adopted rule §174.1 establishes provisions that are generally applicable to all advisory committees created under new chapter 174. The rule sets forth the purpose of the chapter, duration of advisory committees, appointment authority, procedure for selection of chair of advisory committees, maximum number of members, term length, quorum requirements, qualifications, conflict of interest standards, training requirements, and meeting attendance requirements. The rule further sets forth the responsibilities of the Office with respect to advisory committees and that advisory committee members will serve without compensation and will not be reimbursed for expenses unless otherwise authorized by law.

Adopted rule §174.2 creates the International Business Advisory Committee and establishes the purposes, composition, and qualifications of the committee's members. The rule also establishes how the Office will determine which countries are Countries of Interest for the development and promotion of business relationships between Texas and such countries.

SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The Office received no comments in response to this rulemaking.

TAKINGS IMPACT ASSESSMENT

Adriana Cruz, Executive Director, Texas Economic Development & Tourism Office, has determined that there are no private real property interests affected by the adopted rules; therefore, the Office is not required to prepare a takings impact assessment pursuant to §2007.043, Texas Government Code.

STATUTORY AUTHORITY.

Section 481.0211, Texas Government Code, authorizes the Office to adopt rules relating to the establishment of advisory committees to make recommendations to the Office on programs, rules, and policies administered by the Office.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2024.

TRD-202405926
Adriana Cruz
Executive Director
Office of the Governor, Economic Development and Tourism Office
Effective date: December 29, 2024
Proposal publication date: November 1, 2024
For further information, please call: (512) 936-0100

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CHAPTER 190. GOVERNOR'S UNIVERSITY RESEARCH INITIATIVE GRANT PROGRAM SUBCHAPTER C. APPLICATION, REVIEW AND AWARD PROCESS

10 TAC §190.20

The Office of the Governor ("OOG") adopts an amendment to 10 TAC §190.20, without changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4536). The rule will not be republished.

REASONED JUSTIFICATION OF ADOPTED AMENDMENTS

The adopted amendment to §190.20 specifies that an application must be submitted not later than the 30th day before the distinguished researcher begins employment at the eligible institution. This change ensures that an application for a Governor's Uni-

versity Research Initiative ("GURI") grant award is considered during the recruitment stage. The adopted amendment also ensures the GURI Advisory Board will have sufficient time to make its recommendations to the Office of the Governor prior to the distinguished researcher beginning employment.

SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The OOG received no comments in response to this rulemaking.

TAKINGS IMPACT ASSESSMENT

The OOG has determined that no private real property interests are affected by the adopted rules and the rules do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the adopted amendments do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

STATUTORY AUTHORITY

The amendments are adopted under section 62.162 of the Texas Education Code, which authorizes the Texas Economic Development and Tourism Office, in consultation with the Texas Higher Education Coordinating Board, to adopt rules necessary to administer GURI.

CROSS REFERENCE TO STATUTE

Chapter 62 of the Texas Education Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2024.

TRD-202406036
Adriana Cruz
Executive Director, Texas Economic Development and Tourism Office
Office of the Governor, Economic Development and Tourism Office
Effective date: January 5, 2025
Proposal publication date: June 21, 2024
For further information, please call: (512) 936-0100

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CHAPTER 201. TEXAS MICRO-BUSINESS DISASTER RECOVERY LOAN PROGRAM

10 TAC §§201.1 - 201.8

The Office of the Governor, Texas Economic Development and Tourism Office ("Office") adopts new 10 TAC §§201.1 - 201.8, concerning the Texas Micro-Business Disaster Recovery Loan program, without changes to the proposed text as published in the October 18, 2024, issue of the *Texas Register* (49 TexReg 8445). The rule will not be republished.

REASONED JUSTIFICATION OF ADOPTED NEW RULES

The adopted rules relate to the establishment and administration of the new Texas Micro-Business Disaster Recovery Loan Program ("Program") established by subchapter CC, chapter 481, Texas Government Code. The Program expands access to capital for qualifying micro-businesses following a declared disaster to create jobs in this state. Under the Program, the Office will make zero-interest loans to community development financial institutions ("CDFIs") to support interest-bearing disaster recovery loans from the CDFIs to qualifying micro-businesses following a declared disaster.

Rule §201.1 states the authority and purpose of the new chapter. It references the statutory authorization and sets forth the purpose for the Program as described in statute.

Rule §201.2 provides definitions used throughout the new chapter for words and terms with specific meanings.

Rule §201.3 establishes the process for a CDFI to enter into a participation agreement with the Office. Entering into a participation agreement is required before a CDFI can apply for a zero-interest loan from the Office.

Rule §201.4 describes how a participating CDFI can submit a loan application to the Office. Once a CDFI has entered into a participation agreement, it may submit an application to the Office for a zero-interest loan to support one or more disaster recovery loans to one or more qualifying micro-businesses.

Rule §201.5 states the requirements for a disaster recovery loan from the CDFI to a qualifying micro-business.

Rule §201.6 lists general terms for a loan agreement from the Office to the CDFI. If the Office approves a loan application from a CDFI, the Office and the CDFI will enter into a loan agreement that contains certain minimum requirements. The loan agreement will specify, among other things, that the loan is a zero-interest loan upon which quarterly payments must be made over seven years.

Rule §201.7 details monitoring and reporting requirements for a CDFI under a loan agreement. Certain information must be reported on a quarterly basis, and audited financial statements must be submitted annually. The Office must also be permitted to inspect financial records related to the Program.

Rule §201.8 provides the ability for the Chief of Staff or designee to waive any rules not required under statute upon a showing of good cause or when facts or circumstances make a waiver appropriate.

SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The Office received no comments in response to this rulemaking.

TAKINGS IMPACT ASSESSMENT

Adriana Cruz, Executive Director, Texas Economic Development & Tourism Office, has determined that there are no private real property interests affected by the adopted rules. Thus, the Office is not required to prepare a takings impact assessment pursuant to §2007.043, Texas Government Code.

STATUTORY AUTHORITY.

Section 481.456, Texas Government Code authorizes the Office to adopt rules relating to the implementation of the Program and any other rules necessary to accomplish the purposes of the relevant subchapter, including rules that provide criteria under which CDFIs may qualify for the Program.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2024.

TRD-202406037
Adriana Cruz
Executive Director
Office of the Governor, Economic Development and Tourism Office
Effective date: January 5, 2025
Proposal publication date: October 18, 2024
For further information, please call: (512) 936-0100

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §25.186

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.186, relating to Goal for Average Total Residential Load Reduction. The commission adopts the rule with changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7175). The rule will be republished. New 16 TAC §25.186 implements Public Utility Regulatory Act (PURA) §39.919, as enacted by Senate Bill (SB) 1699, Section 5 by the 88th Texas Legislature, Regular Session. The new rule creates an average total residential load reduction goal for the ERCOT power region that focuses on reducing electricity consumption during ERCOT peak demand periods. These reductions will be achieved through responsive device programs that may be offered by retail electric providers (REPs) to residential customers that utilize smart responsive appliances or devices.

The commission received comments on the proposed rule from AARP Texas (AARP); AEP Texas, Inc. (AEP); Base Texas REP, LLC (Base Power); CenterPoint Energy Houston Electric, LLC (CenterPoint); Electric Reliability Council of Texas, Inc. (ERCOT); the Environmental Defense Fund & Alison Silverstein Consulting (EDF & ASC); Houston Advanced Research Center (HARC); Octopus Energy LLC (Octopus); the Office of Public Utility Counsel (OPUC); OhmConnect Energy (OhmConnect); Oncor Electric Delivery Company, Inc (Oncor); the Sierra Club; the South Central Partnership for Energy Efficiency as a Resource (SPEER); Tesla, Inc. (Tesla); the Texas Advanced Energy Business Alliance (TAEBA); and the Texas Energy Association for Marketers (TEAM and the Alliance for Retail Markets (ARM) (filing collectively as the REP Coalition).

General Comments

HARC, Sierra Club, SPEER, and TAEBA recommended the term "responsive device program" be replaced with the term "demand response program" throughout the proposed rule to conform with PURA §39.919. HARC and Sierra Club explained that such a change would provide flexibility to REPs when developing demand response programs. Sierra Club remarked that while demand response program will utilize responsive devices, some programs rely more on customer reactions and behavior rather than taking control of the devices. Therefore, the rule should be revised to encourage several types of demand response programs. SPEER and TAEBA explained that such a change will enable REPs greater flexibility in designing a variety of demand response offerings for residential customers that utilize different smart technologies and devices.

Commission Response

The commission disagrees with commenters and declines to implement the proposed changes. While commenters are correct that demand response programs are not limited to responsive device programs, PURA §39.919 places a clear emphasis on that subcategory of programs. Specifically, PURA §39.919(b)(6) requires the commission to facilitate the widespread deployment of smart responsive appliances and devices in a manner that is compatible with a REP's demand response product or plan. Moreover, PURA §39.919(c) requires both components of the ratio, the amount of load reduced at peak demand and the total amount of demand at that specific period, to be derived from all residential customers that have responsive appliances or devices at their premises that reduce electric consumption. Other provisions, such as PURA §39.919(b)(2) and (3) also require the load reduction program implemented by commission rule promote smart metering technology and be capable of responding to an Energy Emergency Alert (EEA) issued by ERCOT, respectively. These requirements also evince a legislative intent that the load reduction program be oriented around the recording of energy consumption through smart meters, including the communication of such information (i.e., telemetry) and the remote adjustment of electricity usage in response under certain conditions or events.

However, the rule does not require a REP to brand its program as a responsive device program, prohibit a REP from developing or offering alternative demand response programs that do not utilize responsive programs or devices, or incorporate additional demand response elements into its responsive device program. However, by statute, progress towards the goal itself must be calculated based on customers with responsive appliances or devices.

Sierra Club generally requested clarification on what "demand response programs that utilize [smart responsive appliances or] devices" means as referred to in the preamble to the proposed rule.

Commission Response

In response to Sierra Club's request for clarification, the term "smart responsive appliance or device" is defined under §25.186(b). In the context of the programs offered by REPs under the proposed rule, a REP, aggregator, or third-party remotely controls a responsive appliance or device in accordance with the offered program that the residential customer has agreed to. Additionally, any ambiguity associated with the customer incentive structure is dependent on how a REP develops its program and consequently utilizes the relevant responsive appliances or devices.

OhmConnect recommended that any qualifying REP program should be eligible to participate in residential demand response and be compensated solely based on actual load reduction delivered.

Commission Response

The commission declines to modify the rule to require compensation be based solely on actual load reduction delivered. The statute only authorizes an eligible REP to receive funding from a Transmission and Distribution Utility (TDU) under PURA §39.919(b)(9) and correspondingly prescribes the manner in which a TDU may use up to 10% of its budgeted spending for demand response programs under PURA §39.919(c). The statute does not prescribe the manner in which customers must be compensated or what other revenue streams the REP may be able to utilize to monetize a responsive device program. The commission notes the calculation of the goal is based on actual load reductions, but REPs are not required to design their responsive device programs or broader demand response programs solely towards achieving that goal.

OhmConnect recommended the commission adopt a "stretch goal" for demand response programs and a roadmap to meet that goal. OhmConnect generally recommended the commission consult with ERCOT and generation resources to establish a percent or megawatt (MW) reduction goal to reach by 2030, provide funding to demand response outside of energy efficiency programs, limit funding or incentives only to REPs that meet the commission's requirements, and use initial energy efficiency funds to promote the enrollment of new customers in demand response programs.

Commission Response

The commission declines to implement OhmConnect's recommendations because they are beyond the scope of this rulemaking. PURA §39.919 does not provide for the adoption of a stretch goal, a roadmap to meet the goal, or additional funding outside of energy efficiency programs to meet the goal. Moreover, OhmConnect's recommendation to establish a 2030 reduction goal is unnecessary because the current rulemaking allows for the commission to update the goal every two years. The commission may consider demand response more broadly in future proceedings.

OhmConnect recommended the commission either direct ERCOT to expand the "weather sensitive loads" component of its Emergency Response Service (ERS) that accounts for seasonally driven loads such as air conditioning or split the weather sensitive load component of ERS into its own ancillary service with independent funding.

Commission Response

The commission declines to implement the recommended change because it is beyond the scope of this rulemaking. The proposed rule is narrowly focused on implementing PURA §39.919, which requires the commission to establish a residential load reduction goal for the ERCOT power region.

Octopus recommended the commission coordinate with the Railroad Commission (RRC) to develop an inter-agency effort to increase energy demand response during the winter season that capitalizes on the RRC's new authority from House Bill 2263 (87th Regular Session) to develop natural gas energy conservation programs for the purpose of avoiding blackouts during extreme winter weather events. Octopus maintained that because the "vast majority of residential natural gas consumption in the winter is driven by the home thermostat" the commission should work with the RRC to create a new emergency demand response product "that incentivizes heating load

Commission Response

The commission declines to implement the recommended change because it is beyond the scope of this rulemaking. Neither PURA §39.919 nor the proposed rule contemplate the creation of a new emergency demand response product or inter-agency program. Furthermore, PURA §39.919(c) states that the ratio for the load reduction goal is calculated for customers with responsive devices that reduce electrical consumption, not gas consumption.

Octopus recommended ERCOT undertake process changes to ensure load profile data accurately represents the load type present at a customer's premises. Octopus explained that winter heating fuel type is frequently misrepresented in ERCOT's load profile data, despite marked differences in demand response capabilities depending on the heating technology used.

Commission Response

ERCOT's load profiling process is beyond the scope of this rulemaking. Accordingly, the commission declines to modify the rule in response to this comment.

Octopus recommended the commission include an analysis of the benefits of modifying state policy to reintroduce full indexed pricing for residential customers for purposes of incentivizing demand response in its 2025 Biennial Agency Report to the Legislature (2025 Agency Report). Octopus remarked that such an indexed pricing product with adequate customer safeguards, such as a price ceiling, would prevent situations that led to the ban of such products in the first place. Octopus alternatively recommended the commission include a similar recommendation in the 2025 Agency Report that would permit indexed products only for customers with "batteries, flexible loads, or on-site generation."

Commission Response

The commission declines to modify the rule in response to this comment, because no modification is requested. The contents of the 2025 Agency Report are beyond the scope of this rulemaking project.

OPUC recommended the commission review the survey of demand response programs to "determine whether customers understand the program and identify areas for continuing consumer education." OPUC generally recommended customers be provided with sufficient information to decide whether participation in a demand response program would be beneficial. OPUC emphasized the importance of customer education and awareness to the success of demand response programs, such as the terms of the agreement and resulting commitments when enrolling. OPUC also highlighted issues associated with ownership of essential equipment and cancellation procedures should be clearly outlined to customers. OPUC primarily noted the importance of customers understanding the pricing model of demand response program and any associated behavioral changes that are expected.

Commission Response

The commission agrees with OPUC on the importance of customer education and awareness for the success of any customer-focused program, including demand response programs. The commission makes no revisions to the proposed rule in response to this comment, because no revisions are requested.

EDF and ASC recommended the commission expand energy efficiency programs and budgets to ensure energy efficiency and demand response work in tandem to improve reliability, resilience and affordability. EDF and ASC emphasized that res-

idential demand response can be complemented and expanded by "aggressive peak-oriented energy efficiency programs such as heat pumps and attic insulation" which are cost-effective and provide actual and consistent benefits for long periods of time. OPUC opposed expanding the TDU energy efficiency programs beyond what is statutorily prescribed because, in OPUCs view, such programs are uneconomical.

Commission Response

The commission declines to expand energy efficiency programs as part of this rulemaking proceeding, because it is beyond the scope of this proceeding. PURA §39.919 is limited to establishing an average total residential load reduction goal through the utilization of responsive device programs, a subcategory of demand response programs. Energy efficiency and other demand programs are addressed by other rules that were not noticed as part of this rulemaking proceeding.

OPUC recommended the commission consider how access to the internet, or lack thereof, may affect the participation of low to moderate-income customers in demand response programs. OPUC commented that while the proposed rule would "drastically expand access" to demand response programs for residential customers, but noted that some customers, such as those without internet, would not be able to participate. OPUC explained that smart appliances or devices require an internet connection to function, which would inhibit the ability of customers without internet to participate. OPUC further recommended that REPs should work to inform customers about incentives like federal tax credits, energy savings, rate reductions, and bill rebates.

Commission Response

The commission declines to modify the rule to account for customers without internet access, as requested by OPUC. As noted by OPUC, customer without internet connection are not able to utilize smart appliances and devices. Accordingly, this recommendation, along with OPUC's recommendations related to other incentives such as tax credits or rate reductions, are beyond the scope of this rulemaking.

Proposed §25.186(b) - Definition

Proposed §25.186(b) defines the term "smart responsive appliance or device" as an appliance or device that may be enabled to allow its electric usage or electric usage of connected appliances or devices to be adjusted remotely.

HARC, SPEER, and TAEBA recommended the terms "average total residential load" and "average total residential load reduction" be defined in proposed §25.186(b). TAEBA commented that clear and standardized definitions align stakeholder expectations and help ensure consistent implementation across a multitude of programs. TAEBA noted that such definitions would provide a reliable method for evaluating the performance of demand response programs and meeting the average total residential load reduction goal.

Commission Response

The commission declines to define the terms "average total residential load" and "average total residential load reduction," because those terms are not used in the rule, other than as a part of the name of the goal. Instead of employing these concepts directly, the rule directs REPs and ERCOT to provide specific data points that can be used to calculate whether the goal has been met over any number of peak demand periods. If additional incentives or requirements are developed in the future that require individual REPs to evaluate whether its program meets the goal, commission staff can create guidance materials, as appropriate, at that time.

REP Coalition recommended adding new definitions to proposed §25.186(b) for clarity and to establish the appropriate context for implementation of PURA §39.919. Specifically, REP Coalition recommended defining "demand response" as "induced changes in electric usage by residential customers in response to incentives provided by retail electric providers;" "demand response program" as "a program offered by a retail electric provider that creates an incentive for residential customers to participate in demand response"; "demand response provider" as "a third party that facilitates or supports the operation of a demand response program offered by a retail electric provider; "responsive device program" as "a demand response program offered by a retail electric provider pursuant to the requirements of this section that incorporates the use of a smart responsive appliance or device." REP Coalition also recommended revising the term "smart responsive appliance or device" as "an electricity consuming appliance or device that may be enabled to allow its electric usage or electric usage of connected appliances or devices installed at the residential premise to be adjusted remotely." The REP Coalition argues that the rule will be clearer if concepts are clearly defined in the definitions section rather than in other portions of the rule.

Commission Response

The commission declines to adopt definitions for the terms "demand response," "demand response program," "responsive device program," or "demand response provider" and further declines to revise the term "smart responsive appliance or device" because those terms and changes are unnecessary. The definitions recommended by REP Coalition are effectuated under §25.186(c) which states "A REP may offer a responsive device program that offers an incentive to residential customers with smart responsive appliances or devices to reduce electricity consumption." Moreover, given the narrow focus of PURA §39.919 and the proposed rule on responsive device programs, it is not within the scope of this project to adopt definitions for a broader range of demand response-related concepts.

The commission also declines to add the phrases "electricity consuming" and "installed at the residential premise" to the term "smart responsive appliance or device." The REP Coalition does not provide any specific reasoning for these additions, and in the context of the rule it is unclear what specific scenarios the REP Coalition is concerned about.

The commission also disagrees with the REP Coalition's general premise that formally defining terms always results in a better final rule and is clearer for consumers than letting the context of the rule and its other provisions provide necessary clarity. Formally defined terms are often carelessly applied across rules resulting in unintended consequences. Moreover, baking additional concepts into definitions can create confusion as to what is core to the defined term and what is actually playing some other regulatory function, such as the applicability of the rule (e.g., a "smart responsive device" is not exclusively a residential tool; "demand response" is not inherently linked to incentives provided by REPs). On balance, in this instance, the commission does not agree that the additional definitions and definition modifications would improve the clarity of the rule.

Proposed §25.186(c) - Responsive device program

Proposed §25.186(c) authorizes a REP to offer a responsive device program that offers an incentive to residential customers with smart responsive appliances or devices to reduce electricity consumption during an ERCOT peak demand period.

SPEER recommended proposed §25.186(c) be revised to address residential load reductions generally, not just reduction of electricity consumption during an ERCOT peak demand period. Specifically, SPEER recommended replacing the term "responsive device program" with the term "demand response program" and also recommended deleting "during an ERCOT peak demand period. Similarly, the REP Coalition also recommended clarifying that REPs can offer responsive device programs during off peak periods as well.

Commission Response

The commission declines to expand the scope of the rule by replacing "responsive device program" with "demand response program". In the context of §25.186(c) the term "demand response program" is not appropriate because demand response programs that do not utilize responsive appliances or devices are not the subject of this rulemaking and will not be used in calculating the ratio under §25.186(d)(3).

The commission modifies the rule by removing the phrase "during an ERCOT peak demand period" from §25.186(c). The commission agrees that a responsive device program can offer incentives for reducing demand at any time. However, the commission emphasizes that only reductions during ERCOT peak demand periods are relevant for calculating the ratio for the average total residential load reduction goal.

OhmConnect opined that the requirement for the commission to establish a residential demand response goal may be the most important part of SB 1699 and that the law recognizes the outsized influence that demand from air conditioning has on load - approximately 80% of peak demand and potentially even 80% of net peak demand. As such, OhmConnect maintained that the intent of the Legislature was to require the commission to establish specific load reduction goals to be achieved within an appropriate timeframe. OhmConnect commented that the statutory authorization to use 10% of all utility efficiency program funds for residential demand response further evidences the legislative intent to promote additional efforts to reach such specific load reduction goals. OhmConnect remarked that despite such statutory language, "the proposed rule lacks a specific goal or any plan to establish clear metrics by which the efficacy of the program can be measured."

Commission Response

The commission disagrees with OhmConnect that PURA requires the commission to establish specific load reduction goals to be achieved within a specific timeframe. As discussed in detail in commission responses to comments on the goal below, the statutory language of PURA §39.919(c) requires the goal to be measured as a ratio of the load reduced by responsive device program participants during peak and the total peak demand of those participants. While the commission agrees that this ratio is, effectively, a measure of the effectiveness of responsive device programs rather than a measure of aggregate demand reduction the programs achieve, the commission cannot, by rule, circumvent specific statutory direction on how the goal is to be calculated. Furthermore, the statute also provides the intended means of achieving this goal, which is allowing REPs to offer responsive device programs and to authorize TDUs to direct a portion of their energy efficiency funds to these programs.

OhmConnect, Octopus, and TAEBA each commented that the rule should be revised to require REPs to offer responsive device programs. TAEBA commented that demand response should be available to all customers and such a change would maximize grid reliability and customer benefits. OhmConnect commented that by making several aspects of the proposed rule optional for REPs, the rule "makes no material changes to existing demand response programs" and will accordingly not cause any real effect in the market. OhmConnect stated that making the certain aspects of the rule mandatory would provide a certain expectation of reasonable incentives to participating REPs from utility energy efficiency programs. OhmConnect maintained that without such a change, "there is nothing in the proposed rule to help scale residential demand response capabilities in the ERCOT market."

Octopus recommended interpreting PURA §39.919(b)(1) to mean any residential customer within the ERCOT power region must have an opportunity to opt into a demand response program, if eligible. Octopus maintained that making the provision optional "renders the statutory provision meaningless" because if a REP does not want to offer a demand response program, then customers have no options for such a program. Octopus commented that customers should have the option to participate, but REPs should be required to offer a demand response program during the winter and summer. Octopus noted that making the rule mandatory for REPs would benefit both retail customers and the ERCOT grid. Octopus commented that, while the proposed rule nominally satisfies some of the statutory requirements of PURA §39.919, it does not adequately address the legislation's intended purpose of reducing average total residential load. Octopus remarked that the proposed rule actually creates disincentives for REPs to provide demand response more than anything else.

Base Power categorically opposed requiring REPs to provide, or partner with a third-party to provide demand response programs. Base Power expressed that such a requirement is contrary to the intent of PURA §39.919and would be unnecessary and burdensome, particularly for REPs that do not offer traditional demand response programs with smart appliances or devices. In such cases, requiring demand response participation would be duplicative and contrary to some REP's demand response business models, such as programs that prioritize customer control of energy usage. Base Power maintained that the proposed rule appropriately authorizes REPs to offer demand response programs where reasonably available and recognizes the impracticality of a blanket requirement. Base Power emphasized that PURA §39.919 provides flexibility to REPs in meeting the average total load reduction goal. Moreover, Base Power commented that requiring demand response programs would provide an unfair competitive advantage to REPs that have already established demand response programs or utilize responsive devices.

Commission Response

The commission agrees with Base Power that PURA §39.919 provides REPs flexibility in designing and offering a responsive device program. There is no language in PURA §39.919 that requires a REP to offer such a program, and the commission will not impose such a requirement by rule at this time. Under PURA §39.001, the commission "may not make rules regulating competitive electric services, prices, or competitors except

as authorized by this title" and "shall authorize or order competitive rather than regulatory methods to achieve the goals of this chapter to the greatest extent feasible and shall adopt rules and issue orders that are both practical and limited so as to impose the least impact on competition." While the commission places limitations on the types of services that REPs can offer for consumer protection purposes, as authorized by statute, the competitive market requires a REP to have the flexibility to determine which products and services it offers.

Octopus and TAEBA each recommended, as an alternative to requiring REPs to offer demand response programs, that the commission incentivize participation through an ERCOT-based incentive mechanism. Octopus provided information on the "Demand Flexibility Service" offered in the United Kingdom for use as a model for demand response in Texas.

Commission Response

The commission declines to modify the rule to provide incentives for participation through an ERCOT-based incentive mechanism, because ERCOT programs are beyond the scope of this rulemaking proceeding, which is to implement the requirements of PURA §39.919.

AARP recommended that REP-provided responsive device programs target "low to fixed income and energy burdened households." AARP emphasized the need for REPs to carefully consider outreach efforts for such customers.

EDF and ASC recommended the proposed rule be revised to effectuate the intent of PURA §39.919(b)(1), which requires the program facilitated by commission rule "[provide for] demand response participation to residential customers where reasonably available." Specifically, EDF and ASC recommended the proposed rule be revised to ensure that demand response programs are available for as many customers as possible. EDF and ASC emphasized the importance of the commission considering where and why demand response programs are not "reasonably available." Specifically, EDF and ASC indicated that the statutory provision could lead to incorrect assumptions for exclusion of particular groups of customers, such as low-income individuals, renters, or those without internet access. EDF and ASC noted that, contrary to those assumptions, such customers have high rates of participation outside Texas in demand response programs.

Commission Response

The commission declines to modify the rule to target "low to fixed income and energy burdened households," because customer outreach and incentives are at the discretion of the REP when designing its responsive device program. Potential funding for responsive device programs under §25.186(f) by TDUs may help facilitate availability of smart responsive appliances and devices to low-income customers, renters, and energy burdened households, but imposing specific customer-based requirements on REP programs is not contemplated by PURA §39.919. Moreover, neither the statute nor the rule requires REPs to develop responsive device programs, and imposing specific requirements as to which customer the REPs must target may discourage participation and undermine the statutory objective of encouraging the widespread deployment of smart responsive devices and appliances.

Proposed §25.186(c)(1) - Contracting with demand response providers

Proposed §25.186(c)(1) authorizes a REP to contract with a demand response provider to provide a responsive device program.

EDF and ASC recommended the proposed rule explicitly provide for PURA §39.919(b)(4) because that requirement is not currently addressed. PURA §39.919(b)(4) requires the program facilitated by commission rule "[provide for] opportunities for demand response providers to contract with retail electric providers to provide demand response services."

Commission Response

The commission declines to implement the recommended change because it is unnecessary. This statutory requirement is codified in §25.186(c)(1) which explicitly authorizes a REP to contract with a demand response provider to provide a responsive device program.

HARC and Sierra Club recommended §25.186(c)(1) be revised to explicitly indicate that a REP may administer a demand response program directly or contract with a demand response provider.

Commission Response

The commission declines to modify the rule to explicitly state that a REP can administer its own responsive device program because it is unnecessary. Proposed §25.186(c) explicitly states that a REP may offer a responsive device program. Proposed §25.186(c)(1) provides additional authorization for a REP to contract with a demand response provider to administer the program. The use of the term "may" makes this provision permissive. Neither the statute nor the rule precludes a REP from offering a responsive device program independently without a third-party demand response provider.

Proposed §25.186(c)(2) and (c)(2)(A) - Responsive device program requirements and participation by residential customers

Proposed §25.186(c)(2) prescribes the requirements for a responsive device program. Proposed §25.186(c)(2)(A) requires a responsive device program to allow demand response participation by residential customers where reasonably available, including during the summer and winter seasons.

HARC, Sierra Club, TAEBA, Tesla, and AARP recommended proposed §25.186(c)(2)(A) be revised to explicitly indicate that the responsive device program authorizes year-round participation and is not limited to just the summer and winter seasons. HARC explained that revising the provision in this manner could further lower customer electricity bills and reduce the costs of electricity in the wholesale market. Sierra Club commented that allowing participation all year could further lower customer electricity bills and reduce the costs of electricity in the wholesale market. Sierra Club further stated this limitation should be removed because PURA §39.919 does not contain such a limitation. TAEBA remarked that a year-round approach more effectively enhances grid reliability and provides ongoing savings opportunities to customers. Tesla commented that limiting program participation to the summer and winter may be confusing and does not provide value to customers. AARP commented that proposed §25.186(d) should address energy consumption throughout the entire year, not just during ERCOT peak demand periods.

Commission Response

The commission declines to implement the recommended change because it is unnecessary. The language of

§25.186(c)(2)(A) only requires a responsive device program to allow for demand response participation by residential customers where reasonably available, inclusive of participation during the summer and winter seasons. Under the Texas Code Construction Act, "including" is a "term of enlargement and not of limitation or exclusive enumeration, and use of the [term] does not create a presumption that components not expressed are excluded." This provision is reflective of the requirements of PURA §39.919(b)(8), which explicitly provides for the "achievement of demand reductions within both summer and winter seasons."

Proposed §25.186(c)(2)(B) - Capability to respond to emergency energy alerts (EEAs)

Proposed §25.186(c)(2)(B) requires a responsive device program to be capable of responding to an EEA issued by the independent organization certified under PURA §39.151.

Octopus recommended revising proposed §25.186(c)(2)(B) for clarity. Specifically, Octopus noted that the provision requires the program to be capable of responding to an energy emergency alert (EEA) issued by ERCOT, but not that the program must respond. Octopus maintained that this distinction is critical depending on whether the commission intends to require a response to an EEA. Moreover, ERS is designed explicitly for such a purpose and is compensated by ERCOT through a competitive bidding process in accordance with §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS). Octopus indicated that if the new rule obligates residential customers to respond to an EEA separately from ERS, then ERCOT would be inappropriately receiving a no-cost reliability tool without compensating residential customers for demand reductions. Octopus further noted that the provision does not provide details for how quickly a device must respond, at which level of EEA response is expected, or how successful response is measured.

Commission Response

The commission agrees with Octopus that residential customers are not, under this rule, required to respond to an EEA. Proposed §25.186(c)(2)(B) reflects the statutory requirement of PURA §39.919(b)(3) which requires a responsive device program to be capable of responding to an energy emergency alert issued by ERCOT. The commission declines to modify the rule to include additional details such as how quickly the device must respond, because these details may vary depending upon how a REP designs its program and how it intends to deploy these demand response resources.

Tesla commented that the requirement of proposed §25.186(c)(2)(B) for demand response programs to respond to energy emergency alerts is problematic and may create confusion. Tesla explained that many customers purchase its batteries for their own needs during emergencies, not for the grid.

Commission Response

A responsive device program is not required to respond to an EAA under §25.186(c)(2)(B), only be capable of responding. This provision is a codification of PURA §39.919(b)(3) and therefore the inclusion of this provision in the commission rule is necessary.

SPEER, HARC, and Sierra Club recommended adding new §25.186(c)(2)(B) which would require the responsive device program to promote smart meter technology and energy efficiency measures or programs. HARC and Sierra Club stated the addition of this provision would effectuate the directives of SB 1699 and PURA §39.919(b)(2) by explicitly facilitating the deployment of smart responsive appliances or devices.

Commission Response

The commission declines to implement the recommended change because it is unnecessary. The requirement of PURA §39.919(b)(2) to promote the use of smart metering technology is reflected in the rule's emphasis on smart responsive appliances or devices which by nature are capable of telemetry. Moreover, all four ERCOT TDUs have deployed smart meter technology in accordance with Chapter 25, Subchapter F (§§25.121 through 25.133) of the commission rules and more specifically, §25.130, relating to Advanced Metering. In the same vein, under §25.181(h)(5)(C), relating to Energy Efficiency Goal, an electric utility in an area where customer choice is offered (i.e., a TDU in the ERCOT power region) is required to encourage and facilitate the evaluation of programs - "facilitated by advanced meters to determine the demand and energy savings from such programs."

Proposed §25.186(c)(2)(C) - Critical care customers

Proposed §25.186(c)(2)(C) requires a responsive device program to ensure that the program does not adversely impact the needs of a critical care residential customer or chronic condition residential customer in accordance with §25.497.

REP Coalition requested clarity as to whether proposed §25.186(c)(2)(C) prohibits REPs from enrolling critical care customers in responsive device programs, or if such customers are eligible to be enrolled provided that appropriate consents or the ability to adjust participation are provided.

Commission Response

The commission clarifies that §25.186 does not prohibit the enrollment of critical care customers in a responsive device program. However, a REP must establish adequate safeguards in its programs to ensure that the critical customers described under §25.186(c)(2)(C) are not adversely affected when choosing to participate and are aware of the terms of the program they are enrolled in, including the capability and method to opt out of the program or and individual program deployments.

Proposed §25.186(c)(2)(D) - Single participation by residential customer

Proposed §25.186(c)(2)(D) requires a responsive device program to limit a residential customer to participation in a single demand response program within the ERCOT region.

HARC, Sierra Club, and SPEER recommended proposed §25.186(c)(2)(D) be revised to allow for participation in multiple demand response programs. HARC and Sierra Club also recommended proposed §25.186(c)(2)(D) account for overall load reductions of the customer to prevent duplication of benefits across programs the customer participates in.

Commission Response

The commission agrees with commenters that customers should not, by rule, be prohibited from participating in multiple responsive device programs. However, a customer that participates in an emergency response program must be capable of performing if called upon to do so. The commission revises §25.186(c)(2)(D) to clarify that a residential customer that is enrolled in an emergency program such as the Emergency

Response Service under §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS), or a TDU load management program under §§25.181-83 of this title, relating to Electrical Planning: Energy Efficiency and Customer-Owned Resources, is prohibited from participating in a residential demand response program.

HARC, Sierra Club, and SPEER recommended adding a new subparagraph which would require the responsive device program to facilitate the deployment of smart responsive appliances and devices for use in demand response products or plans offered by a REP. HARC provided redlines consistent with its recommendation. SPEER also recommended the provision be revised to account for demand response products of plans offered by a demand response provider.

Commission Response

The commission declines to implement the recommended change because it is unnecessary. The requirement of PURA §39.919(b)(6), which requires the commission rule adopt a program that facilitates the deployment of smart responsive appliances and devices for enrollment in a REP-offered demand response products or plans, is codified under §25.186(c). Furthermore, the rule generally emphasizes and facilitates the usage of responsive appliances and devices for measuring the total average load residential reduction goal.

TAEBA, EDF and ASC, OPUC, HARC, Sierra Club, and SPEER recommended the proposed rule include a requirement for a REP-provided demand response program to compensate customers.

HARC, Sierra Club, and SPEER recommended adding a new subparagraph which would require the responsive device program to compensate residential customers for delivered load reductions due to participation in a demand response program. Sierra Club recommended participating customers be provided an incentive, reduced bills, or direct compensation for delivered load reductions due to their participation. SPEER further specified such compensation should come directly from REPs. TAEBA recommended the proposed rule include a "transparent compensation mechanism" that offsets transmission and distribution costs and rewards customers for actual and verifiable load reductions through participation in a demand response program.

TAEBA indicated that the ERCOT competitive retail market empowers customers to monetize reducing energy consumption through REP demand response product offerings such as smart devices. TAEBA noted that if the commission ensures such offerings are sufficiently funded, smart devices could provide further value to consumers. TAEBA remarked that such a mechanism would encourage broader program participation in a manner consistent with a REP business model that has facilitated the promotion of demand response. EDF and ASC recommended the proposed rule explicitly address reasonable residential customer compensation for participating in demand response programs in a manner that "reflects the resource adequacy and cost relief value of [residential customer's] demand response efforts." EDF and ASC highlighted that demand response has been used to the benefit of REPs and large industrial customers to address grid reliability or price reductions attributable to growing demand within the ERCOT region, including generation shortfalls and transmission constraints.

OPUC recommended revising proposed §25.186(c) to include "tangible financial benefits through either direct payments or lower retail rates" to compensate customers that participate and shed load or otherwise adjust their schedule to support the grid. OPUC indicated that, based on an International Energy Agency Study, residential customers are responsive to relatively small changes in price. OPUC recommended the commission provide examples of incentives REPs could offer, such as dynamic retail rate structures to program participants. For example, "Critical Peak Rebate" pricing provides bill credits to customers that reduce usage below a baseline amount during periods where the wholesale market price of energy exceeds a certain threshold. OPUC suggested REPs consider both performance-based incentives where measurement and verification are required as well as participation-based incentives where the utility controls the equipment used in demand response. OPUC noted that financial penalties for underperformance could apply in such programs. OPUC further recommended the commission, as the entity best positioned to evaluate demand response compensation structures and set policy, also provide guidance to REPs on different program incentives and their effectiveness.

Commission Response

The commission declines to modify the proposed rule to require compensation or otherwise address the types of compensation a REP can offer retail customers for participation in a responsive device program. As previously stated, the statute does not require the commission rule to establish incentives for demand response programs. Moreover, consistent with PURA §39.001(c) and (d), this rule favors competitive rather than regulatory solutions by providing REPs with the flexibility to establish adequate incentives to attract customer participation.

The commission disagrees with OPUC's argument that the commission is the entity best positioned to evaluate compensation structures and provide guidance to REPs on the effectiveness of different program incentives. The commission does not have any direct insight into the different costs, risks, hedging strategies, and other considerations that REPs must take into account when designing retail products or related incentive structures. The commission also has far less direct insight into customers' preferences than REPs, for whom product marketing is a critical component of their business models. However, the data gathered in accordance with this rule will assist the commission in understanding many aspects of residential demand response and may provide insights on how to better encourage demand response in the future.

To ensure that customers are not locked into these programs, the commission adds new §25.186(c)(2)(E) to add an expiration requirement to responsive device programs. Specifically, a responsive device program that is offered or included as a part of a product or plan for retail electric service, it expires when the customer's contract for retail service ends. Similarly, if the responsive device program is offered as a standalone product, plan or as an additional service, it expires in a manner consistent with the REP's disclosure to the customer regarding the term of the responsive device program, but must otherwise end on the date the enrolling REP is no longer the customer's REP of record.

Proposed §25.186(c)(3) - Definition of ERCOT peak demand period

Proposed §25.186(c)(3) defines an "ERCOT peak demand period" as an hour with the highest daily value of peak net load, where peak net load is calculated as gross load minus wind and solar.

HARC and Sierra Club recommended striking proposed §25.186(c)(3) from the proposed rule because the provision is unnecessary and not required by law. Specifically, PURA §39.919 does not limit demand response periods to net peak demand periods and therefore the provision should be deleted.

Commission Response

The commission declines to implement the recommended change. Neither demand response programs generally nor responsive device programs are prohibited from deploying outside of ERCOT peak demand periods. The definition of ERCOT peak demand period is necessary to include in the rule because that is the time period being evaluated for purposes of the average total residential load reduction goal.

ERCOT recommended proposed §25.186(c)(3) be revised to clarify that only ERCOT-registered wind and solar generation will be included in an "ERCOT peak demand period." ERCOT explained that ERCOT is currently unable to account for unregistered wind and solar generation output. ERCOT provided draft language consistent with its recommendation.

ERCOT also recommended proposed §25.186(c)(3) be revised to add a definition of "gross load" in a manner that aligns with the same value ERCOT uses for load for purposes of determining four coincident peak (4CP) intervals. ERCOT provided draft language consistent with its recommendation.

Commission Response

The commission revises the definition of ERCOT peak demand period to "an hour with the daily peak value of net load, where net load is calculated as defined in ERCOT protocols." The commission also relocates this provision to new §25.56(d)(4) because the term is only appears in §25.56(d).

REP Coalition recommended revising proposed §25.186(c)(3) to indicate that an ERCOT peak demand period "may be measured as" an hour with the highest value of peak "system load, high residential load, or the highest value of peak" net load. REP Coalition provided draft language consistent with its recommendation. REP Coalition argues that net load may not reflect the times when residential demand response can be most impactful. REP Coalition argues that expanding the measured periods to include peak demand periods that better account for the specific behaviors of residential customers, the commission would enable the creation of responsive devise programs that are more aptly tailored to the capabilities and needs of residential customers.

Commission Response

The commission declines to implement the requested changes to provide flexibility in how an ERCOT peak demand is be measured. Initially, this approach is not practicable, since the commission is the entity that calculates whether the goal has been met, and the commission cannot use different variables to calculate the goal relative to each REP based on its tailored responsive device program. The commission interprets peak demand as peak net load, because these are the periods where demand response most valuable to the system.

EDF and ASC recommended that proposed subsection (c) rule be broadened to include all types of REP demand response programs and measures, even if funding is dedicated solely to REP-provided smart responsive appliances and devices. Specifically, EDF and ASC commented that the proposed rule inappropriately narrows the scope of demand response program by only prioritizing programs that utilize smart technology. EDF and ASC commented that PURA §39.918(b) does not limit demand response options to smart responsive appliances and devices, even though it promotes their use. EDF and ASC indicated that other demand response programs include "direct non-automated customer requests for energy use modifications," timers on water heaters an electric vehicle chargers, and virtual power plants such as residential batteries. EDF and ASC commented that the proposed rule could benefit the competitive retail market's offerings of demand response program if a broader scope is adopted. EDF and ASC recommended proposed §25.186(c)(3) be revised to acknowledge and emphasize the value of flexible REP-provided demand response programs that are available for a variety of purposes. EDF and ASC noted that while the provision is consistent with statute, ERCOT "may often need load reductions during peak and net peak load hours" and flexible services that are available during non-peak hours, such as "shoulder season maintenance periods and transmission-constrained hours." EDF and TSC also noted that such a change would benefit the growing adoption of solar generation, batteries, and, electric vehicles by residential customers by utilize automated demand response capabilities that facilitate load reduction.

Commission Response

As discussed in response to general comments above, the rule does not require a REP to brand its program as a responsive device program, prohibit a REP from developing or offering alternative demand response programs that do not utilize responsive programs or devices, or incorporate additional demand response elements into its responsive device program. However, by statute, the goal itself must be calculated based on customers with responsive appliances or devices. Accordingly, this rule focuses on the requirements of a responsive device program.

Proposed §25.186(d) - Average total load reduction goal.

Proposed §25.186(d) prescribes the average total residential load reduction goal for the ERCOT power region.

OPUC recommended the commission request additional data and feedback from ERCOT on the average residential load reduction goal in proposed §25.186(d), including ERCOT's planned implementation strategy and whether adjustments to the goal may be necessary. OPUC commented that, based on discussions with commission staff, it understands that the average total residential load reduction goal of 0.25 is bound to a four kilowatt (kW) peak residential demand and a one kW reduction using smart appliances. OPUC expressed that it is unclear how the load reduction goal was calculated and from where such data was derived from and that the commission should seek additional information before adoption.

OPUC also asserted that ERCOT must proactively "facilitate the effective and efficient implementation of new rules," particularly with demand response programs that affect residential customers. OPUC argued that ERCOT could help model demand response prices and incentives. OPUC argued that ERCOT should make its inputs, outputs, and assumptions used for this modeling public.

OPUC also recommended the commission also address any barriers to aggregated distributed energy resource (ADER) pilot projects to guarantee such projects can be fully adopted and begin contributing energy to the grid and supporting reliability.

Commission Response

In response to OPUC's recommendation that the commission request additional data and feedback from ERCOT, commission staff and ERCOT staff worked closely together to develop the original goal. Regarding OPUC's request for clarification on the source of the data and calculation method for establishing the goal, the proposed goal was calculated using the four days in the summer of 2023 with the highest hourly peak net load value in each month--June 20, July 31, August 25, and September 6--for the roughly 30,000 customers that ERCOT knows to be enrolled in a REP-administered demand response program based on ERCOT's annual demand response survey. The ratio was calculated, as required by statute, by dividing the amount of load reduced by the actual amount of load during a peak demand period.

The commission declines to modify the rule to require ERCOT to provide modeling on the prices and incentives for demand response programs. ERCOTs role under this rule is limited to helping the commission collect and analyze the data necessary to calculate the goal and whether it is being achieved. The task of designing responsive device programs and establishing proper incentives for those programs belongs to REPs, who are best positioned to assess the market and collectively identify, through competition, the most effective programs and incentive structures to encourage the adoption of smart responsive appliances and devices.

The commission also declines to address obstacles to the ADER pilot project in this rule, because ADER implementation is beyond the scope of this rulemaking project.

Proposed §25.186(d)(1) - REP report to ERCOT

Proposed §25.186(d)(1) requires a REP providing responsive device program within the ERCOT region to submit to ERCOT a report on responsive device program performance for each calendar month in the quarter within 45 days following the end of each calendar quarter.

TAEBA, EDF and ASC, HARC, Sierra Club, and SPEER recommended the REP reporting requirement under proposed §25.186(d)(1) be simplified or more generalized. TAEBA recommended the commission revise the provision to reduce administrative overhead, maintains transparency, and makes data submission protocols more streamlined. TAEBA indicated that such revisions would allow REPs to implement more effective load reduction strategies and therefore lead to increased demand response program participation and help more efficiently meet the goals established by the commission.

EDF and ASC stated that the proposed REP reporting requirements are administratively burdensome and risk customer privacy. Specifically, EDF and ASC recommended that REPs only be required to report aggregate event information given that some REPs may initiate their demand response program in outside peak and net peak load. Alternatively, if the commission requires meter or device specific information, ASC and EDF recommended the provision be revised to indicate the rationale and value of such information and require ERCOT treat it as confidential. EDF and ASC indicated that the purpose of the REP reporting requirement is unclear given the rule makes REP participation in demand response program optional. EDF and ASC further commented that there are "neither rewards nor penalties to motivate REPs to offer demand response programs or achieve the demand response goal" which makes it unclear why REP reporting is important. EDF and ASC maintained that the reporting requirements are redundant given that ERCOT already records smart meter data and is aware what electric service identifiers (ESI IDs) are served by each REP.

HARC, Sierra Club, and SPEER recommended REPs only be required to report the number of enrolled residential customers with smart appliances or devices rather than report each enrolled ESI ID with smart appliances or devices. Specifically, HARC and SPEER recommended the requirement to report each ESI ID deployed for every demand response event be replaced with a requirement to report the aggregated load reductions achieved for each event. In contrast, Sierra Club recommended the requirement to report each ESI ID deployed for every demand response event be replaced with a requirement to report the recommended total number of residential meters participating in the event and the aggregated load reduced in kWs and kilowatt hours (kWhs) aggregated load reductions achieved for each event. HARC, SPEER, and Sierra Club explained that burdensome reporting requirements could disincentivize participation in a demand response program under the rule and increase administrative costs which would consequently reduce the amount of funds available for residential load reduction efforts. HARC also emphasized that burdensome reporting requirements could represent potential privacy concerns for customers. HARC, Sierra Club, and SPEER provided redlines consistent with their recommendation.

Octopus characterized the reporting requirements for REPs under proposed §25.186(d)(1) as a "time tax" that unnecessarily burdens REPs willing to offer demand response programs and does nothing to tax REPs that do not participate.

Commission Response

The commission declines to simplify the REP reporting requirements in the proposed rule, because this information will provide valuable data to help the commission gain a better understanding of responsive device programs, evaluate the reliability potential of such programs, determine if the goal is being met, and verify program effectiveness claims. The commission does not agree with commenters that these requirements are overly burdensome, because a REP must already track this information to administer its program and much of this information is already being provided to ERCOT for its annual survey under Section 3.10.7.2.2 of the ERCOT Protocols. Additionally, under §25.186(e) all data that a REP reports to ERCOT will be confidential and treated as protected information under the ERCOT Protocols.

OhmConnect also recommended transmission and distribution service providers (TDSPs), not REPs, be obligated to comply with the reporting obligations under proposed §25.186(d)(1). OhmConnect explained that such reporting requirements are inconsistent with an "unregulated" retail electric market; further burden REPs that already face difficulties in developing demand response programs that are valuable to their customers; and contravene the objectives of SB 1699 by ultimately disincentivizing participation.

Commission Response

The commission declines to revise the rule to apply reporting requirements to [TDUs] instead of REPs. The commission disagrees with OhmConnect's argument that reporting requirements are inconsistent with an "unregulated" market. The significant features of the deregulated retail electric market are that REPs are largely free to design their own products and determine the pricing for those products. There are multiple statutorily and regulatory reports required of REPs, none of which jeopardize the deregulated status of REPs. In this in-

stance, the commission is requiring REPs to provide data to assist in calculating and analyzing a statutorily-created goal. The REP is the entity that designs its responsive device program and decides when and how to deploy it. Accordingly, the REP is the entity to which the reporting requirement properly applies.

CenterPoint noted that the peak demand periods and performance measurements outlined in the proposed rule are not consistent with savings calculations and performance metrics in the current energy efficiency Technical Reference Manual.

Commission Response

Performance metrics outlined in this rule specifically apply to REPs deploying smart responsive appliances and devices to reduce residential load at any given time, including ERCOT peak demand period. A TDU can still claim energy savings from smart thermostats if the utility can prove the smart thermostat was installed per the Technical Reference Manual as TDUs have historically done. However, a TDU may not claim demand reduction or energy savings from the actual real-time deployment of a responsive appliance or device, such as a smart thermostat to control a customer's HVAC system because that is demand response administered by the REP or its aggregator.

AARP recommended that REPs address barriers to participation experienced by low to fixed income and energy burdened households when reporting information about their responsive device program that will ultimately be received by the commission. Specifically, AARP recommended REPs report on challenges experienced by renters, customers without internet in underserved areas such as rural communities, low to fixed income customers, and those uncomfortable with new technologies such as older adults. AARP emphasized the importance of "partnering with other programs, projects, or funding opportunities" that complement or focus on load reduction such as weatherization, home retrofitting initiatives, and other energy efficiency initiatives to maximize opportunities for participation. AARP also highlighted the need to address trust and privacy concerns of potential program participants and recommended a "concerted effort" to educate the public on demand response technologies.

Commission Response

The commission declines to expand the reporting requirements as requested by AARP, because the purpose of these reporting requirements is primarily to collect data necessary to track demand reductions. The commission expects to continue to work with stakeholders on exploring barriers to demand response outside of the context of this rulemaking proceeding and can seek out additional information, as necessary, at that time.

Proposed §25.186(d)(1)(A) - electronic service identifiers (ESI IDs) of participating residential customers

Proposed §25.186(d)(1)(A) requires a REP to report to ERCOT the ESI ID for each residential customer with smart appliances or devices enrolled in each demand response program offered by the REP.

REP Coalition recommended replacing the phrase "demand response program" with "responsive device program" in proposed §25.186(d)(1)(A).

Commission Response

The commission agrees with REP Coalition and implements the recommended change. The numerator and denominator of the ratio described by PURA §39.919(c) applies only to customers with a responsive device program. Additionally, §25.186(d)(1) applies to "responsive device program" so usage of "demand response program" in (d)(1)(A) is overbroad.

Proposed §25.186(d)(1)(B) - Timing and participation of each demand response event

Proposed §25.186(d)(1)(B) requires a REP to report to ERCOT the date of each demand response event, including each demand response event start time and stop time and the ESI IDs deployed for each event.

REP Coalition recommended revising proposed §25.186(d)(1)(B) to define a "demand response event" for purposes of §25.186(d) as "an ERCOT peak demand period that demonstrates reduction of demand due to the retail electric provider's deployment of its responsive device program.

Commission Response

The commission declines to define "demand response event" as requested by the REP Coalition because it may limit the data REPs provide. Specifically, REPs sometimes deploy outside of peak demand period, and sometimes there are demand response deployments that do not result in load reductions.

Octopus recommended the reporting obligations under proposed §25.186(d)(1)(B) be restricted to time periods identified by ERCOT. Octopus explained that, as proposed, the provision needlessly intrudes into a REP's competitive business activities and unnecessarily imposes a burdensome reporting obligation. Octopus maintained that the provision requires a REP provide 24/7 reporting whenever a REP initiates demand response, which does not account for instances where demand response is called outside of peak demand periods and EEAs such as for proprietary market research and development.

Commission Response

The commission declines to implement the requested change. As previously stated, the customer information provided to ERCOT by REPs under §25.186(d)(1) is substantially similar to information that is already provided to ERCOT under the ERCOT Protocols. Additionally, under §25.186(e) all data that a REP reports to ERCOT will be confidential and treated as protected information under the ERCOT Protocols.

Proposed §25.186(d)(2) - ERCOT report to the commission

Proposed §25.186(d)(2) requires ERCOT to provide an annual report to the commission by March 31 of each calendar year on responsive device program performance for each for each daily ERCOT peak demand period and each ERCOT EEA period for the preceding twelve-month period ending on November 30 of the previous calendar year.

ERCOT recommended revising proposed §25.186(d)(2) to clarify that ERCOT will publicly file its report with the commission. ERCOT provided draft language consistent with its recommendation. ERCOT stated it assumes such information should be publicly available.

Commission Response

The commission agrees with ERCOT and implements the recommended change to require the ERCOT report under §25.186(d)(2) to be publicly filed.

REP Coalition recommended revising proposed §25.186(d)(2) to require ERCOT to report on an aggregate basis so as not to disclose any confidential information.

Commission Response

The commission declines to implement the recommended change because it is unnecessary. Under §25.186(d)(2)(B) and (C) ERCOT will be providing "total amounts" of residential load and residential load reduced, which is aggregated information.

Proposed §25.186(d)(2)(B) - Total load reduced by residential customers

Proposed §25.186(d)(2)(B) requires ERCOT to report the total amount of load reduced by all residential customers enrolled in a responsive device program for each ERCOT peak demand period in the preceding twelve-month period ending on November 30 of the previous calendar year.

ERCOT recommended revising proposed §25.186(d)(2)(B) be revised to replace "each ERCOT peak demand period" with "each day for which ERCOT has received notice of a REP deployment." ERCOT explained that some REPs deploy their responsive device programs infrequently, and therefore most data would not be useful as there would be little to no calculated load reduction values. ERCOT also recommended adding new §25.186(d)(2)(B)(i)-(v) to require that ERCOT's report must include the load-reduction values and metered-load values, in aggregated hourly and 15-minute intervals, for all customers that were directed to deploy during a peak demand period or EEA. ERCOT explained that not all REP-administered responsive device programs may have been deployed during each period or EEA, therefore such information is important to include in the report.

Commission Response

The commission partially agrees with ERCOT and revises the rule to require ERCOT to provide actual usage data for all periods and load reduction data only for periods in which a deployment occurs.

Proposed §25.186(d)(2)(C) - Total load of residential customers

Proposed §25.186(d)(2)(C) requires ERCOT to report the total amount of load of all residential customers enrolled in a responsive device program for each ERCOT peak demand period in the preceding twelve-month period ending on November 30 of the previous calendar year.

ERCOT recommended adding new §25.186(d)(2)(C) to "describe how ESI IDs with behind-the-meter photovoltaic (PV) generation are accounted for in the calculation of the load reduction values ERCOT is required to file with the Commission." Specifically, ERCOT advised load reduction from customers from PV be based on the reduction in the actual energy consumption at the premise rather than the reduction in metered load because of the offset in consumption due to PV power generation that could lead to exporting energy to the grid during peak net load hours. ERCOT noted that load reduction for such customers with PV could therefore occur where the customer decreases consumption or increases export to the grid. As such, "calculating the load value for a premise with PV as the sum of the customer's metered energy consumption plus its PV generation less PV export would allow this more accurate calculation of load reduction for these customers." ERCOT noted that a "significant" amount of customers that have enrolled in REP-provided demand response programs, and a 1kW reduction in the load of such customers would benefit the grid in the same manner as a 1kW load reduction by a customer without PV. ERCOT provided draft language consistent with its recommendation.

Commission Response

The commission agrees with ERCOT that PV generation should be accounted for in the data provided by ERCOT for calculation of the goal but implements the recommended change as part of §25.186(d)(2).

Sierra Club recommended adding new §25.186(d)(2)(D) which would require the aggregated information provided to the commission from ERCOT under §25.186(d)(2) to be filed in Project 56966. Sierra Club provided redlines consistent with its recommendation.

Commission Response

The commission adds new §25.186(d)(4) which requires ERCOT to file the information required under §25.186(d)(2) in the commission project established for the filing of that report.

Proposed §25.186(d)(3) - Average total residential load reduction goal

Proposed §25.186(d)(3) provides that the average total residential load reduction goal is 0.25, unless the commission adopts an updated goal under §25.186(d)(3)(C).

EDF and ASC and AARP recommended revising proposed §25.186(d)(3) for clarity. EDF and ASC inquired about whether the goal means reducing total residential demand by 25% at peak load or net peak load and whether demand is measured as absolute maximum demand every year or is a relative demand reduction calculated over time. EDF and ASC also asked how the goal was calculated and the justification for its use. AARP noted that the goal itself is ambiguous as to whether it means the goal is a 25% average load reduction or some other metric. Sierra Club generally recommended the load reduction goal be expressed as a percentage for clarity on what the goal actually is (i.e., a 25% reduction in average total residential load).

EDF and ASC stated the proposed ratio for the goal seems to be measured as "load reduced by all responsive device residential programs in a peak period relative to the total demand of all residential customers participating in those programs."

Commission Response

The commission agrees with EDF and ASC that the proposed ratio for the goal measures "load reduced by all responsive device residential programs in a peak period relative to the total demand of all residential customers participating in those programs." In terms of the requested justification for the use of this goal, the proposed ratio was drafted to align with the specific requirements of PURA §39,919(c). However, the commission makes a number of edits to the proposed text to improve the clarity of the provision, as requested by EDF and ASC and AARP, and also to express the ratio in terms of a percentage, as recommended by Sierra Club.

To clarify and justify the calculation of the goal and the level at which it was set, note that the ratio is calculated by dividing the amount of load reduced by the amount of load that actually occurred, whereas the proportion of load reduction is calculated by dividing the amount of load reduced by the amount of load that would have occurred absent this reduction. Therefore, a ratio of 0.25 corresponds to a 20 percent reduction in residential load, not a 25 percent reduction. The goal was derived from REPs reporting an average reduction of one kW attributable to demand response programs like a change in thermostat temperature. ERCOT reported a maximum consumption of four kW hour in August for the average residential home. The goal is ac-

cordingly derived from dividing the reported reduction in demand by the reported usage.

EDF and ASC indicated that if only a low number of REPs offer demand response programs or inadequately market such programs, program participation and demand reduction will be low if the proposed ratio is used. EDF and ASC commented that a 25% demand response goal is high but may only provide a trivial impact on actual peak demand reduction by residential customers. EDF and ASC indicated that it is more appropriate to calculate the goal based on "all residential customers, using actual total residential demand response peak hour reductions as the numerator and total residential load as the denominator" because PURA §39.919 refers to "average total residential load reduction." EDF and ASC noted that its recommended ratio would create a smaller goal that would provide a larger total peak reduction impact.

Commission Response

The commission declines to modify the goal to be based on "all residential customers, using actual total residential demand response peak hour reductions as the numerator and total residential load as the denominator" as recommended by EDF and ASC. The commission agrees with EDF and ASC that if there is low enrollment in responsive device programs, that the proposed ratio can be achieved without significant increases in segment-wide demand reduction. However, as discussed previously, the ratio and how it is calculated is directly governed by statutory language, which cannot be modified by rule.

Octopus recommended the load reduction goal in propose §25.186(d)(3) be revised to provide different goals for the winter and summer seasons. Octopus commented that a 25% load reduction goal is not a reasonable goal for the winter season due to the nature of load differing from the summer season. Octopus explained that summer demand is "homogenous," with approximately 45% of peak load originating from residential air conditioning use and almost all customers uniformly contributing in the same manner. However, because not every customer has electric heating, the load profile differs for the winter season due to some customers using electric heating and others using gas heating. Octopus remarked that "the ratio of winter peak demand to summer peak demand residential customers can range from 75% to 400%." As such, the winter peak for some customers can be 25% less than the same customer's summer peak. Conversely, winter peak usage can be up to four times more than summer peak usage.

Commission Response

The commission declines to modify the rule to have different winter and summer peaks, as recommended by Octopus. The average total load reduction goal is calculated daily and ERCOT's report under §25.186(d)(2) will assist the commission in determining whether the goal is being achieved in accordance with §25.186(d)(3). The rule is structured to allow evaluation of whether the goal is being met over any time period. The primary focus of the rule is the frequency with which goal is met, and data will inform future decisions and also help stakeholders, the commission, ERCOT evaluate residential demand response holistically. But, a winter-specific or summer-specific analysis will also be possible.

ERCOT commented that the average total residential load reduction goal of 0.25 included in §25.186(d)(3) may be too high. ERCOT explained that the goal "appears to exceed historically observed values for at least some days" based on its sampling data from the summer of 2023. ERCOT stated that it used the four days with the highest hourly peak net load value in each month (June 20, July 31, August 25, and September 6) for the approximately 30,000 customers that it is aware of that are enrolled in a REP-administrated demand response program. ERCOT explained that for those four days, the average premise-level load reduction during the peak net load hour for each day ranged from -.048 kW to 1.25kW, and using the calculation from the proposed rule, the load-reduction ratio ranged from -.029 to .0806.

ERCOT noted that some ratios were negatives because some deployments "ended at or near the beginning of the peak net load hour, which allowed the customers' thermostats to revert to the previous lower thermostat setting, causing those customers' actual load in those hours to be higher than their baseline during the hour of peak net load." ERCOT stated that it had "calculated the baseline and actual load reduction values for each customer for each 15-minute interval for each of the four days." ERCOT stated that it had estimated the baseline load values by application of its "Demand Response Baseline Methodologies" used for calculating demand reduction for demand response programs. ERCOT further indicated that "difference between the baseline and actual interval demand values represents ERCOT's estimate of the change in load attributable to the REP's deployment of responsive devices" such as smart thermostats.

ERCOT noted that its analysis indicates that the 0.25 goal "may be difficult to meet for every peak net load hour" because customer "participation in REP-administered programs does not necessarily guarantee that deployment will occur during the highest net peak load hours or for the entirety of those hours." ERCOT maintained that this occurs for reasons such as individual programs not requiring customers to curtail electric consumption or allowing customers to cease curtailment after a certain amount of time, imperfect correlation between prices and net peak load for the full hour of peak net load, imprecise estimates by REPs of high-priced intervals, REP hedge positions that reduce curtailment incentives, and other factors. However, ERCOT expressed that 0.25 could be achievable as more customers participate and REPs become more experienced with targeting demand reductions during intervals with high prices.

Commission Response

The commission declines to reduce the residential load reduction goal in response to ERCOT's comments. Analysis of ERCOT's data shows that REP dispatch of responsive device programs can, at times, surpass the goal set by this rule, if measured when the REPs choose to deploy their programs and not during the defined peak demand periods. ERCOT's data shows that REPs often do not deploy during ERCOT peak demand periods, but at other times, either due to lack of ability to predict when those periods will occur or because they are deploying for other reasons. In either case, the data indicates that the necessary demand reductions are achievable, indicating that the magnitude of the goal appropriately captures the potential of responsive device programs. Similarly, whether the goal is met appropriately measures whether this potential is deployed during peak demand periods where these demand reductions are most beneficial to the grid.

Proposed §25.186(d)(3)(A) - Calculation of ratio for residential load reduction goal

Proposed §25.186(d)(3)(A) provides that the ratio of load reduced by all responsive device programs during an ERCOT peak

period and the total amount of demand of all residential customers participating in the responsive device programs should meet or exceed the average total residential load reduction goal.

ERCOT recommended proposed §25.186(d)(3)(A) be revised to clarify how the average total residential load reduction goal of 0.25 will be determined to have been achieved. Consistent with its recommendation for its reporting requirements under proposed §25.186(d)(2)(B), ERCOT recommended the assessment of whether the goal has been met be limited to those peak demand periods in which a REP deployment occurred. ERCOT also recommended that the commission consider whether achievement of the goal should be based on an average of multiple peak demand periods during a reporting year, such as all of the peak demand periods in which a deployment occurred, or just the peak demand periods during a summer or winter month in which a deployment occurred." ERCOT provided draft language consistent with its recommendation.

Commission Response

The commission declines to limit assessment of the goal to peak periods in which REP deployment actually occurs, because whether or not a deployment occurs at all is the single largest factor in determining whether responsive device programs are reducing peak demand. If no deployment occurs, the program has failed to reduce peak demand, and excluding such periods would inflate the success rate of the programs.

The commission also declines to predefine over which peaks success will be measured. The goal is measured on a period-by-period basis and can be assessed over any series or subset of periods.

REP Coalition recommended revising proposed §25.186(d)(3)(A) to permit the ratio of load reduced by all responsive device programs during an ERCOT peak demand period and the total amount of demand of all residential customers participating in the responsive device programs to aggregate responses observed during different peak demand periods. REP Coalition provided redlines consistent with its recommendation.

Commission Response

The commission declines to modify the rule to allow the ratio to aggregate responses observed during different peak demand periods because it is unnecessary. The ratio is a measure of the effectiveness of responsive device programs during each peak demand period. Whether this goal is generally met across different seasons, timeframes, or conditions can be evaluated under the rule as drafted (e.g., the goal was met for 87% of demand response events during the winter months). It is also possible to calculate demand reductions across different peak demand periods, as described by the REP Coalition.

Proposed §25.186(d)(3)(B) - Commission staff review of ERCOT report

Proposed §25.186(d)(3)(B) provides that on or before June 30 of each even-numbered year, commission staff will review the data received from ERCOT under §25.186(d)(2) to assess the effectiveness of the responsive device programs offered by REPs and whether the average total residential load reduction goal under §25.186(d)(3) is being achieved. Proposed §25.186(d)(3)(B) further provides that commission staff will file a recommendation in Project 56966 on whether the commission should adjust the goal.

Sierra Club recommended §25.186(d)(3)(B) to be revised to require commission staff's recommendations to include the aggregated information from ERCOT's report filed in Project 56966, as required by new §25.186(d)(2)(D). Sierra club also requested, that the rule be revised to provide stakeholders with at least 30 days to provide comments on commission staff's recommendations.

Commission Response

The commission declines to require commission staff to file aggregate information because it revises §25.186(d)(2) to require ERCOT to publicly file its report, which will contain the requested aggregate data. The commission also declines to revise the rule to codify a stakeholder comment period on commission staff's recommendation. Both commission staff and the commission have the ability to request comments on commission staff's recommendations, if appropriate, in light of the substance of the recommendation.

Proposed §25.186(d)(3)(C) - Commission review

Proposed §25.186(d)(3)(C) provides that the commission will consider commission staff's recommendation under §25.186(d)(3)(B) and, if appropriate, issue a written order adopting an updated average total residential load reduction goal, effective December 1 of that calendar year.

SPEER, HARC, and Sierra Club recommended commission staff review the data provided by ERCOT on an annual basis, rather than biannually each even-numbered year. TAEBA recommended proposed §25.186(d)(3)(C) be revised to include an annual process for the "reassessment and adjustment of the average total residential load reduction goal." TAEBA emphasized the importance of providing for such flexibility to maintain the effectiveness of the goal and alignment with technological and market changes. TAEBA commented that regular review would enable the commission to adjust the goal in a manner supported by data, and therefore improve the effectiveness of demand response programs offered within ERCOT.

Commission Response

The commission disagrees with commenters and declines to implement the recommended changes. To provide sufficient time for REPs to implement their programs and for ERCOT to evaluate program data, a biannual basis is appropriate. If this timeframe proves insufficient, the rule may be amended at a later date. A two-year period ensures that a measurable effect can be recorded and observed for purposes of determining whether the goal has been met or needs to be revised. Additionally, to ensure compliance with the statutory requirement of PURA §39.919(a) that the commission adopt average total load reduction goals for the ERCOT power region by rule, the commission revises §25.186(d)(3)(C) to delete language regarding the commission issuing an order to adjust the goal effective December 1 of that calendar year and replaces it with a more general statement that the commission will "determine whether to update the goal." The commission also makes conforming changes to §25.186(d)(3) to omit the reference to the commission updating the goal under §25.186(d)(3)(C).

Proposed §25.186(e) - Confidentiality

Proposed §25.186(e) requires ERCOT to treat the information submitted by a REP under §25.186(d)(3) as protected information as defined by the ERCOT protocols.

REP Coalition recommended revising proposed §25.186(e) to authorize a REP to file any information provided to commission staff as confidential and further requiring the commission to treat any such information that would otherwise be considered confidential under commission rules or the ERCOT Protocols as such. REP Coalition provided redlines consistent with its recommendation.

Commission Response

The commission declines to implement the recommended change because it is unnecessary. ERCOT's filing will not include individual REP's confidential information because the load and load reduced will be provided as total (i.e. aggregated) amounts under §25.16(d)(2)(B) and (C). To address REP Coalition's concerns, the commission revises §25.186(e) to indicate that §25.186 neither authorizes nor requires a REP to publicly disclose proprietary customer information.

Proposed §25.186(f) - Funding

Proposed §25.186(f) authorizes a REP to receive funding for a responsive device program through an energy efficiency incentive program established under §25.181 if the responsive device program meets the requirements of §25.186(c). Proposed §25.186(f) also authorizes a TDU required to provide an energy efficiency incentive program under §39.905 to use up to 10 percent of the budgeted spending for responsive device programs offered by a REP under §25.186(c)

Sierra Club and CenterPoint recommended revising §25.186(f) to add language stating that no other provision of §25.186 prohibits a REP from offering demand response programs that do not utilize funding from an energy efficiency program established under §25.181, relating to Energy Efficiency Goal. Specifically, CenterPoint recommended the rule clearly indicate that a REP that receives funding for a responsive device program is not prohibited from participating in a TDU's other energy efficiency programs. CenterPoint provided draft language consistent with its recommendation.

Commission Response

The commission declines to implement the recommended change because it is unnecessary. As stated previously, there is no provision of §25.186 that would preclude a REP from offering other demand response programs that are not funded by a TDU or that would preclude a REP that receives funding for a responsive device program from a TDU from participating in that TDU's other energy efficiency programs.

Octopus recommended proposed §25.186(f) include incentive payments for participation in a residential demand response program. Octopus maintained that the proposed rule disincentivizes REPs from implementing or expanding demand response programs due to compliance obligations. Octopus further stated that customers rightly object when curtailed during ERCOT EEAs and should be compensated for their participation, particularly during peak demand periods where reliability is a concern. Octopus reiterated its recommendation to use the United Kingdom's Demand Flexibility Service to encourage demand response when appropriate.

Commission Response

The commission declines to impose specific requirements on the types of incentives a REP must offer its customers for participation in a responsive device program. In a competitive retail market, it is up to REPs to design programs that provide adequate incentives to attract customer interest, either as part of the provision of retail electric service or as a standalone program. This aligns with PURA's stated preference for competitive rather than regulatory solutions, promotes innovation, and respects customer choice.

Octopus, TAEBA, CenterPoint, AEP, and Oncor recommended that the commission revise the rule with regards to how much funding a TDU is authorized to provide. Specifically, Octopus commented that the provision is unclear as to the amount of funding available. Octopus advanced that the provision should be reworded to clearly state that "a utility may allocate up to 10% of its energy efficiency budget for the purpose of funding delivery of responsive devices to REP customers," if that is the intended effect.

CenterPoint recommended adding clarifying language that would indicate a TDU is authorized to use up to 10% of the budged spending for load management program offerings, as opposed to 10% of the budgeted spending of the TDU's energy efficiency program as a whole.

AEP, and Oncor commented that the statute only authorizes a TDU to use up to 10% of its budgeted for demand response programs, not its entire budget for energy efficiency. AEP stated the rule incorrectly authorizes the use of up to 10% of the entire portfolio budget on REP programs. Specifically, AEP recommended amending the provision to authorize a TDU to use up to 10 percent of the budgeted spending for demand response programs on the responsive device programs described under proposed §25.186(c).

Commission Response

The commission agrees with Oncor and AEP that a TDU is authorized to use up to 10 percent of its demand response budget to fund REP responsive device programs, rather than 10 percent of its total energy efficiency budget. The commission modifies the rule to replace "the budgeted spending" with "demand response budget", accordingly.

AEP recommended the commission revise proposed §25.186(f) to clarify that a TDU has discretion in deciding whether to allocate funding to responsive device programs. AEP maintained that a program that meets the commission's evaluation, measurement, and verification criteria should not automatically mean a TDU is required to fund it. AEP indicated that cost-effectiveness, budget concerns, and cost recovery of REP programs are all factors among others that a TDU should be authorized to consider before funding a REP program. AEP expressed concern on how the funding of REP programs would impact a TDU's EECRF if such funding is not discretionary. Specifically, whether funding a REP program would be required to be a part of a TDU's overall energy efficiency program budget. AEP recommended that, if the funding is not discretionary, a TDU should be authorized to request additional and separate funding for responsive device programs that will not affect the cost cap.

Conversely, EDF and ASC and Octopus recommend that the provision be revised to clarify that a TDU is authorized to use up to 10% of its energy efficiency budget for demand response programs. Specifically, EDF and ASC recommended the provision be revised to "require a TDU use up to 10% of its total energy efficiency budget to meet REP responsive device requests." EDF and ASC further recommended revisions to limit a TDU discretion to give a lesser amount and provide guidance on allocating funds between different REPs and demand response programs.

Commission Response

The commission agrees with AEP that a TDU is not required to allocate funds to qualifying responsive device programs. Under PURA §39.919(d), a TDU "may use up to 10 percent of the budgeted spending for demand response programs" to fund responsive device programs under this rule. The "may" establishes this as a permissive provision.

Oncor recommended the rule provide additional information on how TDUs will fund REP-provided demand response programs in accordance with proposed §25.186(f). Specifically, Oncor recommended the rule elaborate upon how funding mechanism would work in practice, how under-recovery and over-recovery would be addressed, and whether TDUs may claim savings on responsive device programs, or whether those will be passed-through. Oncor stated that because TDUs will not have access to demand response performance data, and therefore data on how much savings are being achieved, any savings "would not need to impact a TDU's performance bonus under 16 TAC §25.182(e)." Oncor stated that, in the alternative, a TDU could be authorized to claim savings based on a specified dollar amount that a TDU funded to comply with the goals of §25.181. Moreover, any funding provided under the proposed rule during a program year could be included in the calculation of a TDUs Energy Efficiency Cost Recovery Factor (EECRF) under-collection or over-collection under §25.182(d). Specifically, those claimed savings could be reported as a separate residential customer program in a TDU's annual energy efficiency plan and report filings. Oncor commented that this option would provide the commission information as to how TDUs are funding these programs and, if necessary, evaluate the effectiveness of programs offered under the proposed rule.

Commission Response

An energy efficiency program offered by a TDU in support of the responsive device program must be cost-effective based on commission rules. Savings resulting from installation of these appliances or devices and the cost of the incentive are inputs considered in this determination. Any demand reduction resulting from a REP demand response program is separate and would not play any part in the savings attributed to customer installation of a responsive device. As in TDU marketplace programs, deemed savings will be used for the purpose of TDU claimed (energy) savings for the device (and only the device), and TDU determination of cost-effectiveness of a program.

TAEBA recommended the commission develop precise and straightforward standardized measurement and verification protocols to reliably record and report demand reductions. TAEBA commented that such protocols would provide transparency and accountability to stakeholders if implemented in a manner that does not add unnecessary administrative burdens.

Commission Response

The commission agrees with TAEBA and adds language to §25.186(f) to require a responsive device program that is funded with energy efficiency funds to comply with the evaluation, measurement, and verification requirements of §25.181.

Oncor noted that it interprets the proposed rule such that a responsive device program that qualifies under proposed §25.186(f) is limited to compliance with only the "the evaluation, measurement, and verification requirements under §25.181." Oncor agrees and explained that it would be inappropriate to require demand response programs offered under the proposed rule to meet the cost-effectiveness requirements under §25.181(d). Oncor explained that a TDU would not have access to the program's performance data at that time, which is a prerequisite to a cost-effectiveness test.

Oncor recommended the proposed rule include an effective date of January 1, 2025. Oncor additionally recommended that TDU EECRF annual and forecast reporting in accordance with §25.182(d)(1)(A) and (d)(8) reflect demand response program funding under proposed §25.186(f) beginning in 2026. Oncor stated that by delaying the effective date, TDU funding under §25.186(f) can proceed in tandem with the annual review period of an EECRF, which would provide a full calendar years' worth of funding for demand response programs that the commission could then assess in 2026.

Commission Response

The commission declines to revise the rule to include an effective date of January 1, 2025, and also declines to revise EECRF reporting in the manner Oncor recommends because it is unnecessary. A rule is effective 20 days after it is submitted to the *Texas Register*. The commission adopts this rule on December 12, 2024, so absent any administrative delays in submitting this order, the effective date of this rule will be January 1, 2025.

CenterPoint maintained that the only role transmission and distribution utilities (TDUs) have in the implementation of PURA §39.919 is to provide funding to REPs for the implementation of demand response programs utilizing responsive devices. As such, a TDU should be authorized to claim savings associated with such programs in accordance with §25.181. CenterPoint noted that its proposed language, claimed savings "does not and would not extend to calculating net benefits or performance bonuses." CenterPoint provided draft language consistent with its recommendation.

Commission Response

The commission declines to implement the recommended change because it is inaccurate. As stated previously, a TDU cannot claim demand response savings under §25.186 as part of its goal under §25.181. A TDU can claim energy savings for the installation of devices using its program - as it can today - but it cannot claim actual demand response (kW) savings from the actual dispatch of these devices. A TDU must still follow Subchapter H Division 2 §§25.181-83 and show that the program is cost effective when funding a responsive device program under §25.186(c).

REP Coalition recommended adding a new subparagraph to increase responsive device program participation by enabling more diverse and competitive incentive options for customers. REP Coalition indicated that the recommended language would indicate that ERCOT and stakeholders should work collaboratively to create new market products to incentivize residential customer aggregation under commission leadership.

Commission Response

The commission declines to implement the recommended change because it is beyond the scope of this rulemaking, which is to implement PURA §39.919. The statute does not contemplate the creation of new market products or direct the commission to establish new incentive structures for responsive device programs or residential customer aggregation.

The new rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to

regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings. The amended rule is also adopted under §39.905 which prescribes legislative goals for energy efficiency and requires the commission to provide oversight and adopt rules and procedures for such goals; and §39.919 which requires the commission to establish goals in the ERCOT power region to reduce the average total residential load and for the adoption of a program that effectuates such a goal through demand response participation to residential customers.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.052, 39.905, 39.919.

§25.186. Goal for Average Total Residential Load Reduction.

(a) Application. This section applies to the independent organization certified under PURA §39.151 for the Electric Reliability Council of Texas (ERCOT) region, a transmission and distribution utility (TDU), and a retail electric provider (REP) providing demand response using a responsive device program to residential customers.

(b) Definition. When used in this section, the term "smart responsive appliance or device" has the following meaning unless the context indicates otherwise. An appliance or device that may be enabled to allow its electric usage or electric usage of connected appliances or devices to be adjusted remotely.

(c) Responsive Device Program. A REP may offer a responsive device program that offers an incentive to residential customers with smart responsive appliances or devices to reduce electricity consumption.

(1) A REP may contract with a demand response provider to provide a responsive device program.

(2) A responsive device program must:

(A) allow demand response participation by residential customers where reasonably available, including during the summer and winter seasons;

(B) be capable of responding to an emergency energy alert issued by the independent organization certified under Public Utility Regulatory Act (PURA) §39.151 for the ERCOT region;

(C) ensure that the program does not adversely impact the needs of a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title, relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers; and

(D) not allow participation of a residential customer that is enrolled in an emergency program such as the Emergency Response Service under §25.507 of this title, relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS), or a TDU load management program under §§25.181-183 of this title.

(E) specify that participation in the responsive device program expires:

(i) if participation in the responsive device program is offered or included as part of a product or plan for retail electric service, with the term of the contract; or

(ii) if the responsive device program is offered as a separate product or plan or as an additional service, on the date consistent with the REP's disclosures to the customer regarding the term of the responsive device program, but must end when the REP that enrolled the retail customer is no longer the REP of record for that customer.

(d) Average total residential load reduction goal.

(1) No later than 45 days following the end of each calendar quarter, a REP providing a responsive device program within the ERCOT region must submit to ERCOT, on a form prescribed by ERCOT, the following information for each calendar month in the quarter:

(A) the electric service identifier (ESI ID) for each residential customer with smart appliances or devices enrolled in each responsive device program offered by the REP; and

(B) the date of each demand response event, including each demand response event start time and stop time and the ESI IDs deployed for each event.

(2) No later than March 31 of each calendar year, for each daily ERCOT peak demand period and each ERCOT energy emergency alert period, ERCOT must publicly file with the commission the following information for the twelve-month period ending on November 30 of the previous calendar year. For purposes of this paragraph, the load associated with any premise with behind-the-meter photovoltaic (PV) generation will be calculated as the sum of the premise's import from the grid plus any PV generation less any export to the grid.

(A) the date of the period, the time of the period, and the hourly and 15-minute interval values of load and net load during the period;

(B) the aggregated hourly and 15-minute interval actual metered load of all the residential customers enrolled in a responsive device program during the ERCOT peak demand period or energy emergency alert period; and

(C) for each day for which ERCOT has received notice of a REP responsive device program deployment and for each ERCOT energy emergency alert period:

(i) the estimated hourly and 15-minute interval load reduction by all residential customers enrolled in a responsive device program during the ERCOT peak demand period or energy emergency alert period;

(ii) the estimated hourly and 15-minute interval load reduction by all customers identified in clause (i) of this subparagraph that were deployed at any point during the ERCOT peak demand period or energy emergency alert period;

(iii) the aggregated hourly and 15-minute interval actual metered load of all customers enrolled in a responsive device program that were deployed at any point during the ERCOT peak demand period or energy emergency alert period; and

(iv) the total number of customers deployed at any point during each interval.

(3) The average total residential load reduction goal is 0.25 (i.e., a 20 percent reduction in load by participating residential customers).

(A) The goal is calculated as a ratio by dividing the load reduced by all responsive device programs during an ERCOT peak demand period by the total amount of demand of all residential customers

participating in a responsive device program during that ERCOT peak demand period.

(B) On or before June 30 of each even-numbered year, commission staff will review the data received from ERCOT under paragraph (2) of this subsection to assess the effectiveness of the responsive device programs offered by REPs and whether the average total residential load reduction goal under paragraph (3) of this subsection is being achieved. Commission staff will file a recommendation in Project 56966 on whether the commission should adjust the goal.

(C) The commission will consider commission staff's recommendation under subparagraph (B) of this paragraph and determine whether to update the goal.

(4) For the purposes of this section, an ERCOT peak demand period is an hour with the daily peak value of net load, where net load is calculated as defined in ERCOT protocols.

(e) Confidentiality. ERCOT must treat the information submitted by a REP under subsection (d) of this section as protected information as defined by the ERCOT protocols. The requirements of this section neither authorize nor require a REP to publicly disclose proprietary customer information.

(f) Funding. A REP may receive funding for a responsive device program through an energy efficiency incentive program established under §25.181 of this title, relating to Energy Efficiency Goal, if the responsive device program complies with the evaluation, measurement, and verification requirements of §25.181 of this title, and if the smart responsive appliances or devices meet the requirements of subsection (c) of this section. A transmission and distribution utility required to provide an energy efficiency incentive program under PURA §39.905 may use up to 10 percent of its demand response budget for responsive device programs offered by a REP under subsection (c) of this section.

(g) Additional information. Commission staff may request additional data from REPs and ERCOT regarding the responsive device program under subsection (c) of this section to assist in evaluating and revising the goal under subsection (d) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405968
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 1, 2025
Proposal publication date: September 13, 2024
For further information, please call: (512) 936-7322

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER M. CONTINUING EDUCATION AUDITS FOR LICENSE RENEWALS IN CERTAIN PROGRAMS

16 TAC §60.700, §60.701

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 60, new Subchapter M, §60.700 and §60.701, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5239). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules create a new audit system to verify compliance with the continuing education (CE) requirements established for renewal of a license in the programs administered by the Department under the following statutes: Texas Government Code, Chapter 171, Court-Ordered Education Programs; Texas Health and Safety Code, Chapter 401, Subchapter M, Laser Hair Removal; Texas Occupations Code, Chapter 203, Midwives; Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists; Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers; Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists; Texas Occupations Code, Chapter 451, Athletic Trainers; Texas Occupations Code, Chapter 455, Massage Therapy; Texas Occupations Code, Chapter 605, Orthotists and Prosthetists; Texas Occupations Code, Chapter 701, Dietitians; Texas Occupations Code, Chapter 1952, Code Enforcement Officers; Texas Occupations Code, Chapter 1953, Sanitarians; and Texas Occupations Code, Chapter 1958, Mold Assessors and Remediators. These programs will hereafter be referred to as "the affected programs."

The adopted rules are necessary to ensure that CE audits do not delay the issuance of license renewals in the affected programs. The program-specific rules for most of the affected programs currently require a CE audit to be completed before a license renewal may be issued. However, even when a license holder provides the audited CE records in a timely manner, the process of the Department receiving and verifying those documents can take a significant amount of time, and this creates a risk that the license will expire before the license renewal can be issued, resulting in a period of non-licensure through no fault of the license holder. The adopted rules allow the CE audit to occur before, during, or after the license renewal process to ensure that a CE audit does not affect the renewal process for the license holder.

The adopted rules are applicable only to the affected programs because, with regard to the reporting of CE completion, the affected programs differ from other licensing programs administered by the Department that have CE requirements. In other programs, CE providers are required to register with the Department and report CE completion by license holders directly to the Department, which eliminates the need for the Department to audit license holders to verify their CE completion. In contrast, license holders in the affected programs may fulfill their CE requirements by completing activities that are not provided by CE providers that report CE completion directly to the Department, such as attending or instructing academic courses or publishing books or articles.

The adopted rules are also necessary to provide consistency and efficiency in the Department's CE audit process among the affected programs. Rather than having multiple program-specific rules addressing CE audits with variations in rule language from program to program, the adopted rules provide uniform language that allows Department staff to apply the same procedures to each affected program, which streamlines the Department's operations.

SECTION-BY-SECTION SUMMARY

The adopted rules create new Subchapter M, Continuing Education Audits for License Renewals in Certain Programs, to clearly separate the CE audit requirements for the affected programs from the remainder of Chapter 60, which applies to all programs administered by the Department.

The adopted rules create new §60.700, Applicability, consisting of new subsection (a), which provides the list of affected programs that are subject to the new CE audit process; new subsection (b), which provides the statutory authority for the subchapter; new subsection (c), which clarifies the interplay between new Subchapter M and other laws and rules applicable to the affected programs; new subsection (d), which clarifies that the CE audit provisions of the subchapter supersede any CE audit provisions included in the rules of the affected programs; and new subsection (e), which clarifies that the new audit process does not affect the Department's authority to conduct inspections or investigations that involve examining the license holder's continuing education records.

The adopted rules create new §60.701, Continuing Education Audits for License Renewal. The adopted rules create new subsection (a), which provides that the Department may employ the new CE audit system to verify CE completion in the affected programs for each renewal of a license. The adopted rules create new subsection (b), consisting of subsection (b)(1), which provides a definition for "continuing education records"; and subsection (b)(2), which requires license holders to maintain CE records applied toward a license renewal for two years after the date the license renewal is issued by the department. The adopted rules create new subsection (c), which provides the new CE audit process, including subsection (c)(1), which provides that the Department may select for audit a random sample of license holders at its discretion before, during, or after the license renewal process; subsection (c)(2), which requires license holders selected for audit to submit continuing education records within 30 calendar days after notification of the audit; subsection (c)(3), which clarifies that a CE audit does not affect the renewal process for the license holder; and subsection (c)(4), which requires a license holder who is deficient in CE to remedy the deficiency within 90 calendar days after notification of the deficiency. The adopted rules also create new subsection (d), which provides the list of grounds for which a license holder may be subject to disciplinary action, and new subsection (e), which clarifies that CE obtained to correct a deficiency or as part of a disciplinary action cannot be applied toward the next renewal of the license.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5239). The public comment period closed on August 19, 2024. The Department received comments from four interested parties on the proposed rules.

Comment: One comment stated that CE audits should be conducted on CE providers instead of license holders.

Department Response: The Department disagrees with the comment because license holders in the affected programs may fulfill their CE requirements by completing activities that are not provided by CE providers that report CE completion directly to the Department, such as attending or instructing academic courses or publishing books or articles. The Department did not make changes to the proposed rules in response to the comment.

Comment: One comment expressed support for the proposed rules.

Department Response: The Department appreciates the comment in support of the proposed rules. The Department did not make any changes to the proposed rules in response to the comment.

Comment: One comment stated that it does not make sense to audit CE after the license renewal has already been issued.

Department Response: The Department disagrees with the comment because even when a license holder provides the audited CE records in a timely manner, the process of the Department receiving and verifying those documents can take a significant amount of time, and this creates a risk that the license will expire before the license renewal can be issued, resulting in a period of non-licensure through no fault of the license holder. The Department did not make any changes to the proposed rules in response to the comment.

Comment: One comment suggested that license holders who have been licensed for a certain period of time should not have to complete CE for license renewal.

Department Response: The Department disagrees with the comment because it is outside the scope of the proposed rules. The Department did not make any changes to the proposed rules in response to the comment.

COMMISSION ACTION

At its meeting on October 23, 2024, the Commission adopted the proposed rules as published in the *Texas Register*.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under: Texas Government Code, Chapter 171, Court-Ordered Education Programs; Texas Health and Safety Code, Chapter 401, Subchapter M, Laser Hair Removal; Texas Occupations Code, Chapter 203, Midwives; Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists; Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers; Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists; Texas Occupations Code, Chapter 451, Athletic Trainers; Texas Occupations Code, Chapter 455, Massage Therapy; Texas Occupations Code, Chapter 605, Orthotists and Prosthetists; Texas Occupations Code, Chapter 701, Dietitians; Texas Occupations Code, Chapter 1952, Code Enforcement Officers; Texas Occupations Code, Chapter 1953, Sanitarians; and Texas Occupations Code, Chapter 1958, Mold Assessors and Remediators.

The statutory provisions affected by the adopted rules are those set forth in Texas Government Code, Chapter 171; Texas Health and Safety Code, Chapter 401, Subchapter M; and Texas Occupations Code, Chapters 51, 401, 402, 403, 451, 455, 605, 701, 1952, 1953, and 1958. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405966
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: January 1, 2025
Proposal publication date: July 19, 2024
For further information, please call: (512) 475-4879

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.9

The Texas State Board of Pharmacy adopts amendments to §291.9, concerning Prescription Pick Up Locations. These amendments are adopted without changes to the proposed text as published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7576). The rule will not be republished.

The amendments clarify that U.S. Mail is a type of common carrier.

The Board received comments from Craig Chapman, R.Ph., expressing concern that the amendments may be unnecessary and suggesting alternative language for consistency with other Board rules.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405929
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: December 30, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 305-8084

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33

The Texas State Board of Pharmacy adopts amendments to §291.33, concerning Operational Standards. These amendments are adopted without changes to the proposed text as published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7577). The rule will not be republished.

The amendments clarify a recordkeeping requirement for a donated prescription drug dispensed under Chapter 442, Health and Safety Code, in accordance with House Bill 4332.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The Board received comments from George Wang, Ph.D., with SIRUM in support of the amendments.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405930
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: December 30, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 305-8084

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.45

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §133.45, concerning Miscellaneous Policies and Protocols.

The amendment to §133.45 is adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5253). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption is necessary to implement Senate Bill (S.B.) 186 and S.B. 1402, 88th Legislature, Regular Session, 2023.

S.B. 186 added new Texas Health and Safety Code (HSC) §256.003, which prohibits a hospital or other health care facility from discharging or otherwise releasing a patient to a group home, boarding home facility, or similar group-centered facility, unless the person operating the group-centered facility holds a license or permit in accordance with applicable state law. New HSC §256.003 also contains provisions to allow a hospital or other health care facility to discharge a patient to a group-centered facility that does not hold an applicable license or permit under certain circumstances.

S.B. 1402 amended HSC §323.0045 and added new HSC §323.0046. Amended HSC §323.0045 requires a person who performs a forensic medical examination on a sexual assault survivor to complete at least two hours of basic forensic evidence collection training or equivalent education. Amended HSC §323.0045 also requires each health care facility with an emergency department that is not a sexual assault forensic exam-ready facility (SAFE-ready facility) to develop a written policy to require staff who perform forensic medical examinations on sexual assault survivors to complete at least two hours of basic forensic evidence collection training. New HSC §323.0046 requires each health care facility with an emergency department to provide at least one hour of basic sexual assault response training to certain facility employees and outlines the training content requirements. New HSC §323.0046 also requires each non-SAFE-ready health care facility with an emergency department to develop a written policy to ensure all appropriate facility personnel complete the basic sexual assault response training.

The adoption adds information regarding the new discharge requirements in HSC §256.003, new training requirements in HSC §323.0045 and §323.0046 to the general and special hospital rules, and more statutory language to further align the rule requirements for providing parents or caregivers of newborn infants with a resource pamphlet, as required by HSC §161.501.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, HHSC received comments regarding the proposed rule from one commenter, Texas Hospital Association (THA). A summary of comments relating to the rule and HHSC responses follows.

Comment: While THA acknowledged the goal of protecting vulnerable patients and that HHSC has little flexibility in implementing HSC §256.003, THA expressed concern that §133.45(k), which implements HSC §256.003, may impact a hospital's ability to timely discharge patients who no longer need hospital care. THA noted that surges of disease, such as COVID-19, strain inpatient capacity and any factor that may cause discharge delays could further impact inpatient capacity.

Response: HHSC requires hospitals to comply with all applicable statutes and rules, including HSC §256.003. HHSC declines to revise the rule in response to this comment because the rule aligns with HSC §256.003.

Comment: Regarding §133.45(k), THA stated there are no resources available for a hospital to identify licensed or certified group homes, if any, in the hospital's county. THA requested HHSC establish, publish, and maintain a list of facilities to which hospitals may discharge patients.

Response: HHSC declines to create or publish a list or database of authorized facilities as the commenters requested because these facilities are regulated at the county or municipal level, if regulated at all, and the statute did not authorize HHSC to do so.

Comment: THA requested that HHSC use discretion when enforcing §133.45(k). In situations where one of the exceptions in the rule does not apply, THA suggested HHSC consider factors including a hospital's need to maintain inpatient capacity or when there is not availability a licensed or certified group-facility when enforcing the rule.

Response: HHSC requires hospitals to comply with all applicable statutes and rules, including HSC §256.003. HHSC declines to revise the rule in response to this comment because the rule aligns with HSC §256.003.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405947
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: December 31, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 834-4591

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §509.47

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §509.47, concerning Emergency Services.

The amendment to §509.47 is adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5302). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption is necessary to implement Senate Bill (S.B.) 1402, 88th Legislature, Regular Session, 2023.

S.B. 1402 amended Texas Health and Safety Code (HSC) §323.0045 and added new HSC §323.0046. Amended HSC §323.0045 requires a person who performs a forensic medical examination on a sexual assault survivor to complete at least two hours of basic forensic evidence collection training or equivalent education. Amended HSC §323.0045 also requires each health care facility with an emergency department that is not a sexual assault forensic exam ready facility (SAFE-ready facility) to develop a written policy to require staff who perform forensic medical examinations on sexual assault survivors to complete at least two hours of basic forensic evidence collection training. New HSC §323.0046 requires each health care facility with an emergency department to provide at least one hour of basic sexual assault response training to certain facility employees and outlines the training content requirements. New HSC §323.0046 also requires each non-SAFE-ready health care facility with an emergency department to develop a written policy to ensure all appropriate facility personnel complete the basic sexual assault response training.

The adoption adds the new training requirements in HSC §323.0045 and §323.0046 to the freestanding emergency medical care facility rules.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405948
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 31, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 834-4591

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CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.44

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §510.44, concerning Miscellaneous Policies and Protocols.

The amendment to §510.44 is adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5304). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption is necessary to implement Senate Bill (S.B.) 186, 88th Legislature, Regular Session, 2023.

S.B. 186 added new Texas Health and Safety Code (HSC) §256.003, which prohibits a hospital or other health care facility from discharging or otherwise releasing a patient to a group home, boarding home facility, or similar group-centered facility, unless the person operating the group-centered facility holds a license or permit in accordance with applicable state law. New HSC §256.003 also contains provisions to allow a hospital or other health care facility to discharge a patient to a group-centered facility that does not hold an applicable license or permit under certain circumstances.

The adoption adds information regarding the new discharge requirements in HSC §256.003.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, HHSC received comments regarding the proposed rule from two commenters, the Texas Association of Behavioral Health Systems (TABHS) and the Texas Hospital Association (THA). A summary of comments relating to the rule and HHSC responses follows.

Comment: Regarding §510.44(e), TABHS requested HHSC clarify how a psychiatric hospital should document whether a group facility is licensed at the time of planned discharge. TABHS asked whether hospitals would have access to a website to confirm licensure for group facilities and how often HHSC would update the licensing database. TABHS also asked what happens if a group facility loses its license after a hospital confirms the facility's license, but before patient discharge from the hospital occurs.

Response: HHSC declines to create or publish a list or database of authorized facilities as the commenters requested because these facilities are regulated at the county or municipal level, if regulated at all, and the statute did not authorize HHSC to do so. HHSC requires private psychiatric hospitals to comply with all applicable statutes and rules, including HSC §256.003.

Comment: While THA acknowledged the goal of protecting vulnerable patients and that HHSC has little flexibility in implementing HSC §256.003, THA expressed concern that §510.44(e), which implements HSC §256.003, may impact a psychiatric hospital's ability to timely discharge patients who no longer need inpatient psychiatric care. THA noted timely patient discharge is

critical because there is a general lack of capacity for inpatient psychiatric care and limitations imposed by HSC §256.003 and §510.44(e) may have a significant impact on a psychiatric hospital's capacity.

Response: HHSC requires private psychiatric hospitals to comply with all applicable statutes and rules, including HSC §256.003. HHSC declines to revise the rule in response to this comment because the rule aligns with HSC §256.003.

Comment: Regarding §510.44(e), THA stated there are no resources available for a hospital to identify licensed or certified group homes, if any, in the hospital's county. THA requested HHSC establish, publish, and maintain a list of facilities to which hospitals may discharge patients.

Response: HHSC declines to create or publish a list or database of authorized facilities as the commenters requested because these facilities are regulated at the county or municipal level, if regulated at all, and the statute did not authorize HHSC to do so.

Comment: THA requested that HHSC use discretion when enforcing §510.44(e). In situations where one of the exceptions in the rule does not apply, THA suggested HHSC consider factors including a psychiatric hospital's need to maintain inpatient capacity or when there is not availability a licensed or certified group-facility when enforcing the rule.

Response: HHSC requires private psychiatric hospitals to comply with all applicable statutes and rules, including HSC §256.003. HHSC declines to revise the rule in response to this comment because the rule aligns with HSC §256.003.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405949
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 31, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 834-4591

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CHAPTER 511. LIMITED SERVICES RURAL HOSPITALS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §511.62

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §511.62, concerning Discharge Planning.

The amendment to §511.62 is adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5306). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption is necessary to implement Senate Bill (S.B.) 186, 88th Legislature, Regular Session, 2023.

S.B. 186 added new Texas Health and Safety Code (HSC) §256.003, which prohibits a hospital or other health care facility from discharging or otherwise releasing a patient to a group home, boarding home facility, or similar group-centered facility unless the person operating the group-centered facility holds a license or permit in accordance with applicable state law. New HSC §256.003 also contains provisions to allow a hospital or other health care facility to discharge a patient to a group-centered facility that does not hold an applicable license or permit under certain circumstances.

The adoption adds information regarding the new discharge requirements in HSC §256.003.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, HHSC received comments regarding the proposed rule from one commenter, Texas Hospital Association (THA). A summary of comments relating to the rule and HHSC responses follows.

Comment: While THA acknowledged the goal of protecting vulnerable patients and that HHSC has little flexibility in implementing HSC §256.003, THA expressed concern that §511.62(m), which implements HSC §256.003, may impact the ability of a limited services rural hospital (LSRH) to timely discharge patients who no longer need hospital care. THA noted that surges of disease, such as COVID-19, strain capacity of the health care system and any factor that may cause discharge delays could further impact that capacity.

Response: HHSC requires LSRHs to comply with all applicable statutes and rules, including HSC §256.003. HHSC declines to revise the rule in response to this comment because the rule aligns with HSC §256.003.

Comment: Regarding §511.62(m), THA stated there are no resources available for a hospital to identify licensed or certified group homes, if any, in the LSRH's county. THA requested HHSC establish, publish, and maintain a list of facilities to which hospitals may discharge patients.

Response: HHSC declines to create or publish a list or database of authorized facilities as the commenters requested because these facilities are regulated at the county or municipal level, if regulated at all, and the statute did not authorize HHSC to do so.

Comment: THA requested that HHSC use discretion when enforcing §511.62(m). In situations where one of the exceptions in the rule does not apply, THA suggested HHSC consider factors including an LSRH's need to maintain emergency treatment capacity or when there is not availability a licensed or certified group-facility when enforcing the rule.

Response: HHSC requires LSRHs to comply with all applicable statutes and rules, including HSC §256.003. HHSC declines to revise the rule in response to this comment because the rule aligns with HSC §256.003.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §241.302(b), which provides that the Executive Commissioner of HHSC shall adopt rules to implement that section and establish minimum standards for LSRHs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405950
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 31, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 834-4591

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 43. CONTESTED CASES

34 TAC §§43.1 - 43.21, 43.23 - 43.29, 43.33 - 43.48

The Teacher Retirement System of Texas (TRS) adopts the repeal of §§43.1, 43.2, 43.3, 43.4, 43.5, 43.6, 43.7, 43.8, 43.9, 43.10, 43.11, 43.12, 43.13, 43.14, 43.15, 43.16, 43.17, 43.18, 43.19, 43.20, 43.21, 43.23, 43.24, 43.25, 43.26, 43.27, 43.28, 43.29, 43.33, 43.34, 43.35, 43.36, 43.37, 43.38, 43.39, 43.40, 43.41, 43.42, 43.43, 43.44, 43.45, 43.46, 43.47, and 43.48 of Chapter 43 (relating to Contested Cases) in Part 3 of Title 34 of the Texas Administrative Code. These repeals are adopted without changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 TexReg 8333). The repeals are adopted in conjunction with the adopted new rules under Chapter 43 published elsewhere in this issue of the *Texas Register.*

REASONED JUSTIFICATION

In 2022, the TRS board of trustees approved the adoption of TRS's four-year rule review. As part of that adopted rule review, TRS staff recommended amending or repealing and readopting all of Chapter 43 of TRS rules, which govern the pension appeals process, in order to improve the readability of the chapter for TRS members and staff. To implement this recommendation, TRS adopts the repeal of its existing 44 rules under Chapter 43 as part of a complete restructuring and revision of that chapter. In addition, TRS has adopted 49 new rules to replace these proposed repealed rules in Chapter 43. The adopted new rules are published elsewhere in this issue of the *Texas Register.*

TRS has determined that the repealed rules shall become effective on the same date that the proposed new Chapter 43 rules become effective.

COMMENTS

TRS received no public comments on the proposed repeals.

STATUTORY AUTHORITY

The repealed rules are adopted under the authority of Government Code §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board; and Government Code §825.115(b), which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406026
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: January 2, 2025
Proposal publication date: October 11, 2024
For further information, please call: (512) 542-6506

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CHAPTER 43. CONTESTED CASES

The Teacher Retirement System of Texas (TRS) adopts new §§43.1, 43.2, 43.3, 43.4, 43.5, 43.6, and 43.7 under new Subchapter A (relating to General Administration) of Chapter 43 in Part 3 of Title 34 of the Texas Administrative Code; new §§43.101, 43.102, 43.103, 43.104, 43.105, 43.106, and 43.107 under new Subchapter B (relating to Requests for Adjudicative Hearing) of Chapter 43 in Part 3 of Title 34 of the Texas Administrative Code; new §§43.201, 43.202, 43.203, 43.204, 43.205, 43.206, 43.207, 43.208, 43.209, 43.210, 43.211, 43.212, 43.213, 43.214, 43.215, 43.216, 43.217, 43.218, 43.219, 43.220, 43.221, 43.222, 43.223, 43.224, 43.225, 43.226, 43.227, and 43.228 under new Subchapter C (relating to Hearings Not Docketed at SOAH) of Chapter 43 in Part 3 of Title 34 of the Texas Administrative Code; and new §§43.301, 43.302, 43.303,43.304, 43.305, 43.306, and 43.307 under new Subchapter D (relating to Final Decisions of TRS) of Chapter 43 in Part 3 of Title 34 of the Texas Administrative Code. These new rules are adopted without changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 TexReg 8335) and will not be republished. The new rules are adopted in conjunction with the repeal of all current rules under Chapter 43 (relating to Contested Cases) in Part 3 of Title 34 of the Texas Administrative Code as published elsewhere in this issue of the *Texas Register.*

REASONED JUSTIFICATION

In 2022, the TRS board of trustees approved the adoption of TRS's four-year rule review. As part of that adopted rule review,

TRS staff recommended amending or repealing and readopting all of Chapter 43 of TRS rules, which govern the pension appeals process, in order to improve the readability of the chapter for TRS members and staff. To implement this recommendation, TRS is adopting 49 new rules in Chapter 43. In addition, TRS is also repealing all 44 current rules in Chapter 43.

As recommended in rule review, the new rules primarily restructure the existing Chapter 43 rules to increase readability and usability for both TRS members and TRS staff. For instance, the new rules are divided into four new subchapters to clarify which rules apply at which point in the TRS appeal process. In addition, 42 of the 44 current Chapter 43 rules are being readopted wholly or in part with, primarily, nonsubstantive style and structural changes.

The new rules also provide for several minor administrative improvements to the pension appeals process. These improvements include clarifying the exceptions process after the administrative law judge issues a proposal for decision and the deadline for members to resubmit petitions for adjudicative hearing that were rejected for formal deficiencies.

Lastly, the new rules make substantive changes to the hearing process for appeals to the board of trustees. These changes include: delegating the board's authority to determine whether to have oral argument to the executive director in consultation with the board chair; providing an expanded opportunity for parties to submit written briefs to the board; and clarifying the hearing process for disability appeals that come before the board.

These changes will improve the hearing process by expediting the process to determine whether oral argument will be granted while simultaneously ensuring that all parties have equal opportunity to provide written argument to the board. Further, the changes to the disability appeal process clarify how confidentiality, oral argument, and the board's review of the ALJ's proposal for decision shall proceed.

A full rule-by-rule description of the new rules is provided below.

SECTION-BY-SECTION SUMMARY

New §43.1 of this title (relating to the Applicability) readopts portions of current §43.1 of this title (relating to Administrative Review of Individual Requests) and §43.9 of this title (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting) in new subsections (a) and (c), respectively. In addition, new §43.1(b) clarifies that appeals relating to qualified domestic relations orders are governed by Chapter 47 of this title (relating to Qualified Domestic Relations Order) and not governed by Chapter 43.

New §43.2 of this title (relating to Definitions) largely readopts the existing provisions of current §43.3 of this title (relating to Definitions) with minor, nonsubstantive changes for style and clarity purposes.

New §43.3 of this title (relating to Filing of Documents) largely readopts the existing provisions of current §43.6 of this title (relating to Filing of Documents) with minor, nonsubstantive changes for style and clarity purposes. In addition, new §43.3 also provides the procedures for filing of documents if TRS has referred an appeal for hearing before an administrative law judge (ALJ) not affiliated with the State Office of Administrative Hearings (SOAH).

New §43.4 of this title (relating to Computation of Time) primarily readopts current §43.7 of this title (relating to Computation of Time) with minor, clarifying changes.

New §43.5 of this title (relating to Extensions) readopts current §43.8 of this title (relating to Extensions) with minor, nonsubstantive changes for style and clarity purposes.

New §43.6 (relating to Ex Parte Consultations) readopts the provisions of current §43.36 of this title (relating to Ex Parte Consultations) and also clarifies that its provisions apply to all contested cases under Chapter 43, not just those heard before a hearing officer not affiliated with SOAH.

New §43.7 of this title (relating to Procedures Not Otherwise Provided) readopts current §43.47 of this title (relating to Procedures Not Otherwise Provided) with a clarifying change that the board of trustees and TRS deputy director may also, in addition to the ALJ and executive director, resolve procedural issues as necessary in accordance with this provision when there are no other applicable TRS rules or statutes.

New §43.1 through new §43.7 are adopted to be included in adopted new Subchapter A (relating to General Administration) in Chapter 43 of TRS rules.

New §43.101 of this title (relating to Administrative Review of Individual Requests) readopts portions of current §43.1 of this title (relating to Administrative Review of Individual Requests) that pertain to the administrative review of pension appeals that do not relate to eligibility for disability retirement. New §43.101 also makes minor, conforming changes to the text of current §43.1.

New §43.102 of this title (relating to Administrative Review of Disability Determinations) readopts subsection (f) of current §43.1 of this title, which relates to the administrative review of disability determinations made by the TRS Medical Board. New §43.102 also provides procedural steps for the review that are analogous to the steps for administrative reviews under new §43.101. Lastly, new §43.102 provides that a TRS member who pursues an adjudicative hearing on the member's eligibility for disability retirement consents to public hearing of that appeal once it reaches the TRS Board of Trustees.

New §43.103 of this title (relating to Administrative Review of Option Beneficiary or Optional Retirement Annuity Plan Changes) readopts subsection (b) of current §43.4 of this title (relating to Decisions Subject to Review by an Adjudicative Hearing).

New §43.104 of this title (relating to Request for Adjudicative Hearing) largely readopts provisions from current §43.5 of this title (relating to Request for Adjudicative Hearing) and subsections (d) and (e) of current §43.12 of this title (relating to Form of Petitions and Other Pleadings). In addition, new §43.104 provides that a petition for adjudicative hearing must include "a concise statement of the facts supporting the petition and a statement of the specific relief requested from TRS" to correspond with analogous provisions in paragraphs (f)(2)-(3) of current §43.12.

New §43.105 of this title (relating to Docketing of Petition for Adjudicative Hearing and Dismissal for Failure to Obtain Setting) readopts provisions from current §43.4 of this title and §43.9 of this title that relate to the determination to docket or decline to docket a petition for adjudicative hearing. In addition, new §43.105 clarifies the deadline for how long a party has to resubmit a petition that the deputy director rejects for formatting purposes.

New §43.106 of this title (relating to Authority to Grant Relief) primarily readopts current §43.10 of this title (relating to Authority to Grant Relief) with minor, nonsubstantive changes for style and clarity. New §43.106 also clarifies that the chief benefit officer has the authority to grant an appeal while it remains in the docketing process.

New §43.107 of this title (relating to Subpoenas and Commissions) primarily readopts current §43.43 (relating to Subpoenas and Commissions). In addition, new §43.107 simplifies the subpoena and commission process by placing all authority to issue subpoenas and commissions with the deputy director and providing that only the parties and the ALJ may request a subpoena or commission.

New §43.101 through new §43.107 are adopted to be included in adopted new Subchapter B (relating to Requests for Adjudicative Hearing) in Chapter 43 of TRS rules.

New §43.201 of this title (relating to Applicability) is a new rule that provides that the provisions of new Subchapter C of Chapter 43 (relating to Hearings Not Docketed at SOAH) only apply to hearings docketed to be heard by a hearing official not affiliated with SOAH.

New §43.202 of this title (relating to Form of Pleadings) primarily readopts the provisions relating to pleadings of current §43.12 of this title with only minor conforming changes except the provisions related to petitions (specifically subsections (d)-(e) of current §43.12). Those subsections are readopted in new §43.104 of this title (relating to Request for Adjudicative Hearing).

New §43.203 of this title (relating to Filing of Pleadings and Amendments) primarily readopts the provisions of current §43.13 of this title (relating to Filing of Pleadings and Amendments) with only minor conforming changes.

New §43.204 of this title (relating to Briefs) primarily readopts the provisions of current §43.14 of this title (relating to Briefs) with only minor conforming changes.

New §43.205 of this title (relating to Motions) primarily readopts the provisions of current §43.15 of this title (relating to Motions) with only minor conforming changes.

New §43.206 of this title (relating to Discovery) primarily readopts the provisions of current §43.44 of this title (relating to Discovery) with only minor conforming changes and to update the reference to SOAH's procedural rules regarding discovery.

New §43.207 of this title (relating to Notice of Hearing and Other Action) primarily readopts the provisions of current §43.16 of this title (relating to Notice of Hearing and Other Action) with only minor changes for style and clarity.

New §43.208 of this title (relating to Agreements To Be in Writing) primarily readopts the provisions of current §43.17 of this title (relating to Agreements To Be in Writing) with only minor conforming changes.

New §43.209 of this title (relating to Motion for Consolidation) primarily readopts the provisions of current §43.18 of this title (relating to Motion for Consolidation) with only minor conforming changes.

New §43.210 of this title (relating to Additional Parties) primarily readopts the provisions of current §43.19 of this title (relating to Additional Parties) with only minor changes for style and clarity.

New §43.211 of this title (relating to Appearance and Representation) primarily readopts the provisions of current §43.20 of this title (relating to Appearance and Representation) with only minor conforming changes.

New §43.212 of this title (relating to Lead Counsel) readopts the provisions of current §43.21 of this title (relating to Lead Counsel).

New §43.213 of this title (relating to Powers of the Administrative Law Judge) primarily readopts the provisions of current §43.23 of this title (relating to Powers of the Administrative Law Judge) with only minor conforming changes.

New §43.214 of this title (relating to Prehearing Conference and Orders) readopts the provisions of current §43.24 of this title (relating to Prehearing Conference and Orders).

New §43.215 of this title (relating to Conduct of Hearing) primarily readopts the provisions of current §43.25 of this title (relating to Conduct of Hearing) with minor conforming changes and a clarification that all TRS contested case hearings before a hearing officer not affiliated with SOAH are confidential. This is the same standard as contested case hearings heard before SOAH.

New §43.216 of this title (relating to General Admissibility) readopts the provisions of current §43.26 of this title (relating to General Admissibility).

New §43.217 (relating to Exhibits) primarily readopts the provisions of current §43.27 of this title (relating to Exhibits) with only minor conforming changes and changes for style and clarity.

New §43.218 of this title (relating to Pre-filed Direct Testimony in Disability Appeal Proceedings) readopts the provisions of current § 43.28 (relating to Pre-filed Direct Testimony in Disability Appeal Proceedings).

New §43.219 of this title (relating to Limit on Number of Witnesses) readopts the provisions of current §43.29 of this title (relating to Limit on Number of Witnesses).

New §43.220 of this title (relating to Failure to Appear) readopts the provisions of current §43.33 of this title (relating to Failure to Appear).

New §43.221 of this title (relating to Conduct and Decorum at Hearing) primarily readopts the provisions of §43.34 of this title (relating to Conduct and Decorum at Hearing) with only minor conforming changes.

New §43.222 of this title (relating to Official Notice) readopts the provisions of §43.35 of this title (relating to Official Notice).

New §43.223 of this title (relating to Recording of the Hearing; Certified Language Interpreter) primarily readopts the provisions of current §43.37 of this title (relating to Recording of the Hearing; Certified Language Interpreter) with only minor conforming changes.

New §43.224 of this title (relating to Dismissal without Hearing) primarily readopts the provisions of current §43.38 of this title (relating to Dismissal without Hearing) with only minor conforming changes.

New §43.225 of this title (relating to Summary Disposition) primarily readopts the provisions of current §43.39 of this title (relating to Summary Disposition) but changes the deadline for filing a motion for summary disposition from 25 days before the hearing on the merits to 30 days before the hearing. This change is necessary to ensure non-SOAH hearings conform with SOAH hearings on key procedural deadlines and provide sufficient time

for the administrative law judge to consider the motion prior to the hearing on the merits.

New §43.226 (relating to The Record) readopts the provisions of current §43.40 of this title (relating to The Record).

New §43.227 (relating to Findings of Fact) readopts the provisions of current §43.41 of this title (relating to Findings of Fact).

New §43.228 of this title (relating to Reopening of Hearing) readopts some provisions of current §43.42 of this title (relating to the Reopening of Hearing) but removes provisions relating to reopening the hearing after the administrative law judge issues a PFD and the executive director or board of trustees have begun to consider the appeal. Because new §43.228 only applies at the contested case level, these elements of current §43.42 have been readopted in provisions related to those later stages of the appeal process.

New §43.201 through new §43.228 are adopted to be included in adopted new Subchapter C (relating to Hearings Not Docketed at SOAH) of Chapter 43 of TRS rules.

New §43.301 of this title (relating to Proposals for Decision and Exceptions) readopts subsection (b) of current §43.45 of this title (relating to Proposals for Decision, Exceptions, and Appeals to the Board of Trustees). In addition, new §43.301 further clarifies the exceptions process after an ALJ issues a proposal for decision after a contested case. Specifically, new §43.301 provides that exceptions shall be filed with and reviewed by the ALJ, not the executive director, and the ALJ shall inform TRS whether any action was taken pursuant to the parties' exceptions.

New §43.302 of this title (relating to Decision of Executive Director) readopts, in part, subsections (c), (e), (h), and (i) of current §43.45 of this title to the extent the provisions involve the duties of the executive director after an ALJ issues a proposal for decision to TRS. New §43.302 also adds provisions to clarify the executive director's authority to remand a case to the administrative law judge and to modify a proposal for decision if a finding of fact is against the weight of the evidence.

New §43.303 of this title (relating to Proposals for Decision and Exceptions regarding Eligibility for Disability Retirement) readopts, in part, subsections (c), (h), and (i) of current §43.45 of this title as they relate to the duties of the board of trustees to review an ALJ's proposal for decision in a case relating to a member's eligibility for disability retirement. New §43.303 primarily expands upon these provisions to provide for the procedure for a proposal for decision to be reviewed by the board of trustees in such a case. The new procedures are similar to those followed by the executive director in a pension appeal not related to eligibility for disability retirement.

New §43.304 of this title (relating to Appeals to the Board of Trustees) readopts, in part, subsections (c) through (i) and (k) of current §43.45 of this title as they relate to the duties of the board of trustees when reviewing a decision of the executive director. In addition, new §43.304 makes several member-friendly changes to the board of trustees' portion of the appeals process. These changes include providing all parties with the opportunity to submit written briefs or exceptions to the board of trustees in every appeal to the board, not only those appeals when the executive director made a change to the ALJ's proposal for decision. The changes also include offering the parties the opportunity to express their preference on whether oral argument is needed in a case and delegates the determination on whether to have oral argument from the board to the executive director in consultation with the chairman of the board of trustees in order to expedite the decision-making process on that issue. Lastly, similar to the changes made in new §43.302 of this title, new §43.304 also adds provisions to clarify the board of trustees' authority to remand a case to the administrative law judge and to modify a proposal for decision if a finding of fact is against the weight of the evidence.

New §43.305 of this title (relating to Final Decision of TRS) readopts subsection (j) of current §43.45 of this title.

New §43.306 of this title (relating to Rehearings) primarily readopts current §43.46 of this title (relating to Rehearings) but also clarifies that the deputy director may also act upon a motion for rehearing or other related motions when the deputy director makes a decision not to docket an appeal in accordance with adopted new §43.105 of this title.

New §43.307 of this title (relating to Cost of Preparing Administrative Record) readopts current §43.48 of this title (relating to Cost of Preparing Administrative Record).

New §43.301 through new §43.307 are adopted to be included in adopted new Subchapter D (relating to Final Decisions of TRS) of Chapter 43 of TRS rules.

COMMENTS

No comments on the proposed new rules were received.

SUBCHAPTER A. GENERAL ADMINISTRATION

34 TAC §§43.1 - 43.7

STATUTORY AUTHORITY

The new rules are adopted under the authority of Government Code §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board; Government Code §825.115(b), which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority.

CROSS-REFERENCE TO STATUTE

The new rules affect the following statutes: Government Code §825.115, which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406027
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: January 2, 2025
Proposal publication date: October 11, 2024
For further information, please call: (512) 542-6506

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SUBCHAPTER B. REQUESTS FOR ADJUDICATIVE HEARING

34 TAC §§43.101 - 43.107

STATUTORY AUTHORITY

The new rules are adopted under the authority of Government Code §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board; Government Code §825.115(b), which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority; Government Code §825.521, which provides that in adopting rules relating to appeals of a determination or decision of the retirement system by the system's staff, the board of trustees shall ensure that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as the retirement system has to issue the retirement system's decision; and Section 12 of House Bill 1585, as enrolled by the 87th Texas Legislature, Regular Session, on May 13, 2021 and effective on May 26, 2021.

CROSS-REFERENCE TO STATUTE

The new rules affect the following statutes: Government Code §825.115, which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority and Government Code §825.521, which provides that in adopting rules relating to appeals of a determination or decision of the retirement system by the system's staff, the board of trustees shall ensure that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as the retirement system has to issue the retirement system's decision

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406028
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: January 2, 2025
Proposal publication date: October 11, 2024
For further information, please call: (512) 542-6506

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SUBCHAPTER C. HEARINGS NOT DOCKETED AT SOAH

34 TAC §§43.201 - 43.228

STATUTORY AUTHORITY

The new rules are adopted under the authority of Government Code §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board; and Government Code §825.115, which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority and to refer a contested case to a hearing officer not affiliated with the State Office of Administrative Hearings.

CROSS-REFERENCE TO STATUTE

The new rules affect the following statutes: Government Code §825.115, which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority and to refer a contested case to a hearing officer not affiliated with the State Office of Administrative Hearings.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406029
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: January 2, 2025
Proposal publication date: October 11, 2024
For further information, please call: (512) 542-6506

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SUBCHAPTER D. FINAL DECISIONS OF TRS

34 TAC §§43.301 - 43.307

STATUTORY AUTHORITY

The new rules are adopted under the authority of Government Code §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board; Government Code §825.115(b), which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority; Government Code §825.521, which provides that in adopting rules relating to appeals of a determination or decision of the retirement system by the system's staff, the board of trustees shall ensure that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as the retirement system has to issue the retirement system's decision; and Section 12 of House Bill 1585, as enrolled by the 87th Texas Legislature, Regular Session, on May 13, 2021 and effective on May 26, 2021.

CROSS-REFERENCE TO STATUTE

The new rules affect the following statutes: Government Code §825.115, which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority and Government Code §825.521, which provides that in adopting rules relating to appeals of a determination or decision of the retirement system by the system's staff, the board of trustees shall ensure that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as the retirement system has to issue the retirement system's decision.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406030
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: January 2, 2025
Proposal publication date: October 11, 2024
For further information, please call: (512) 542-6506

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER D. DRIVER IMPROVEMENT

37 TAC §15.89

The Texas Department of Public Safety (the department) adopts amendments to §15.89, concerning Moving Violations. This rule is adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8546) and will not be republished.

The proposed amendments modify the list of traffic offenses involving the operation of a motor vehicle that constitute a moving violation and identify what a moving violation does and does not include.

The department accepted comments on the proposed amendments through November 25, 2024. Written comments relating to §15.89 were submitted by an individual. The substantive comments received and the department's responses are summarized below.

COMMENT: The department should not remove texting and cell phone use from the list of moving violations.

RESPONSE: Under Texas Transportation Code §542.304(b)(2)(D), texting while driving is not a moving violation, but it is an offense under §545.4251, which pertains to the operation and movement of vehicles. Therefore, convictions for this offense will appear on a driver's record. However, there is no state offense for driving while using a cell phone, unless the driver is a minor or driving a bus. No changes were made to the proposal based on this comment.

COMMENT: The department should include inattentive driving as a moving violation.

RESPONSE: Inattentive driving is not a state offense defined in the Transportation Code. However, related offenses like careless driving, disregarding traffic signals, and impeding traffic are included and may be considered forms of inattentive driving. No changes were made to the proposal based on this comment.

COMMENT: The department should include operating uninsured or underinsured vehicle as a moving violation.

RESPONSE: Uninsured or underinsured vehicles are not moving violations as they fall under the Motor Vehicle Safety Responsibility Act (Transportation Code, Chapter 601). The department administers this law, and convictions for these offenses will appear on a driver's record. No changes were made to the proposal based on this comment.

COMMENT: The department should include "lights on when wipers are on" as a moving violation.

RESPONSE: Under Texas Transportation Code §547.302, drivers are not required to use their headlights solely because their windshield wipers are on. However, they must use headlights when visibility is limited to 1,000 feet or less, or in conditions of poor visibility like rain, snow, fog, or dust. No changes were made to the proposal based on this comment.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Transportation Code; and §542.304 which authorizes the department to designate by rule the offenses involving the operation of a motor vehicle that constitute a moving violation of the traffic law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405970
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §§23.1, 23.3, 23.5, 23.6

The Texas Department of Public Safety (the department) adopts amendments to §§23.1, 23.3, 23.5, and 23.6, concerning Vehicle Inspection Station And Vehicle Inspector Certification. These rules are adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8547) and will not be republished.

The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including elimination of driving while intoxicated as a disqualifying offense for licensure and changing the license renewal dates from August 31 to December 31 to align with discontinuation of the safety inspection program on January 1.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.511, which authorizes the Public Safety Commission to adopt a system by rule under which licenses expire on various dates during the year; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; §548.301(b), which authorizes the Public Safety Commission to establish by rule a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission; §548.401, which authorizes the Department of Public Safety to adopt rules for the certification of inspectors and inspection stations; §548.403, which authorizes the Department of Public Safety to adopt rules for the certification of inspection stations; and §548.4055, which authorizes the Public Safety Commission to adopt rules necessary to comply with Occupations Code, Chapter 53.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405971
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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SUBCHAPTER B. GENERAL VEHICLE INSPECTION STATION REQUIREMENTS

37 TAC §§23.11 - 23.13

The Texas Department of Public Safety (the department) adopts amendments to §§23.11 - 23.13, concerning General Vehicle Inspection Station Requirements. These rules are adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8550) and will not be republished.

The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including adding a web link for the DPS Training and Operations Manual, removing references to non-commercial vehicles inspections, and specifying applicability to commercial vehicles.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; §548.252, which authorizes the Department of Public Safety to adopt rules relating to the issuance and content of vehicle inspection reports; §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission; §548.403, which authorizes the Department of Public Safety to adopt rules for the certification of inspection stations; and §548.407(e), which authorize the Public Safety Commission to adopt rules to implement §548.407.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405972
D. Phillip Adkins
General Counsel
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Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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SUBCHAPTER C. VEHICLE INSPECTION STATION OPERATION

37 TAC §23.21, §23.22

The Texas Department of Public Safety (the department) adopts amendments to §23.21 and §23.22, concerning Vehicle Inspection Station Operation. These rules are adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8553) and will not be republished.

The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including adding that vehicle inspection stations must use the electronic station interface device to issue vehicle inspection reports and adding that a fine may be assessed if a vehicle inspector shares a unique identifier protocol with another.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; §548.252, which authorizes the Department of Public Safety to adopt rules relating to the issuance and content of vehicle inspection reports; and §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405973
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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37 TAC §23.26

The Texas Department of Public Safety (the department) adopts the repeal of §23.26, concerning Retention of Records. This repeal is adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8554) and will not be republished.

This repeal is necessary because vehicle inspection reports and out of state identification certificates are now submitted electronically by the licensees, therefore retention of physical records is no longer required.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405974
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41

The Texas Department of Public Safety (the department) adopts the repeal of §23.41, concerning Passenger (Non-Commercial) Vehicle Inspection Items. This repeal is adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8555) and will not be republished.

This rule is being repealed in response to House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405976
D. Phillip Adkins
General Counsel
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Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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37 TAC §23.42

The Texas Department of Public Safety (the department) adopts amendments to §23.42, concerning Commercial Vehicle Inspection Items. This rule is adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8556) and will not be republished.

The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including moving and adding language from current §23.41 (to be repealed) relating to the inspection of vehicles equipped with compressed natural gas fuel systems and adding a web link for the DPS Training and Operations Manual.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and §548.252, which authorizes the Department of Public Safety to adopt rules relating to the issuance and content of vehicle inspection reports.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405975

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §§23.51 - 23.53

The Texas Department of Public Safety (the department) adopts amendments to §§23.51 - 23.53, concerning Vehicle Emissions Inspection and Maintenance Program. These rules are adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8557) and will not be republished.

The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules and provide conformity with other amendments, including removing references related to personal vehicle safety inspections, specifying applicability to commercial vehicles, and adding a web link for the State Implementation Plan.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405977
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.62, §23.63

The Texas Department of Public Safety (the department) adopts amendments to §23.62 and §23.63, concerning Violations and Administrative Penalties. These rules are adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8561) and will not be republished.

The amendments implement House Bill 3297, 88th Leg., R.S. (2023), which eliminates the safety inspection program for personal (non-commercial) vehicles, effective January 1, 2025. The amendments update, clarify, or simplify existing rules or provide conformity with other amendments, including updating the violations and penalty schedule, adding certain violations, and clarifying the role of settlement conferences.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; §548.301(b), which authorizes the Public Safety Commission to adopt rules to establish a motor vehicle emissions inspection and maintenance program for vehicles specified by the conservation commission; and §548.407(e), which authorizes the Public Safety Commission to adopt rules to implement §548.407.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405979
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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SUBCHAPTER G. VEHICLE INSPECTION ADVISORY COMMITTEE

37 TAC §§23.71 - 23.73

The Texas Department of Public Safety (the department) adopts amendments to §§23.71 - 23.73, concerning Vehicle Inspection Advisory Committee. These rules are adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8565) and will not be republished.

The amendments clarify and update the rules relating to the Vehicle Inspection Advisory Committee, including that department staff will make a record of attendance for each meeting and that the alternating acting presiding officer will prepare the agenda for the meeting over which the officer will be presiding.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to

adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2024.

TRD-202405980
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 1, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 424-5848

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER A. MISSION AND ADMISSIONS

37 TAC §152.1

The Texas Board of Criminal Justice (board) adopts amendments to §152.1, concerning Correctional Institutions Division, without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6979). The rule will not be republished.

The adopted amendments revise "offender" to "inmate" throughout and remove a reference to transfer facilities.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and §493.0021, which establishes organizational flexibility.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2024.

TRD-202406044
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Effective date: January 5, 2025
Proposal publication date: September 6, 2024
For further information, please call: (936) 437-6700

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SUBCHAPTER B. CORRECTIONAL CAPACITY

37 TAC §§152.21, 152.23, 152.25, 152.27

The Texas Board of Criminal Justice (board) adopts amendments to Chapter 152, Subchapter B, concerning Correctional Capacity, without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6979). The rules will not be republished.

The adopted amendments revise "offender" to "inmate" and make grammatical updates throughout the subchapter; and revise §152.25 to amend the title, update the names of units, remove units that were sold or closed with no possibility of reopening, and update the maximum rated capacity of individual units. The adopted amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

The board received comments on the proposed amendments from Aletia Stewart.

Ms. Stewart suggests that the expansion of capacity at the Stiles Unit means all inmates will inevitably have a cellmate.

The TBCJ disagrees. In-depth assessments of a unit's ability to meet an inmate's medical, security, program, and other needs will continue to be performed. Specific housing assignments, including whether an inmate requires a single cell, will continue to be made on an individualized basis. If an inmate who requires a single cell will be impacted by this change in capacity, then that inmate will be reassigned and housed appropriately to ensure medical and security needs continue to be met.

Ms. Stewart suggests that being in a confined space with others may exacerbate psychological conditions for inmates.

The TBCJ disagrees. When determining classification and placement, psychological needs will be considered, and decisions will continue to be made on an individualized basis. If an inmate who requires a single cell will be impacted by this change in capacity, then that inmate will be reassigned and housed appropriately to ensure medical and security needs continue to be met.

Ms. Stewart suggests that converting cells from single-occupancy to double-occupancy may place inmates with disabilities in potentially dangerous situations.

The TBCJ disagrees. When determining classification and placement, whether an inmate has a disability will be considered, and decisions will continue to be made on an individualized basis. If an inmate who requires a single cell will be impacted by this change in capacity, then that inmate will be reassigned and housed appropriately to ensure medical and security needs continue to be met.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and §499.102-.110, which establishes procedures for determining unit and system capacity.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2024.

TRD-202406047
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Effective date: January 5, 2025
Proposal publication date: September 6, 2024
For further information, please call: (936) 437-6700

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.31

The Texas Board of Criminal Justice (board) adopts amendments to §163.31, concerning Sanctions, Programs, and Services, without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6980). The rule will not be republished.

The adopted amendments revise presentence and postsentence investigations to mirror statutory language; revise continuum of sanctions to progressive sanctions throughout; update references to Texas Gov't Code; and make grammatical and formatting updates. The adopted amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and §509.003, which authorizes the board to adopt reasonable rules establishing standards and procedures for the TDCJ Community Justice Assistance Division.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2024.

TRD-202406045
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Effective date: January 5, 2025
Proposal publication date: September 6, 2024
For further information, please call: (936) 437-6700

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37 TAC §163.37

The Texas Board of Criminal Justice (board) adopts amendments to §163.37, concerning Reports and Records, without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6981). The rule will not be republished.

The adopted amendments revise presentence report and postsentence report to mirror statutory language. The adopted amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and §509.003, which authorizes the board to adopt reasonable rules establishing standards and procedures for the TDCJ Community Justice Assistance Division.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2024.

TRD-202406046
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Effective date: January 5, 2025
Proposal publication date: September 6, 2024
For further information, please call: (936) 437-6700

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 449. HEAD OF A FIRE DEPARTMENT

The Texas Commission on Fire Protection (the Commission) adopts the amendments to 37 Texas Administrative Code Chapter 449, Head of Fire Department, concerning §449.3. Minimum Standards for Head of a Suppression Fire Department Certification and §449.203. Minimum Standards for Head of a Prevention Only Fire Department Certification.

The amendments are adopted without changes as published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7631). The purpose of the proposed amendments in §449.3 and §449.203 is to add additional meeting options for the certification requirements.

SUBCHAPTER A. MINIMUM STANDARDS FOR HEAD OF A SUPPRESSION FIRE DEPARTMENT

37 TAC §449.3

These amendments are adopted under Texas Government Code §419.008(a), which provides the Commission may adopt rules for the administration of its powers and duties.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405932

Frank King
General Counsel
Texas Commission on Fire Protection
Effective date: December 30, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 936-3824

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SUBCHAPTER B. MINIMUM STANDARDS FOR HEAD OF A PREVENTION ONLY FIRE DEPARTMENT

37 TAC §449.203

The amended sections are adopted under Texas Government Code §419.008(a), which provides the Commission may adopt rules for the administration of its powers and duties.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405934
Frank King
General Counsel
Texas Commission on Fire Protection
Effective date: December 30, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 936-3824

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 817. CHILD LABOR

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 817, relating to Child Labor:

Subchapter A. General Provisions, §§817.2, 817.5 and 817.6

Subchapter B. Limitations on the Employment of Children, §817.22 and §817.24

Subchapter C. Employment of Child Actors, §817.31 and §817.32

TWC adopts the following new subchapter to Chapter 817, relating to Violations and Administrative Penalties:

Subchapter D. Violations and Administrative Penalties, §§817.34 - 817.36

Amended §§817.2, 817.5, 817.6, 817.22, 817.24, 817.31, and 817.32, and new §§817.34 - 817.36 are adopted *without* changes to the proposal, as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8069), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendments to Chapter 817 is to address statutory changes enacted by House Bill (HB) 2459, 88th Texas Legislature, Regular Session (2023); clarify definitions and terms under Texas Labor Code, Chapter 51; provide policy clarifications; and make other technical corrections.

Prior to the enactment of HB 2459, only employers had appeal rights relating to child labor preliminary determination orders or child labor appeal tribunal decisions. HB 2459 repealed and replaced several sections of Texas Labor Code, Chapter 51, and amended Texas Labor Code §301.0015 to establish Commission review of child labor appeal tribunal orders. The administrative hearings process in Texas Labor Code, Chapter 51, now mirrors the process in Texas Labor Code, Chapter 61. TWC is taking the opportunity to use its policy function to provide additional clarity to employers regarding how inspections and penalties operate under Texas Labor Code, Chapter 51, along with technical cleanup.

Rule Review

Texas Government Code, §2001.039 requires a state agency to review and consider for readoption each of its rules every four years. In accordance with the statute, TWC has reviewed Chapter 817, Child Labor, and proposes readoption of the rules as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§817.2. Definitions

Section 817.2(1) adds a definition for Agency.

Section 817.2(9) adds a definition for Commission.

Section 817.2(12) amends the definition of Employer from an entity to a person to be consistent with Texas Labor Code §51.002.

Section 817.2(14) adds a definition for Employs.

§817.5. Certificate of Age

Section 817.5(a)(1) is amended to clarify that applicants must use the TWC-provided application form.

§817.6. Appeals

Section 817.6 is amended to clarify that hearings conducted under Texas Labor Code, Chapter 51, are subject to the rules and hearing procedures set out in TWC Chapter 815 Unemployment Insurance.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

TWC adopts the following amendments to Subchapter B:

§817.22. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old Children

Section 817.22 is amended to clarify the roles of the Agency and Commission.

§817.24. Limitations on the Employment of Children to Solicit

Section 817.24 is amended to clarify the roles of the Agency and its Wage and Hour Department.

SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS

TWC proposes the following amendments to Subchapter C:

§817.31. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old Children

Section 817.31 is amended to clarify the roles of the Agency and Commission.

§817.32. Application Exceptions

Section 817.32 is amended to clarify the roles of the Agency and Commission.

SUBCHAPTER D. VIOLATIONS AND ADMINISTRATIVE PENALTY

The Commission adopts new Subchapter D as follows:

New Subchapter D, regarding violations and administrative penalties, provides clarification regarding TWC's interpretation of the enforcement provisions in Texas Labor Code, Chapter 51.

§817.34. Violations

New §817.34 clarifies the requirements to establish a violation under Texas Labor Code, Chapter 51, or this chapter. While an offense under Texas Labor Code, Chapter 51, includes a culpability requirement, a violation that may lead to an administrative penalty does not include a required culpability. As such, an offense will always be a violation, but a violation will not always be an offense. This section also clarifies that TWC has jurisdiction over child labor violations for the two-year period preceding the inspection, as established under Texas Labor Code §51.021, and jurisdiction over violations by a sexually oriented business for a five-year period preceding an inspection under Texas Labor Code §51.016. The new section also clarifies that TWC has jurisdiction to impose an administrative penalty for child labor violations that occurred during the two-year period even if the child is no longer working for the employer at the time the administrative penalty is imposed.

§817.35. Inspection; Collection of Information; Hinderance

New §817.35 clarifies the places that TWC may inspect by defining the basis that can be used to establish good reason to believe a violation has occurred and addresses TWC's authority to request records concerning the employment of a child. This section also specifies what actions are considered a hinderance to an inspection and a violation under Texas Labor Code, Chapter 51, and this chapter.

§817.36. Administrative Penalty

New §817.36 provides clarification regarding TWC's interpretation of the administrative penalty factors under Texas Labor Code §51.033 and requires the Commission to adopt a penalty matrix.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period ended on November 4, 2024.

TWC received comments from Dan's Hamburgers, Inc.

COMMENT: One commenter questioned the need for a certificate of age form because employers are already required to complete a federal Form I-9, which requires two forms of identification to verify an employee's identity, and employers are required to verify employee Social Security numbers.

RESPONSE: Texas Labor Code §51.022 permits a child who is at least 14 years of age to apply to TWC for a certificate of age and requires TWC to issue a certificate of age if the application is approved. The certificate of age can be used by a child to verify their age to an employer.

Chapter 817 rules do not require an employer or employee to complete a certificate of age form. The proposed amendments to §817.5 clarify that Agency staff are responsible for providing the certificate of age form. No changes were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§817.2, 817.5, 817.6

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Labor Code, Title 2.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405933
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 30, 2024
Proposal publication date: October 4, 2024
For further information, please call: (737) 301-9662

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SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

40 TAC §817.22, §817.24

The rules are adopted under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Labor Code, Title 2.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405936
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 30, 2024
Proposal publication date: October 4, 2024
For further information, please call: (737) 301-9662

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SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS

40 TAC §817.31, §817.32

The rules are adopted under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Labor Code, Title 2.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405937
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 30, 2024
Proposal publication date: October 4, 2024
For further information, please call: (737) 301-9662

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SUBCHAPTER D. VIOLATIONS AND ADMINISTRATIVE PENALTIES

40 TAC §§817.34 - 817.36

The rules are adopted under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Labor Code, Title 2.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405938
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 30, 2024
Proposal publication date: October 4, 2024
For further information, please call: (737) 301-9662

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CHAPTER 844. PROHIBITED CORONAVIRUS VACCINE MANDATES BY PRIVATE EMPLOYER

The Texas Workforce Commission (TWC) adopts new Chapter 844, relating to Prohibited Coronavirus Vaccine Mandates by Private Employer, comprising the following subchapters:

Subchapter A. General Provisions, §844.1 and §844.2

Subchapter B. Complaints, §§844.25 - 844.30

Subchapter C. Determinations, §§844.50 - 844.55

Subchapter D. Administrative Hearings and Judicial Review, §§844.75 - 844.92

New §§844.1, 844.2, 844.25 - 844.30, 844.50 - 844.55, and 844.75 - 844.92 are adopted *without* changes to the proposal, as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8075), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of Chapter 844 is to establish rules as required by Senate Bill (SB) 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

SB 7 prohibits employers from taking adverse actions against applicants, employees, or contractors based on a refusal to be vaccinated against COVID-19. If an adverse action was taken by an employer against an applicant, employee, or contractor, the applicant, employee, or contractor can file a complaint and TWC will investigate. An employer who is determined to have taken a prohibited adverse action is subject to an administrative penalty unless the employer takes reasonable efforts to make the complainant whole. SB 7 also allows TWC to recover the reasonable cost of investigation when it is determined that the employer took a prohibited adverse action.

Chapter 844 rules address the requirements for and methods of submitting a complaint. The chapter also establishes an appeal procedure to provide parties notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts new Subchapter A, General Provisions, as follows:

§844.1. Purpose

New §844.1 defines the purpose of the Chapter 844 rules.

§844.2. Definitions

New §844.2 defines "Adverse Action," "Agency," "Complainant," "Complaint Form," "Contractor," "COVID-19," "Day," "Department," "Employee," "Employer," "Governmental Entity," "Party," and "Person." The definition of Employee would include an individual who seeks admission to or is employed under a medical residency program in Texas.

SUBCHAPTER B. COMPLAINTS

TWC adopts new Subchapter B, Complaints, as follows:

§844.25. Complaint Requirements

New §844.25 establishes the requirements and method to file a complaint. Complaints must be filed online within 90 days of the adverse action and must provide the name of the complainant, name of the employer, and the nature and description of the adverse action. The complainant must also declare that the information provided in the complaint is true and correct.

§844.26. Valid Complaints

New §844.26 addresses issues concerning the validity of a complaint. These issues include that the adverse action must have occurred after the effective date of SB 7, that the employer is not a governmental entity, and that the complaint is not duplicative of a prior complaint. All references to days in this chapter mean calendar days.

§844.27. Jurisdiction

New §844.27 defines when employers are subject to TWC's jurisdiction under this Chapter as it relates the connection of the work, complainant, and employer to Texas.

§844.28. Dismissal

New §844.28 allows TWC to dismiss complaints that are incomplete or do not meet the requirements of §844.26. Dismissed complaints can be refiled by the complainant within 30 days of the dismissal.

§844.29. Adverse Action

New §844.29 provides context to the definition of adverse action by further addressing the reasonable person standard. Examples of an adverse action include, but are not limited to, terminating an employee, terminating a contractual relationship, demoting an employee, reducing pay or compensation, not hiring an employee, not offering a contract for a contract position, or a reduction in hours not related to a business need. When determining whether an employer's action was an adverse action, the Agency will consider the employer's good faith attempt to comply with a legal obligation as evidence that the employer's action would not be considered by a reasonable person to be for the purpose of punishing, alienating, or otherwise adversely affecting a complainant.

§844.30. Investigation of Complaints in Health Care

New §844.30 requires TWC to consult with the Texas Department of State Health Services (DSHS) when a complaint against a health care facility, health care provider, or physician concerns a policy that requires the use of protective medical equipment to determine if the policy is reasonable.

SUBCHAPTER C. DETERMINATIONS

TWC adopts new Subchapter C, Determinations, as follows:

§844.50. Preliminary Determination Order, Determination on Remedial Action, and Penalty and Cost Order

New §844.50 defines the procedures for issuing a determination after the investigation is complete. A preliminary determination order will be mailed to each party informing them whether TWC found a violation, which would require the imposition of an administrative penalty, and whether TWC will seek to recover investigative costs from the employer. SB 7 prescribes the administrative penalty amount of $50,000 for each violation and did not provide TWC with discretionary authority to adjust the penalty amount. The preliminary determination order would inform the parties of appeal rights and the employer's ability to take remedial action to avoid the administrative penalty. If an employer completes remedial action and submits proof of remedial action within 30 days of a preliminary determination order or decision, TWC will issue a determination on remedial action, which is an appealable document. Once the determination or decision is final, a penalty and cost order will be issued instructing the employer to make payment to TWC. If an employer fails to make payment in accordance with the penalty and cost order, TWC will refer the amount to the Office of the Attorney General in accordance with Texas Government Code §2107.003 as well as reporting the indebtedness to the Texas Comptroller of Public Accounts under the warrant hold provisions in Texas Government Code §403.055(f).

§844.51. Remedial Action

New §844.51 establishes how an employer may take remedial action, in accordance with Texas Health and Safety Code §81D.006, to avoid the imposition of an administrative penalty. The section also defines acceptable proof of a remedial action and the method for submitting proof of remedial action, which must be submitted within 30 days of a preliminary determination order.

§844.52. Investigative Costs

New §844.52 addresses when TWC may seek to recover the reasonable costs of an investigation.

§844.53. Corrected Determinations and Decisions

New §844.53 allows TWC to issue corrected determinations or decisions to correct an error including an incorrect address for a party.

§844.54. Withdrawal of Complaint

New §844.54 allows a complainant to withdraw a complaint before the preliminary determination order becomes final.

§844.55. Appeal and Determination Finality

New §844.55 establishes that a party can file an appeal to a determination within 30 days of the mailing date of the determination by submitting a written appeal by mail, fax, or other method approved by TWC on the preliminary determination order.

SUBCHAPTER D. ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

TWC adopts new Subchapter D, Administrative Hearings and Judicial Review, as follows:

§844.75. Administrative Hearings

New §844.75 states that an administrative hearing will be conducted by the Agency's Special Program Appeals department by electronic means.

§844.76. Parties

Under new §844.76, the parties to the hearing are the complainant, the employer and TWC.

§844.77. Hearing Scheduling and Notice

New §844.77 prescribes the procedures for scheduling and issuing a hearing notice upon the receipt of an appeal. The section states what information must be included in the hearing notice.

§844.78. Representation

New §844.78 allows parties to be represented by an attorney or other individual of their choice.

§844.79. Ex Parte Communications

New §844.79 prohibits ex parte communications without notice and an opportunity for all parties to participate.

§844.80. Hearing Procedures

New §844.80 establishes hearing procedures for the administrative hearing including general procedures and procedures for evidence, witnesses, exchange of exhibits, and maintaining the hearing record.

§844.81. Postponement and Continuance

New §844.81 addresses situations when the hearing can be postponed or continued.

§844.82. Default

New §844.82 describes the procedures when a party fails to appear for the hearing and for a non-appearing party to file a motion to set aside the default.

§844.83. Timeliness

New §844.83 establishes the timeliness guidelines for this chapter including address changes, dating of appeal documents, and the evidence required to overcome the presumption of receipt.

§844.84. Withdrawal of an Appeal

New §844.84 allows a party to withdrawal an appeal before the hearing officer's decision is final.

§844.85. Decision

New §844.85 states that the hearing officer's decision must be issued in writing as soon as possible after the hearing closes; states the information that must be included in the decision; and states that the decision must be mailed to the parties or their representatives. A decision can be reopened if the employer submits a notice to the hearing officer within 14 days of the mailing date of the decision that the employer intends to take remedial action. The employer would then have 30 days to submit proof of remedial action.

§844.86. Finality of Decision

New §844.86 states that the hearing officer's decision becomes final 14 days after the date the decision is mailed unless before that date the hearing officer reopens the decision, a party files a timely appeal, or the commission decides to remove the case to itself.

§844.87. Commission

New §844.87 sets forth the Commission's duties under this chapter, including which member of the Commission shall serve as chair when the Commission acts under this chapter.

§844.88. Removal of Order Pending Before a Hearing Officer

New §844.88 allows the Commission to remove a pending hearing to itself.

§844.89. Commission Review of Hearing Officer Order

New §844.89 establishes that the Commission may affirm, modify, or set aside a penalty order on the basis of previously submitted evidence or direct the taking of additional evidence.

§844.90. Notice of Commission Action

New §844.90 defines the issues to be addressed in a notice of Commission action and requires the Commission to enter a written order for the payment of any penalty or investigative costs the Commission has assessed.

§844.91. Finality of Commission Order

New §844.91 establishes that the Commission order is final 14 days after the date the order is mailed unless the Commission reopens the appeal or a party files a motion for rehearing.

§844.92. Judicial Review

New §844.92 sets forth the method of seeking judicial review of TWC's final decision or order.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The comment period ended on November 4, 2024.

TWC received comments from:

-- Texas Medical Association (TMA)

-- Texas Hospital Association (THA)

COMMENT: TMA expressed concern that the proposed rules do not contain a time frame for TWC to complete its complaint investigation. They suggested that the rules should include a 90-day time frame to complete the investigation to ensure that the parties recollection of the events were fresh and records related to the issue were still available. TMA suggested that should TWC need to extend that period, they could do so by notifying the complainant and employer that the investigation would exceed the prescribed period.

RESPONSE: The Commission appreciates TMA's comment and agrees that investigating the allegations in a timely fashion will assist with gathering the necessary information while recollections are fresh and documentary evidence is still available. However, TWC anticipates the average investigation will take a fraction of the time suggested and that creating an artificial deadline for completion that may be waived would only serve to confuse the parties about when a matter may be fully resolved. TWC will adjust the initial notices sent to parties to expressly advise them of the need to retain necessary documents during the investigation. No changes were made in response to this comment.

COMMENT: TMA expressed concern that under the proposed rules an employer that takes an adverse action against an unvaccinated complainant for reasons other than the complainant's vaccination status could be found liable for a violation. To resolve that possibility, they suggest that the rules be revised to include a "but for" causation standard, which they assert would be consistent with the underlying statutory language.

RESPONSE: The Commission appreciates the comment and is aware of the three-part framework used in the McDonnell Douglas standard. The suggested "but for" language is primarily one used in analyzing discrimination and retaliation claims by courts and administrative tribunals faced with a lack of direct evidence of the alleged behavior. The agency will use the appropriate standard when assessing the evidence presented, which would include the suggested "but for" causation analysis where there is no direct evidence of the intent behind an adverse action. No changes were made in response to this comment.

COMMENT: THA expressed concern that the proposed rules do not offer health care providers a sufficiently clear understanding of what safety protocols or staffing decisions, based upon vaccination status, they may engage in before those decisions would be considered an "adverse action" under the rules.

RESPONSE: The Commission appreciates the comment and understands THA's desire to better understand which policies are permissible and impermissible under the statute and these rules. The Commission's present interpretation of the statute would permit a health care facility, health care provider, or physician to establish reasonable policies for employees or contractors who are not vaccinated against COVID-19. The statute also requires TWC to consult with the Department of State Health Services (DSHS) when assessing whether a policy covered by §81D.0035 is reasonable. Because TWC's assessment of a policy will be made on a case-by-case basis in consultation with DSHS, the Commission does not take a position at this time whether a policy that includes more than the use of protective medical equipment based upon the level of risk the individual presents to patients would be deemed or found to be reasonable during such a consultation. No changes were made in response to this comment.

COMMENT: THA expressed concern that the proposed rules limit the involvement of the Department of State Health Services to reviewing only those policies involving the use of personal protective equipment by unvaccinated individuals. They assert that TWC should involve the department in reviewing any policy implemented by a health care employer, which when applied to unvaccinated contractors and employees resulted in a complaint to TWC.

RESPONSE: The Commission appreciates the comment but has determined that policies that exceed the use of personal medical equipment by an employee or contractor, of a facility, provider, or physician, who is not vaccinated against COVID-19 are not permitted under Texas Health and Safety Code §81D.0035. TWC will consult with the Department of State Health Services as required by Texas Health and Safety Code §81D.004. No changes were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §844.1, §844.2

PART IV. STATUTORY AUTHORITY

The rules are adopted to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are adopted under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Health and Safety Code, Chapter 81D.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405939
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 30, 2024
Proposal publication date: October 4, 2024
For further information, please call: (737) 301-9662

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SUBCHAPTER B. COMPLAINTS

40 TAC §§844.25 - 844.30

The rules are adopted to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are adopted under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Health and Safety Code, Chapter 81D.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405940
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 30, 2024
Proposal publication date: October 4, 2024
For further information, please call: (737) 301-9662

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SUBCHAPTER C. DETERMINATIONS

40 TAC §§844.50 - 844.55

The rules are adopted to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are adopted under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Health and Safety Code, Chapter 81D.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405941
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 30, 2024
Proposal publication date: October 4, 2024
For further information, please call: (737) 301-9662

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SUBCHAPTER D. ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

40 TAC §§844.75 - 844.92

The rules are adopted to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are adopted under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Health and Safety Code, Chapter 81D.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2024.

TRD-202405942
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 30, 2024
Proposal publication date: October 4, 2024
For further information, please call: (737) 301-9662

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 218. MOTOR CARRIERS

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §218.2; Subchapter B, Motor Carrier Registration, §§218.10, 218.11, 218.13, 218.14, 218.16, and 218.18; Subchapter C, Records and Inspections, §218.31 and §218.32; Subchapter D, Motor Transportation Brokers, §218.41; Subchapter E, Consumer Protection, §§218.53, 218.54, 218.56, 218.57, 218.61, 218.62, 218.64, and 218.65; Subchapter F, Administrative Penalties and Sanctions, §218.72; and Subchapter G, Financial Responsibility for Foreign Commercial Motor Vehicles, §218.80 and §218.82. The department adopts amendments to the following sections without changes to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6410): §§218.2, 218.10, 218.11, 218.14, 218.18, 218.31, 218.32, 218.41, 218.53, 218.54, 218.56, 218.57, 218.61, 218.64, 218.65, 218.72, and 218.82. These sections will not be republished. The department adopts §§218.13, 218.16, 218.62, 218.80, and Figure: 43 TAC §218.16(a) with changes at adoption to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6410 and 49 TexReg 6486, respectively). These sections will be republished. The department also adopts the repeal of §218.58, which will not be republished.

These adopted revisions are necessary to require the applicants for operating authority under Chapter 218 and Transportation Code, Chapter 643 to provide the department with more information and documents, so the department can detect and prevent chameleon carriers; to make the rules consistent with the department's current processes; to make the rules consistent with current law (both Texas law and applicable federal law); to delete language for which the department does not have rulemaking authority; to clarify language; to delete unnecessary language; and to otherwise clean up the rule text.

REASONED JUSTIFICATION.

Subchapter A. General Provisions.

An adopted amendment to §218.2 adds a new subsection (a) and creates a new subsection (b) for the defined terms. Adopted new §218.2(a) adds language stating that the definitions contained in Transportation Code, Chapter 643 apply to Chapter 218 and that the definitions contained in Chapter 643 govern in the event of a conflict with Chapter 218, except for the definition of the word "director" in §218.2. To the extent that the

terms used in Chapter 218 are already defined in Transportation Code, Chapter 643, there is no need to duplicate the definitions in Chapter 218. As a result, adopted amendments to §218.2 delete the following definitions because the terms are already defined in Transportation Code, Chapter 643: "department," "household goods," and "insurer." In addition, the department adopts the deletion of the definition for "commercial school bus" from §218.2 because the correct term is "school bus," which is defined in Transportation Code, §643.1015.

An adopted amendment to the word "director" in new §218.2(b) clarifies that the department's executive director designated the director of the department's Motor Carrier Division as the director under Transportation Code, §643.001(2). Transportation Code, §643.001(2) defines "director" as the executive director of the department or an employee of the department who is a division or special office director or holds a higher rank and is designated by the director. The department's executive director has designated the director of the department's Motor Carrier Division to perform the functions of the director under Chapter 218 and Transportation Code, Chapter 643. Therefore, a separate definition for "director" is necessary.

An adopted amendment to the definition for "advertisement" in new §218.2(b)(1) replaces the word "on-line" with the word "online" to be consistent with current terminology. An adopted amendment to the definition for "binding proposal" in new §218.2(b)(3) deletes the word "formal" because the word is not clear and is not necessary for the definition. Adopted amendments to the definition for "commercial motor vehicle" in new §218.2(b)(8) incorporate the definition of the term in Transportation Code, §548.001 and delete the prior definition, including the language regarding a commercial enterprise. This amendment is necessary to align with statute: neither Transportation Code, §548.001 nor Transportation Code, §643.051(a) defines a commercial motor vehicle to require the vehicle to be used in furtherance of a commercial enterprise. Only Transportation Code, §643.051(b) refers to compensation; however, that requirement only applies to household goods carriers that transport household goods, regardless of the size of the vehicle. Transportation Code, §643.051(a) states that the term "commercial motor vehicle" is defined in Transportation Code, §548.001.

Adopted amendments to the definition for "commercial motor vehicle" in new §218.2(b)(8) also delete the letter for subparagraph (B) due to the adopted deletion of subparagraph (A), add language to create a full sentence regarding the exclusions from the definition for "commercial motor vehicle," and replace prior clause numbers (i) through (vi) with subparagraph letters (A) through (F) to provide the correct rule structure under 1 TAC §91.33. In addition, an adopted amendment to the definition for "commercial motor vehicle" in new §218.2(b)(8)(A) changes the word "and" to "or" regarding a farm vehicle to be consistent with Transportation Code, §548.001. Although an adopted amendment to the definition for "commercial motor vehicle" in new §218.2(b)(8) refers to the definition found in Transportation Code, §548.001, it is helpful to clarify the language regarding a farm vehicle in §548.001 because the language in §548.001 has caused confusion in the past. An adopted amendment to the definition for "commercial motor vehicle" in new §218.2(b)(8)(B) rewords the exception to apply to a single cotton vehicle to be consistent with Transportation Code, §643.002(2). An adopted amendment to the definition for "commercial motor vehicle" in new §218.2(b)(8)(F) deletes language that requires a tow truck to be permitted under Occupations Code, Chapter 2308, Subchapter C to be consistent with the language in Transportation Code, §643.002(7) regarding exemptions from Transportation Code, Chapter 643.

An adopted amendment to the definition for the word "conversion" in new §218.2(b)(10) deletes the word "and" in the title to the Business Organizations Code because the word "and" does not appear in the name of this code. An adopted amendment to new §218.2(b) deletes the definition for the word "division" because the definition is not necessary due to the adoption of amendments that remove the word "division" in Chapter 218, except for references that indicate a particular division. These amendments provide clarity because Chapter 218 contains references to the department's Motor Carrier Division and the department's Enforcement Division.

Adopted amendments to the definition for "farmer" and "farm vehicle" in new §218.2(b)(13) and (14) make the definitions consistent with the definitions in 49 C.F.R. §390.5T because Transportation Code, §548.001 says the term "farm vehicle" has the meaning assigned by the federal motor carrier safety regulations assigned by Transportation Code, §644.001. The term "farm vehicle" appears in the definition of "commercial motor vehicle" in §218.2, and Transportation Code, §643.051(a) says that the term "commercial motor vehicle" is defined in Transportation Code, §548.001.

An adopted amendment to the definition for "foreign commercial motor vehicle" in new §218.2(b)(16) replaces the definition with a reference to the definition found in Transportation Code, §648.001, which contains the complete definition. An adopted amendment to the definition for "household goods carrier" in new §218.2(b)(19) deletes the clause regarding a commercial enterprise to align with statute because that clause does not appear in Transportation Code, §643.051(b).

Although Transportation Code, §643.001 defines the term "motor carrier," §643.001 does not define the term "carrier." Prior §218.2(28) included the same definition for the terms "motor carrier" and "carrier." For this reason, an adopted amendment modifies the definition for "motor carrier or carrier" in new §218.2(b)(23) to refer to the definition in Transportation Code, §643.001(6), rather than deleting the defined terms. An adopted amendment to the definition for "motor transportation broker" in new §218.2(b)(24) refers to the definition in Transportation Code, §646.001 because it is not necessary to duplicate statutory language in a rule.

An adopted amendment to new §218.2(b)(28) changes the term "principal place of business" to "principal business address" to use the same term that is used in Transportation Code, §643.052(1). An adopted amendment to new §218.2(b) deletes the definition for the term "reasonable dispatch" because the term only appeared in §218.58, which the department repealed. An adopted amendment to new §218.2(b) deletes the definition for "SOAH" because the acronym does not appear in Chapter 218. Adopted amendments to new §218.2(b) renumber the definitions due to adopted amendments that delete definitions.

Subchapter B. Motor Carrier Registration.

An adopted amendment to §218.10 deletes the first sentence because it is not necessary to repeat language from Transportation Code, §643.051 and §643.002. An adopted amendment to §218.10 also modifies the language regarding a household goods carrier because the term "household goods carrier" is a defined term in §218.2. In addition, an adopted amendment to §218.10 clarifies the language to state that a motor carrier, leas-

ing business, or household goods carrier registers with the department. Lastly, an adopted amendment to §218.10 deletes the reference to workers' compensation because Subchapter B of Chapter 218 does not set out the minimum workers' compensation insurance requirements.

Adopted amendments to §218.11 replace the term "the public roads or highways" with "a public highway," which is a defined term in §218.2.

Many of the adopted amendments to §218.13 and §218.14 were presented to the Motor Carrier Regulation Advisory Committee (MCRAC) for review and feedback at the MCRAC meeting in December 2023. The focus of the MCRAC meeting was to discuss the draft amendments to §218.13 and §218.14 to detect and prevent chameleon motor carriers (chameleon carriers). A chameleon carrier is a motor carrier that attempts to continue operating under a certificate of registration without addressing a previous penalty, violation of a legal requirement, or order regarding violation of a legal requirement under a different certificate of registration. There are two types of chameleon carriers: 1) a motor carrier that applies to the department for a new certificate of registration to continue to operate as a motor carrier under a different person's name or a different legal entity; and 2) a motor carrier that already has more than one certificate of registration under different names or legal entities. Under this second type of chameleon carrier, the motor carrier continues to operate under a different certificate of registration when it incurs a penalty, is found to be in violation of a legal requirement, or receives an order regarding a violation of a legal requirement under one of its current certificates of registration.

At the December 2023 MCRAC meeting, the MCRAC members made informal suggestions and approved two motions requesting changes to the draft amendments to §218.13. The department made changes consistent with MCRAC's informal suggestions and one of its motions. Although MCRAC recommended the deletion of the draft amendments to §218.13(a)(3)(E), the department modified the language in §218.13(a)(3)(E) and (i) to strike a balance between addressing the concerns of MCRAC and enabling the department to request necessary information to help detect and prevent chameleon carriers.

The department also met with staff from the Federal Motor Carrier Safety Administration (FMCSA) to learn how FMCSA detects chameleon carriers and prevents them from obtaining operating authority for interstate transportation. In addition, the department reviewed the applicable federal laws and forms to inform the department regarding the amendments to §218.13. Further, the department reviewed materials from International Registration Plan, Inc. regarding another state's procedures to identify a possible chameleon carrier.

Many of the adopted amendments to §218.13 are designed to require new applicants for intrastate operating authority to provide the department with the information it needs to detect and prevent chameleon carriers. The department's primary goal is to prevent chameleon carriers. However, the additional information and documents that are addressed in the adopted amendments to §218.13 will also help the department detect any current chameleon carriers. The Texas Legislature passed laws to authorize the department to deny intrastate operating authority to chameleon carriers and to revoke a chameleon carrier's intrastate operating authority, such as Transportation Code, §643.054(a-2) and §643.252(a)(7).

An adopted amendment to the introductory sentence in §218.13(a) clarifies and modernizes the rule by stating that an application for motor carrier registration must be filed electronically in the department's designated registration system and that the applicant must provide both information and documents. An adopted amendment to §218.13(a)(1) clarifies that the applicant must provide a valid United States Department of Transportation (USDOT) number that was issued to the applicant, to prevent applicants from attempting to use others' USDOT numbers.

Adopted amendments to §218.13(a)(2) require the applicants to provide additional information and documents, which will help the department to detect, prevent, and revoke chameleon carriers. The department currently requires applicants to provide most of the information in adopted new §218.13(a)(2)(A) and (B) regarding the applicant, including contact and identifying information. Adopted new §218.13(a)(A) also makes the rule text consistent with the department's current process, which requires that the applicant's name and email address match the information the applicant provided to FMCSA to obtain the USDOT number that the applicant provided to the department in the application. This requirement helps the department to identify the applicant and to prevent fraud. Adopted new §218.13(a)(2)(C) adds a new requirement for a legible and accurate electronic image of the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, as well as the existing requirement for an applicant to provide each assumed named certificate on file with the Secretary of State or county clerk, if applicable. This new requirement also helps the department to identify the applicant and prevent fraud.

Adopted new §218.13(a)(3)(A) through (F) require applicants to provide information and documents on the applicant's owners, managers, representatives, and affiliates, as applicable. An adopted amendment to §218.13(a)(3)(A) puts authorized representatives of an applicant on notice that they may be required to provide written proof of authority to act on behalf of the applicant. Many of these requirements are new requirements that will provide the department with additional information and documents that are necessary to detect and prevent chameleon carriers.

At the MCRAC meeting in December 2023, members of MCRAC expressed concerns regarding a prior draft of adopted new §218.13(a)(3)(E) because the language could have required applicants to provide information on many employees who do not direct the operations of the motor carrier, and to update the information frequently due to frequent staff turnover in lower-ranking positions. Although the MCRAC members voted to strike new §218.13(a)(3)(E), the department further defined the positions to which this application requirement applies to obtain relevant information to help the department detect and prevent chameleon carriers by focusing on the applicant's representatives who have or exercise authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier. Examples of applicable laws regarding a motor carrier are the motor carrier safety regulations that are administered by the Texas Department of Public Safety under Transportation Code, Chapter 644 and 37 TAC Chapter 4 (Commercial Vehicle Regulations and Enforcement Procedures). In addition, the department modified the draft amendments to §218.13(i) that the department provided to the MCRAC members for the December 2023 MCRAC meeting to eliminate the draft amendment that would have required a motor carrier with a certificate of registration to update all information and documents that the motor carrier provided to

the department in the motor carrier's current application within 30 days of a change in the information or documents the motor carrier provided to the department. The adopted amendments to §218.13(i) only require a motor carrier with a certificate of registration to update its principal business address, mailing address, and email address in the department's online system within 30 days of a change to the information.

The department adopts §218.13(a)(3)(F)(ii) with a change at adoption to decapitalize the word "card" because the word should not be capitalized in the term "Texas identification card."

Adopted amendments to §218.13(a)(4) clarify the language and replace the term "principal place of business" with the term "principal business address" to be consistent with the terminology used in Transportation Code, §643.052(1). Adopted amendments to §218.13(a)(6) delete the word "commercial" from the term "commercial motor vehicle" because Transportation Code, §643.051(b) requires a household goods carrier to obtain operating authority under Transportation Code, Chapter 643, even if their motor vehicles do not fall within the definition of a "commercial motor vehicle" as defined by Transportation Code, §548.001. An adopted amendment to §218.13(a)(6) also removes the word "motor" from the term "vehicle identification number" to make the term consistent with current terminology.

An adopted amendment to §218.13(a)(7) deletes the language that required the applicant to state if the applicant is domiciled in a foreign country because this requirement is not relevant to the type of motor carrier operation, and an adopted amendment adds this requirement to new §218.13(a)(12)(E). Adopted amendments to §218.13(a)(11)(A)(ii) and §218.13(a)(14) replace the references to §218.2(8)(A)(ii) with references to Transportation Code, §548.001(1)(B) to specify the portion of the definition for "commercial motor vehicle" that deals with a vehicle designed or used to transport more than 15 passengers. These adopted amendments are necessary because an adopted amendment to §218.2 removes the specific language from the definition of "commercial motor vehicle" and instead refers broadly to Transportation Code, §548.001.

Adopted amendments to §218.13(a) and §218.13(a)(12) clarify that the requirements apply to an original application. An adopted amendment to §218.13(a)(12)(C) adds the word "the" to improve the wording of the sentence.

An adopted amendment to §218.13(a)(12) deletes the language in prior subparagraph (D) because an adopted amendment moved the language to new §218.13(a)(2)(A), and re-lettered subsequent subparagraphs accordingly. Adopted amendments to new §218.13(a)(12)(D) incorporate the language from the department's New Applicant Questionnaire into rule text, with certain amendments, such as providing a three-year timeframe for certain responses. The New Applicant Questionnaire was designed to obtain relevant information to help the department detect, prevent, and revoke chameleon carriers.

Adopted amendments to new §218.13(a)(12)(F) include the current application certification in rule text. An adopted amendment to new §218.13(a)(12)(G) clarifies that an application must be accompanied by any other information and documents the department requires to evaluate the application under current law, to allow the department the latitude to request additional required information and documentation in order to prevent chameleon carriers and ensure the applicant is eligible for a certificate of registration under Chapter 218 and Transportation Code, Chapter 643.

Adopted amendments to §218.13(a) also delete prior language because the prior language was modified and incorporated into adopted amendments to §218.13(a) in addition to new requirements. In addition, adopted amendments to §218.13(a) renumber or re-letter subdivisions due to deletions and additions.

An adopted amendment to §218.13(a)(14)(B) replaces the word "vehicles" with the word "vehicle" to correct a grammatical error and to clarify that the requirement applies to each commercial motor vehicle.

Adopted amendments throughout §218.13(c), (g) and (i) change certain instances of the words "will" or "must" to "shall" for clarity and consistency. Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.13(c), (g) and (i). The department adopts §218.13(c) with changes at adoption to change the word "will" to "must" in two places. Government Code, §311.016 defines the word "must" to create or recognize a condition precedent, which is the intended meaning in §218.13(c). An adopted amendment to §218.13(c)(2) changes the term "registrant's" to "motor carrier's" because the term "motor carrier" is defined in §218.2. An adopted amendment to §218.13(c)(2) also changes the term "principal place of business" to "principal business address" to be consistent with terminology in Transportation Code, §643.052(1). An adopted amendment to §218.13(c)(2)(C) deletes the word "commercial" from the term "commercial motor vehicle" because Transportation Code, §643.051(b) applies to household goods carriers, even if their motor vehicles do not fall within the definition of a "commercial motor vehicle" as defined by Transportation Code, §548.001.

An adopted amendment to §218.13(c)(2)(F) replaces the word "information" with "cab card" for consistency. In addition, an adopted amendment to §218.13(c)(2) deletes prior subparagraph (G), which said the display of an image that includes the insurance cab card or the display of insurance information via a wireless communication device does not constitute effective consent for a law enforcement officer or any other person to access any other content of the wireless communication device, because the department does not have the statutory authority for this language. However, the person who chooses to display an image that includes the insurance cab card or the display of insurance information via a wireless communication device can verbally specify the extent of their consent to having the law enforcement officer or any other person access the device prior to displaying the image.

An adopted amendment to §218.13(d)(2) replaces the word "shall" with the word "must." Government Code, 311.016 defines the word "must" to create or recognize a condition precedent, which is the intended meaning in §218.13(d)(2).

An adopted amendment to the introductory sentence in §218.13(e) modernizes the rule text by adding language that says a motor carrier shall electronically file a supplement to an original application in the department's designated registration system. An adopted amendment to §218.13(e)(7)(A) replaces the word "re-register" with the word "reregister" because the word does not have a hyphen in Transportation Code, §643.0585. An adopted amendment to §217.13(e)(7)(B) replaces the word "facts" with the word "issue" for clarity.

An adopted amendment to §218.13(g) deletes the word "commercial" from the term "commercial motor vehicle" because Transportation Code, §643.051(b) applies to household goods carriers, even if their motor vehicles do not fall within the def-

inition of a "commercial motor vehicle" under Transportation Code, §548.001. Adopted amendments to §218.13(i) require a motor carrier with a certificate of registration to update their principal business address, mailing address, and email address in the department's online system within 30 days of a change to the information. These amendments to §218.13(i) replace a requirement for the motor carrier to review this information in the department's online system every six months and to update such information if it is no longer correct. The requirement for the motor carrier to update information within 30 days is intended to provide the department with updated information sooner and to eliminate an unnecessary requirement for a motor carrier to review this information every six months even if there is no change to the information.

An adopted amendment to the title to §218.14 deletes the word "commercial" from the term "commercial motor vehicle" because Transportation Code, §643.051(b) applies to household goods carriers, even if their motor vehicles do not fall within the definition of a "commercial motor vehicle" under Transportation Code, §548.001. Adopted amendments throughout §218.14 change the word "will" to "shall." Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.14. Adopted amendments throughout §218.14 add a hyphen to the words "90-day" and "seven-day" as a grammatical correction because the words are compound modifiers of the word "certificates."

An adopted amendment to §218.14(b)(1) changes the first sentence to say that the department shall provide the renewal notice to each registered motor carrier at least 30 days before the expiration of the motor carrier's registration to be consistent with Transportation Code, §643.058(b). An adopted amendment to §218.14(b)(1) also replaces the word "division's" with the term "Motor Carrier Division's" for clarity because other sections in Chapter 218 refer to the department's Enforcement Division, and an adopted amendment to §218.2 deletes the definition for the word "division." In addition, an adopted amendment to §218.14(b)(1) changes the word "mailed" to "sent" because the department may send the notice electronically. Further, an adopted amendment to §218.14(b)(1) removes the requirement for the motor carrier to submit its renewal application to the department at least 15 days prior to the renewal date because motor carriers currently submit their renewals online in the department's designated registration system in which the renewal is automated if there are no issues with the renewal application. Lastly, an adopted amendment to §218.14(b)(1) adds language that says a motor carrier shall electronically file a renewal application in the department's designated registration system to modernize the rule.

Adopted amendments to §218.14(b)(1)(A) require the applicant to provide the department with any new information and documents required under §218.13(e) if the information or documents have not previously been provided to the department. The department needs updated information and documents to ensure the motor carrier still qualifies to be a motor carrier, as well as to prevent and detect chameleon carriers.

Adopted amendments to §218.14(b)(5) make the language consistent with Transportation Code, §643.058(d), which prohibits a motor carrier from renewing a registration that has been expired for more than 180 days. Also, adopted amendments to §218.14(b)(5) modernize the rule by adding language that says a motor carrier shall electronically file a supplemental application in the department's designated registration system. In addition, adopted amendments to §218.14(b)(5) make the language easier to read by breaking the language into multiple subparagraphs and improving the language. An adopted amendment to new §218.14(b)(5)(C) clarifies the language by adding a reference to evidence of financial responsibility as authorized by Transportation Code, §643.102. Adopted amendments to new §218.14(b)(5)(C) replace a reference to the "division" with a reference to the "department" for clarity and consistency.

An adopted amendment to §218.14(c)(2) replaces the word "re-register" with the word "reregister" because the word does not have a hyphen in Transportation Code, §643.0585. Adopted amendments to §218.14(c)(2) replace the term "public streets and highways" with "a public highway," which is a defined term in §218.2. Adopted amendments throughout §218.14(c) and §218.16 change the word "will" to "shall." Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.14(c) and §218.16.

Adopted amendments to §218.16(a) delete the word "commercial" in the term "commercial automobile liability insurance" because Transportation Code, §643.101 does not use the word "commercial" to describe the amount of liability insurance that is required under Transportation Code, Chapter 643. An adopted amendment to §218.16(a) also clarifies the coverage required under an automobile liability insurance policy, which must cover bodily injury to or death of an individual, as well as loss or damage to property.

In addition, adopted amendments to §218.16(a) clarify the financial responsibility requirements of a motor carrier that operates a foreign commercial motor vehicle in intrastate transportation in Texas if the motor carrier is required to register with the department under Transportation Code, Chapter 643. Although Transportation Code, §643.101(b) authorizes the department to set the amount of required liability insurance at an amount that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. §13906(a)(1), Transportation Code, §648.102 requires the department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers that operate foreign commercial motor vehicles in Texas to maintain financial responsibility. Also, Transportation Code, §648.102(b) states that Transportation Code, Chapter 648 prevails over any other requirement of state law relating to financial responsibility for operation of foreign commercial motor vehicles in Texas. The department must comply with both Transportation Code, §643.101 and §648.102 regarding the required amount of financial responsibility for a motor carrier that is required to register with the department under Transportation Code, Chapter 643 that operates a foreign commercial motor vehicle in intrastate transportation in Texas. The financial responsibility requirements under 49 C.F.R. §387.9 regarding minimum levels of financial responsibility for motor carriers of property, and 49 C.F.R. §387.33T regarding minimum levels of financial responsibility for motor carriers of passengers, are higher than the minimum levels of financial responsibility for certain motor carriers under §218.16 that do not operate a foreign commercial motor vehicle.

Pursuant to the department's rulemaking authority under both Transportation Code, §643.101(b) and §648.102, adopted amendments to §218.16(a) adopt by reference the required level of financial responsibility under 49 C.F.R. Part 387, including any amendments that became effective through July 1, 2024, for a motor carrier operating a foreign commercial motor vehicle in intrastate transportation in Texas. An adopted amendment to

§218.16(a) deletes reference to the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015, because FMCSA has since amended 49 C.F.R. Part 387.

The department adopts §218.16(a) with changes at adoption to clarify that a motor carrier that is required to register with the department under Transportation Code, Chapter 643 and operates a foreign commercial motor vehicle in intrastate transportation in Texas must comply with the minimum level of financial responsibility in 49 C.F.R. Part 387 for such vehicle. If such a motor carrier also operates a motor vehicle that is not a foreign commercial motor vehicle as defined in Transportation Code, §648.001, the motor carrier must comply with the minimum level of financial responsibility in Figure 43 TAC §218.16(a) for the non-foreign commercial motor vehicle while operating in intrastate transportation in Texas.

Adopted amendments to the second and third categories in Figure 43 TAC §218.16(a) modify the language to be consistent with Transportation Code, §548.001(1)(B) regarding vehicles, including buses, designed or used to transport more than 15 passengers, including the driver. The department adopts Figure 43 TAC §218.16(a) with a change at adoption to delete the word "commercial" from the term "commercial school buses" in the fourth category because Transportation Code, §643.1015 uses the term "school bus." Adopted amendments to the seventh and eighth categories in Figure 43 TAC §218.16(a) modify the language to be consistent with language in 49 C.F.R. §387.9(3) and (2), respectively, because federal law provides the minimum levels of financial responsibility for intrastate transportation for these categories under 49 U.S.C. §31139(d). Adopted amendments to the ninth category in Figure 43 TAC §218.16(a) modify the language to be consistent with language in 49 C.F.R. §387.9(4) because Transportation Code, §643.101(b) requires the department to set the amount of required liability insurance at an amount that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. §13906(a)(1), which cites to §31139 regarding the minimum financial responsibility requirements for transporting property. The statutory authority listed for 49 C.F.R. §387.9 regarding minimum levels of financial responsibility for motor carriers of property includes 49 U.S.C. §13906 and §31139.

Adopted amendments to §218.16(b) remove the words "for hire" because the definition for the term "household goods carrier" in §218.2 already includes the words "for compensation." An adopted amendment to §218.16(b) also changes the word "shipper" to a plural possessive "shippers'" because the language deals with damage to multiple shippers' cargo. Adopted amendments to §218.16(c) make the language consistent with the language in Transportation Code, §643.106 regarding insurance for employees. Adopted amendments to §218.16(c) also add letters for new subparagraphs (C) and (D) to break the paragraph into additional subdivisions to help make the language consistent with the language in Transportation Code, §643.106.

Adopted amendments throughout §218.16(d) add the term "motor carrier" after the term "self-insured" for clarity. Adopted amendments to §218.16(d)(1) clarify that an applicant for self-insured status under Transportation Code, §643.102 is authorized to request self-insured status for cargo liability, as well as for bodily injury and property damage liability. An adopted amendment to §218.16(d)(2) changes the word "allow" to "enable" for clarity because the department is allowed to determine whether the applicant should be granted self-insured status; however, the department needs information and documents to enable the department to make the determination. An adopted amendment to §218.16(d)(2) also replaces the word "materials" with the term "information and documents" for clarity. An adopted amendment to §218.16(d)(2)(B) replaces the term "security limits" with the term "insurance levels" for clarity. An adopted amendment to §218.16(d)(2)(C) makes the language consistent with the Texas Department of Public Safety's "satisfactory safety rating" under Transportation Code, Chapter 644 and 37 TAC §4.15. Also, an adopted amendment to §218.16(d)(2)(C) authorizes an applicant to provide evidence of a "satisfactory" safety rating from FMCSA because a safety rating from FMCSA is relevant evidence of the motor carrier's safety program. Another adopted amendment to §218.16(d)(2)(C) states that an application by a motor carrier with less than a "satisfactory" safety rating or no safety rating will be summarily denied for self-insured status. Transportation Code, §643.102 requires the department to provide a responsible system of self-insurance for a motor carrier, and safety is an integral component of such a system.

Adopted amendments to §218.16(d)(4) replace the word "applicant" with the words "approved self-insured motor carrier" or "motor carrier" for clarity. Adopted amendments to §218.16(d)(4) also update the language to reflect current procedures regarding the filing of annual statements and any reports with the department.

An adopted amendment to §218.16(d)(5) replaces the word "applicant" with the term "motor carrier" for clarity. An adopted amendment to §218.16(d)(5) also clarifies the department's current practice of including limitations, restrictions, and requirements in the department's letter approving self-insured status under Transportation Code, §643.102. The department adopts §218.16(d)(5) with a change at adoption to improve the language regarding any department letter approving self-insured status.

Adopted amendments to §218.16(d)(6) update the language to reflect current procedures, to clarify the language, and to remove unnecessary language.

An adopted amendment to §218.16(e)(2)(A) adds the word "a" to correct a grammatical error. An adopted amendment to §218.16(e)(3) changes the word "shall" to "must" because it a condition precedent for an applicant to pay the required filing fee of $100 to obtain a certificate of registration. Government Code, §311.016 states that the word "must" creates or recognizes a condition precedent, which is the intended meaning in §218.16(e)(3). An adopted amendment to §218.16(e)(3) also combines the two prior sentences into one sentence to clarify that the applicant is only required to pay the $100 filing fee when the applicant submits an original application and when the applicant submits a supplemental application when retaining a revoked certificate of registration number. Transportation Code, §643.103(a) and (c) only authorize the department to charge the $100 filing fee in certain circumstances, which are more limited than the circumstances under which a motor carrier's insurer is required to file proof of insurance with the department under §218.16(e)(2).

An adopted amendment to §218.16(f) makes the language consistent with Transportation Code, §643.104(a) by modifying the language and replacing the word "shall" with "may not." Government Code, §311.016 defines the word "may not" as imposing a prohibition, and the language in §218.16(f) is intended to be a prohibition. Transportation Code, §643.104(a) prohibits an insurer from terminating insurance coverage to a motor carrier that is registered under Subchapter B of Transportation Code, Chap-

ter 643 unless the insurer provides the department with notice at least 30 days before the date the termination of insurance takes effect. Adopted amendments to §218.16(f) also add a hyphen to the words "90-day" and "seven-day" as a grammatical correction because the words are compound modifiers of the word "certificates." Adopted amendments to §218.16(h) make the language consistent with Transportation Code, §643.105 and specify the people who are authorized to sign the affidavit for the motor carrier if an insurer for a motor carrier becomes insolvent, is placed in receivership, or has its certificate of authority suspended or revoked, and the motor carrier no longer has insurance coverage as required by Transportation Code, Chapter 643, Subchapter C.

An adopted amendment to §218.18(d) clarifies that a motor carrier is not required to carry proof of registration in a vehicle leased from a registered leasing business under a short-term lease. Transportation Code, §643.063(a)(2) defines a "short-term lease" as a lease of 30 days or less.

Subchapter C. Records and Inspections.

An adopted amendment to §218.31(b)(3) changes the word "will" to "shall" for consistency and clarity. Government Code, §311.016 defines the word "shall" to impose a duty, and that is the intended meaning in §218.31. Adopted amendments to §218.31(c)(1) and §218.32(c) change the term "principal place of business" to "principal business address" for consistency and to use the same term that is defined in §218.2 and used in Transportation Code, §643.052(1). An adopted amendment to §218.32(c) also decapitalizes the word "department" because the word is not capitalized in Transportation Code, Chapter 643. In addition, an adopted amendment to §218.32(c)(3) deletes a reference to 49 C.F.R. §390.29 because the inspection of documents for motor carriers that are required to register under Transportation Code, Chapter 643 is governed by Transportation Code, §643.254.

Subchapter D. Motor Transportation Brokers.

An adopted amendment to §218.41(b)(3) replaces the word "shipper" with a reference to the person to whom the motor transportation broker provides services to clarify that this language is not limited to a shipper of a household goods motor carrier. An adopted amendment to §218.41(b)(3) also changes the word "it" to "the person" to conform with the adopted amendment to replace the reference to the word "shipper." An adopted amendment to §218.41 deletes prior subsection (d), regarding the amount of recovery, because the department lacks statutory authority for the language.

Subchapter E. Consumer Protection.

Adopted amendments to §218.53 replace the mandatory standard for uniform cargo liability with a voluntary standard for uniform cargo liability for a household goods carrier as authorized by Transportation Code, §643.152. The adopted amendments to §218.53 are consistent with 49 C.F.R. §375.201, which is a federal regulation adopted under Subtitle IV, Title 49, United States Code. The language in Transportation Code, §643.152 is based on language in 49 U.S.C. §14501(c)(1) and (3)(A) and (B), which is a federal preemption statute. Even though 49 U.S.C. §14501(c)(2)(B) says that the restrictions in subsection (c)(1) do not apply to the intrastate transportation of household goods, Transportation Code, §643.152 does not provide an exemption for the intrastate transportation of household goods. The department therefore does not have statutory authority to set a mandatory standard for uniform cargo liability for the intrastate transportation of household goods in Texas.

The absence of a mandatory standard for uniform cargo liability under Transportation Code, §643.152 means that language in a moving services contract regarding cargo liability, including limitation of liability for loss or damage to cargo, is not an enforcement issue for the department. Household goods carriers and shippers are authorized to agree to any cargo liability and limitation of liability for each intrastate shipment of household goods to the extent authorized by other applicable law that the department is not authorized to implement or enforce, such as Transportation Code, Chapter 5, contract law, other consumer protection laws, and certain common law, which a court could interpret in the event of a lawsuit.

An adopted amendment to §218.53 also adopts by reference 49 C.F.R. §375.201, including any amendments that became effective through July 1, 2024.

Adopted amendments to §218.54(a) replace the word "carrier" with the possessive word "carrier's" to fix a grammatical error, include a reference to the moving service contract between the parties (including a pre-existing transportation contract as described by §218.57(d)) to replace a reference to §218.53 regarding the amount of the household goods carrier's liability, and clarify that the parties might agree that the household goods carrier would have no liability for loss or damage regarding the shipper's property. An adopted amendment to §218.54(d) replaces the catch line for the subsection because the word "penalty" is a confusing term. The department is authorized to assess administrative penalties, which is something different than the liability referenced in §218.54(d).

An adopted amendment to §218.56(a)(5) deletes language regarding the mandatory uniform cargo liability that the department deleted in the adopted amendments to §218.53. An adopted amendment to §218.56(a)(5) also rewords the sentence due to the deletion and clarifies that the proposal might state that the household goods carrier would have no liability for loss or damage regarding the shipper's property. An adopted amendment to §218.56(e)(3) deletes language regarding a portion of a uniform bill of lading under §218.58 because the department adopted the repeal of §218.58. An adopted amendment to §218.56(e)(3) also adds a reference to the moving services contract regarding the authority for the household goods carrier to place the shipment in storage and assess fees relating to storage.

Adopted new §218.57(a)(6) replaces a reference to the mandatory uniform cargo liability under §218.53 for the reasons stated regarding the adopted amendments to §218.53, and replaces the language with text that is similar to the language in 49 C.F.R. §375.201 regarding the disclosure of the limits of the household goods carrier's liability for loss or damage to a shipper's household goods; however, the adopted amendment also clarifies that the moving services contract must expressly state if the household goods carrier's liability is $0.00 for loss or damage to a shipper's household goods.

Adopted new §218.57(a)(7) replaces a reference to the mandatory uniform cargo liability under §218.53 for the reasons stated regarding the adopted amendments to §218.53, and replaces the language with text that requires the household goods carrier to clearly and concisely disclose any costs associated with the household goods carrier's increased liability for loss or damage to a shipper's household goods.

Adopted new §218.57(a)(9) replaces a mandatory clause with an explanation of the clause that a household goods carrier must include in its contract with a shipper to put the shipper on notice regarding the documents that constitute the contract. The mandatory clause in prior §218.57(a)(9) appeared to be written for a hard copy of the moving services contract because it referred to "the front and back of this document." However, the parties may use an electronic version of the moving services contract. Also, the mandatory clause in prior §218.57(a)(9) referred to an addendum, but the average shipper may not know what an addendum is. The adopted new §218.57(a)(9) gives the household goods carrier the flexibility to draft a clause that works for its moving services contract.

Adopted new §218.57(a)(13) adds a clause to require the household goods carrier to include certain language in the moving services contract regarding the claims process for a shipper who wants to file a claim against the household goods carrier. This language is designed to protect a consumer using the services of a household goods carrier, as authorized by Transportation Code, §643.153(a) and (b). Although the department is prohibited from establishing a uniform bill of lading under Transportation Code, §643.152, the prohibitions under §643.152 are intended to prohibit the economic regulation of motor carriers regarding the prices, routes, or services as stated in Transportation Code, §643.151 and the title to Transportation Code, Chapter 643, Subtitle D (Economic Regulation). New §218.57(a)(13) is not an economic regulation regarding the household goods carrier's prices, routes, or services. New §218.57(a)(13) deals with the claims process under §218.61, which is part of the department's formal process for resolving a dispute over a fee or damage under Transportation Code, §643.153(b)(1). Due to the adoption of new §218.57(a)(13), the department also adopts amendments to §218.57(a) to delete the word "and" in §218.57(a)(11) and to add the word "and" at the end of §218.57(a)(12).

The department adopts the repeal of §218.58 because Transportation Code, §643.152 says that the department is only authorized to establish a voluntary standard for "uniform bills of lading or receipts for cargo being transported" and that any voluntary standard that the department establishes must be consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law. The language in Transportation Code, §643.152 is based on language in 49 U.S.C. §14501(c)(1) and (3)(A) and (B), which is a federal preemption statute. Transportation Code, §643.152 and 49 U.S.C. 14501(c)(3)(A) both use the term "uniform cargo liability." Although 49 U.S.C. 14501(c)(3)(A) uses the term "uniform bills of lading or receipts for property being transported," Transportation Code, §643.152 uses the similar term "uniform bills of lading or receipts for cargo being transported." The federal laws on household goods carriers are therefore relevant sources to determine what the Texas Legislature intended the term "bill of lading" to mean in Transportation Code, §643.152. Federal law, such as 49 C.F.R. §375.103, and Appendix A to 49 C.F.R. Part 375 (Your Rights and Responsibilities When You Move), Definitions and Common Terms, and the language in the department's rules, such as the definition for "moving services contract" in §218.2 and the repealed language in §218.58, state that a bill of lading is a moving services contract. A "moving services contract" in repealed §218.58 is a "bill of lading" under state and federal law. The department adopts the repeal of §218.58 because it contained a mandatory standard for a portion of a "uniform bill of lading" regarding limitation of liability, that is impermissible under Transportation Code, §643.152. To the extent the household goods carrier sought to alter or expand on the limitation of liability language that is set forth in §218.57, §218.58 required the household goods carrier to include one of two sets of legal terms and conditions verbatim in their moving services contract with the shipper, which means the language in prior §218.58 was a mandatory standard for a portion of a "uniform bill of lading" regarding limitation of liability. As stated above, prior §218.57(a)(6) and (7) included uniform cargo liability language that said a household goods carrier's liability for loss or damage to any shipment is $0.60 per pound per article, unless the carrier and shipper agree, in writing, to a greater level of liability. The department adopted the deletion of the language in prior §218.57(a)(6) and (7) because they were mandatory standards, which the department lacks legal authority to create through rule under Transportation Code, §643.152.

Moreover, the department was not authorized to amend §218.58 to say that it is a voluntary standard because Transportation Code, §643.152 says that the department is only authorized to establish a voluntary standard for "uniform bills of lading or receipts for cargo being transported" and that any voluntary standard that the department establishes must be consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law. The language in repealed §218.58 was not entirely consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law, such as 49 C.F.R Part 375 (Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations).

An adopted amendment to §218.61(b)(1) provides a clear deadline of 23 days for a household goods carrier to issue the acknowledgment letter to the claimant, and an adopted amendment to §218.61(b)(1)(B) makes a conforming amendment due to the adopted amendment to §218.61(b)(1). The prior 20-day deadline for a household goods carrier to send an acknowledgment of the claim to the claimant excluded Sundays and nationally-recognized holidays, which made it harder for a household goods carrier to calculate the deadline.

Adopted amendments to §218.61(b)(1)(A) and (2) provide a clear deadline of 35 days for a shipper to submit a request to the department for mediation. The prior 30-day deadline excluded Sundays and nationally recognized holidays, which made it harder for a shipper to calculate the deadline.

Section 218.62 describes the department's mediation process, which is part of the department's formal process for resolving a dispute over a fee or damage under Transportation Code, §643.153(b)(1) to protect a shipper of a household goods carrier from deceptive or unfair practices and unreasonably hazardous activities. Adopted amendments to §218.62(a) clarify that a claimant may only make a written request to the department for mediation regarding a dispute over a fee or damage to a shipper's household goods because Transportation Code, §643.153(b)(1) only authorizes the department to establish a formal process for resolving a dispute over a fee or damage. There are other potential claims that a claimant may have against a household goods carrier, such as a personal injury claim, that are outside the scope of the department's mediation program. The claimant may have the right to seek damages against the household goods carrier or the individuals who are responsible for the damages in a court of law.

An adopted amendment to §218.62(c) provides a clear deadline of 35 days for a shipper to submit a request for mediation to the department. The prior 30-day deadline excluded Sundays and nationally recognized holidays, which made it harder

for a shipper to calculate the deadline. An adopted amendment to §218.62(d) makes a conforming amendment to increase the number of days after which the department shall deny a request for mediation due to the adopted amendment to §218.62(c). The adopted amendment to §218.62(d) substitutes "125 days" for "120 days (excluding Sundays and nationally recognized holidays)." The current 90-day deadline in §218.61(a)(1) does not include the clause "(excluding Sundays and nationally recognized holidays)," so 90 days plus the new 35-day deadline under the adopted amendment to §218.62(c) equals 125 days. An adopted amendment to §218.62(f) makes a conforming amendment to increase the 30-day deadline to a 35-day deadline for a shipper to submit a request for mediation to the department, due to the adopted amendment to §218.62(c).

An adopted amendment to §218.62(c)(3) corrects a grammatical error by changing the word "has" to "have." Adopted amendments to §218.62(d) change the word "will" to "shall" for consistency and clarity. Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.62(d). An adopted amendment to §218.62(f) modernizes the rule by authorizing the calculation of the 35-day deadline for requesting mediation to be based on the date the claim denial or settlement offer letter is emailed to the claimant.

Adopted amendments to §218.62(i) add a new paragraph (1) and modify the requirement for a household goods carrier to participate in the mediation process due to the adopted amendments to §218.53 to change the mandatory uniform cargo liability standard to a voluntary standard. The adopted amendments to §218.62(i) strike a balance between protecting a shipper and not forcing the household goods carrier to mediate a shipper's claim for loss or damage regarding the shipper's property that conflicts with the terms of the moving services contract regarding the household goods carrier's liability. Because there is no longer a mandatory standard for uniform cargo liability under the adopted amendments to §218.53, the household goods carrier and the shipper might agree in their moving services contract that the household goods carrier will have $0.00 liability for loss or damage to the shipper's property, which may reduce the contract costs for the shipper. If the parties agree that there will be $0.00 liability or if a pre-existing transportation contract states the household goods carrier will have $0.00 liability, there is nothing to mediate regarding liability for loss or damages to the shipper's property. However, there could still be a need for a mediation regarding a possible claim on the fee under the moving services contract, or a claim if the shipper purchases insurance from the household goods carrier and the household goods carrier does not obtain the insurance policy or other appropriate evidence of purchased insurance for the shipper under §218.54. The department adopts §218.62(i)(1) with changes at adoption to remove the word "would" and to change the word "exceed" to "exceeds" to improve the language in the rule text.

Adopted amendments to §218.62(i) also add a new paragraph (2) to separate the language in new paragraph (1) from the prior language in §218.62(i) regarding the department's authority to impose administrative penalties on a household goods carrier who refuses to participate in mediation as required by §218.62. In addition, an adopted amendment to new §218.62(i)(2) substitutes the word "penalties" for the word "sanctions" because §218.71 deals with penalties, rather than sanctions.

Adopted amendments to §218.64(a) and (b) delete the references to "two incorporated cities" to be consistent with the language in Transportation Code, §643.153(d) regarding the tariff that a household goods carrier shall file with the department regarding the maximum charges for all transportation services. An adopted amendment to §218.64(c)(3)(B) replaces the word "applicant" with the word "association" because the language refers to the collective ratemaking association. An adopted amendment to §218.64(c)(6)(B) makes the language consistent with the language in Transportation Code, §643.154(e) regarding the approval of a collective ratemaking agreement. An adopted amendment to §218.64(c)(9) changes the word "of" to "by" to correct a grammatical error.

Adopted new §218.64(d) exempts a household goods carrier that is required to register under Transportation Code, Chapter 643 from Chapter 15, Business and Commerce Code, for an activity relating to the establishment of a joint line rate, route, classification, or mileage guide, as authorized by Transportation Code, §643.154(c).

Adopted amendments to §218.64 and §218.65 change the word "will" to "shall" for consistency and clarity. Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.64 and §218.65.

An adopted amendment to §218.65(a)(1)(E) deletes a portion of the language because paragraph (1) is supposed to list the contents of the tariff; however, the department moved the deleted language to the appropriate location in §218.65(a)(4)(D) and (b) under adopted amendments referenced below. An adopted amendment to §218.65(a)(3)(B) replaced the term "principal office" with the term "principal business address," which is the term used in Transportation Code, §643.052(1) and a defined term in §218.2. An adopted amendment to §218.65(a)(3)(C) added the words "certificate of" for clarity because the transmittal letter must include the household goods carrier's certificate of registration number. Adopted new §218.65(a)(4)(D) includes a modified version of the first sentence in the language that the department removed from §218.65(a)(1)(E) regarding the requirement to file the mileage guide as an addendum to the tariff because §218.65(a)(4) is the correct location for this language. Another adopted amendment to §218.65 deletes prior subsection (b) as outdated and unnecessary because the oldest tariff that is on file with the department is dated 2018. All tariffs must now comply with §218.65. Adopted new §218.65(b) contains the second sentence from the language the department deleted from §218.65(a)(1)(E) regarding the requirement to allow department personnel free access to a computer database used as a mileage guide in the household goods carrier's tariff.

Subchapter F. Administrative Penalties and Sanctions.

Adopted amendments to §218.72(b) add the word "Texas" to clarify that the references are to the Texas Department of Public Safety. Adopted amendments to §218.72(c) replace the word "motor" with "household goods" for clarity and consistency because the term "household goods carrier" is a defined term in §218.2. Adopted amendments to §218.72(c) also replace the words "mover's" and "mover" with the terms "goods carrier's" and "goods carrier" for clarity and consistency because "household goods carrier" is a defined term in §218.2.

Subchapter G. Financial Responsibility for Foreign Commercial Motor Vehicles.

Transportation Code, §648.102 requires the department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers that operate foreign commercial motor vehicles in Texas to maintain financial responsibility. Also, Transportation Code,

§648.102(b) states that Transportation Code, Chapter 648 prevails over any other requirement of state law relating to financial responsibility for operation of foreign commercial motor vehicles in Texas. The department complied with Transportation Code, §648.102 by adopting Subchapter G of Chapter 218. The department adopts amendments to Subchapter G to clarify and update the rules.

An adopted amendment to §218.80 clarifies that for the purposes of Subchapter G of Chapter 218, the term "motor carrier" is defined by Transportation Code, §648.001, which defines the term "motor carrier" to include a foreign motor carrier and a foreign motor private carrier, as defined in 49 U.S.C. §13102(6) and (7). Also, adopted amendments to §218.80 clarify that Subchapter G does not apply to a motor carrier that is required to register with the department under Transportation Code, Chapter 643 because the financial responsibility requirements for such a motor carrier are addressed in §218.16. In addition, an adopted amendment to §218.80 clarifies that Subchapter G does not apply to a motor carrier that is required to register with FMCSA for interstate transportation and is not operating in intrastate transportation within this state. FMCSA has the authority to regulate motor carriers regarding interstate transportation.

The department adopts §218.80 with clarifying changes at adoption to reorganize the text into separate subsections (a) and (b), and to state that the language in subsection (b) is an exception to the language in subsection (a).

An adopted amendment to §218.82(a) deletes the prior second sentence regarding a motor carrier that is required to register with the department under Transportation Code, Chapter 643 due to the adopted amendments to §218.80, including the amendment that moves most of this second sentence to §218.80 with some changes. An adopted amendment to §218.82(a) also changes the term "public road or highway" to "public highway," which is a defined term in §218.2.

Adopted amendments to §218.82(b) adopt by reference the required level of financial responsibility under 49 C.F.R. Part 387, including any amendments that became effective through July 1, 2024. Also, an adopted amendment to §218.82(b) deletes reference to the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015, because FMCSA has since amended 49 C.F.R. Part 387.

SUMMARY OF COMMENTS.

The department received one written comment on the proposal from the representative for both the Southwest Movers Association and the Texas Trucking Association (commenters).

Comment: The commenters support the department's revised amendments to §218.13(a)(3)(E) and (i), which the department made in response to an adopted motion and comments from the members of MCRAC at the MCRAC meeting in December 2023.

Response: The department agrees with this comment.

Comment: The commenters are opposed to the department's proposed amendments regarding the voluntary standard for uniform cargo liability under Transportation Code, §643.152 out of concern that the amendments would eliminate essential consumer protections, are not in the public's best interest, and could harm the reputation of the household goods moving industry. In addition, the commenters state that they intend to work closely with all stakeholders, their members, the department, and state lawmakers in the upcoming legislative session to address the concerns regarding the voluntary standard for uniform cargo liability.

Response. The department disagrees that Transportation Code, §643.152 allows the department to adopt or enforce a rule requiring a mandatory standard for uniform cargo liability because the statute permits only a voluntary standard. The department is therefore required by Transportation Code, §643.152 to adopt the revisions regarding the voluntary standard for uniform cargo liability. The department agrees that lawmakers in the upcoming legislative session will have an opportunity to decide whether the department's authority to establish a voluntary standard for uniform cargo liability under Transportation Code, §643.152 should be amended regarding the intrastate transportation of household goods.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.2

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a commercial motor vehicle, as defined by Transportation Code, §548.001, on a road or highway in Texas, and may not operate a vehicle, regardless of size, to transport household goods for compensation on a road or highway in Texas unless the motor carrier registers with the department under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §548.001, which defines the term "commercial motor vehicle" and "farm vehicle" under Transportation Code, Chapter 548; Transportation Code, §643.153, which authorizes the department to adopt rules that are necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities, including rules that require the motor carrier to indicate clearly to a customer whether an estimate is binding or nonbinding and to disclose the maximum price a customer could be required to pay, and rules that require a motor carrier transporting household goods to list a place of business with a street address in Texas and the motor carrier's registration number issued under Transportation Code, Chapter 643 in any print advertising published in Texas; Transportation Code, §648.102, which authorizes the department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapter 643 and §648.102; and Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202405996
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: January 2, 2025
Proposal publication date: August 23, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§218.10, 218.11, 218.13, 218.14, 218.16, 218.18

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a commercial motor vehicle, as defined by Transportation Code, §548.001, on a road or highway in Texas, and may not operate a vehicle, regardless of size, to transport household goods for compensation on a road or highway in Texas unless the motor carrier registers with the department under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §643.052, which requires a motor carrier to submit to the department an application on a form prescribed by the department to register under Subchapter B of Transportation Code, Chapter 643, as well as the required components of the application, which include information the department by rule determines is necessary for the safe operation of a motor carrier under Transportation Code, Chapter 643; Transportation Code, §643.053, which provides additional requirements for an application filed with the department under Transportation Code, §643.052; Transportation Code, §643.054, which authorizes the department to deny an application for registration under certain circumstances, in addition to authorizing the department to adopt simplified procedures for the registration of motor carriers transporting household goods as agents for carriers required to register under Transportation Code, Chapter 643; Transportation Code, §643.056, which requires a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643, to supplement the motor carrier's application for registration under certain circumstances; Transportation Code, §643.058, which specifies the requirements for a motor carrier to apply for renewal of registration issued under Subchapter B of Transportation Code, Chapter 643, as well as the authority for the department to deny an application for renewal of registration; Transportation Code, §643.0585, which specifies the requirements for a motor carrier to apply for reregistration after its registration has been revoked, as well as the authority for the department to deny an application for reregistration; Transportation Code, §643.061, which authorizes the department to adopt rules to vary the registration period under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §643.062, which states that a foreign-based international motor carrier that is required to register under Transportation Code, Chapter 643 or that is registered under Transportation Code, Chapter 645 may not transport persons or cargo in intrastate commerce in Texas; Transportation Code, §643.063, which authorizes the department to adopt rules that provide for the operation of vehicles under a short-term lease under flexible procedures, which are designed to avoid requiring a vehicle to be registered more than once in a calendar year and which allow a leasing business to register a vehicle on behalf of a lessee; Transportation Code, §643.101(b), which authorizes the department to adopt rules to set the amount of liability insurance that a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643 must maintain, at an amount that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.102, which authorizes the department to adopt rules to provide for a responsible system of self-insurance for a motor carrier; Transportation Code, §643.103, which authorizes the department to charge a fee of $100 when a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643 files evidence of insurance in the amounts required by Transportation Code, §643.101 or §643.1015, or evidence of financial responsibility as described by Transportation Code, §643.102, in a form prescribed by the department; Transportation Code, §643.252, which authorizes the department to deny a registration issued under Transportation Code, Chapter 643 under certain circumstances; Transportation Code, §648.102, which authorizes the department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

§218.13. Application for Motor Carrier Registration.

(a) Form of original application. An original application for motor carrier registration must be filed electronically in the department's designated motor carrier registration system, must be in the form prescribed by the director and must contain, at a minimum, the following information and documents.

(1) USDOT number. A valid USDOT number issued to the applicant.

(2) Applicant information and documents. All applications must include the following information and documents:

(A) The applicant's name, business type (e.g., sole proprietor, corporation, or limited liability company), telephone number, email address, and Secretary of State file number, as applicable. The applicant's name and email address must match the information the applicant provided to FMCSA to obtain the USDOT number that the applicant provided in its application to the department.

(B) An application submitted by an entity, such as a corporation, general partnership, limited liability company, limited liability corporation, limited partnership, or partnership, must include the entity's Texas Comptroller's Taxpayer Number or the entity's Federal Employer Identification Number.

(C) A legible and accurate electronic image of each applicable required document:

(i) The certificate of filing, certificate of incorporation, or certificate of registration on file with the Texas Secretary of State; and

(ii) each assumed name certificate on file with the Secretary of State or county clerk.

(3) Information and documents regarding applicant's owners, representatives, and affiliates. All applications must include the following information and documents on the applicant's owners, representatives, and affiliates, as applicable:

(A) The contact name, email address, and telephone number of the person submitting the application. An authorized representative of the applicant who files an application with the department on behalf of an applicant may be required to provide written proof of authority to act on behalf of the applicant.

(B) The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, business address, and ownership percentage for each owner, partner, member, or principal if the applicant is not a publicly traded company.

(C) The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, and business address for the following if the applicant is owned in full or in part by a legal entity:

(i) each officer, director, or trustee authorized to act on behalf of the applicant; and

(ii) each manager or representative who has or exercises authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier, excluding sales functions, on behalf of the applicant.

(D) The name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part.

(E) The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, and business address for each person who serves or will serve as the applicant's manager, operator, or representative who has or exercises authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier, excluding sales functions.

(F) A legible and accurate electronic image of at least one of the following unexpired identity documents for each natural person identified in the application:

(i) a driver license issued by a state or territory of the United States. If the driver license was issued by the Texas Department of Public Safety, the image must also include the audit number listed on the Texas driver license;

(ii) Texas identification card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E, or an identification certificate issued by a state or territory of the United States;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) United States passport; or

(v) United States military identification.

(4) Principal business address and mailing address. The applicant must provide the applicant's principal business address, which must be a physical address. If the mailing address is different from the principal business address, the applicant must also provide the applicant's mailing address.

(5) Legal agent.

(A) A Texas-domiciled motor carrier must provide the name, telephone number, and address of a legal agent for service of process if the agent is different from the motor carrier.

(B) A motor carrier domiciled outside Texas must provide the name, telephone number, and Texas address of the legal agent for service of process.

(C) A legal agent for service of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas physical address, rather than a post office box, for service of process.

(6) Description of vehicles. An application must include a motor carrier equipment report identifying each motor vehicle that requires registration and that the carrier proposes to operate. Each motor vehicle must be identified by its vehicle identification number, make, model year, and type of cargo and by the unit number assigned to the motor vehicle by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this section.

(7) Type of motor carrier operations. An applicant must state if the applicant proposes to transport passengers, household goods, or hazardous materials.

(8) Insurance coverage. An applicant must indicate insurance coverage as required by §218.16 of this title (relating to Insurance Requirements).

(9) Safety certification. Each motor carrier must complete, as part of the application, a certification stating that the motor carrier knows and will conduct operations in accordance with all federal and state safety regulations.

(10) Drug-testing certification. Each motor carrier must certify, as part of the application, that the motor carrier is in compliance with the drug-testing requirements of 49 C.F.R. Part 382. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.

(11) Duration of registration.

(A) An applicant must indicate the duration of the desired registration. Except as provided otherwise in this section, registration may be for seven calendar days, 90 calendar days, one year, or two years. The duration of registration chosen by the applicant will be applied to all vehicles.

(i) Household goods carriers may not obtain seven-day or 90-day certificates of registration.

(ii) Motor carriers that transport passengers in a commercial motor vehicle as defined by Transportation Code, §548.001(1)(B) may not obtain seven-day or 90-day certificates of registration, unless approved by the director.

(B) Interstate motor carriers that operate in intrastate commerce and meet the requirements under §218.14(c) of this title (relating to Expiration and Renewal of Commercial Motor Vehicles Reg-

istration) are not required to renew a certificate of registration issued under this section.

(12) Additional requirements. The following fees, documents, and information must be submitted with the application.

(A) An application must be accompanied by an application fee of:

(i) $100 for annual and biennial registrations;

(ii) $25 for 90-day registrations; or

(iii) $5 for seven-day registrations.

(B) An application must be accompanied by a vehicle registration fee of:

(i) $10 for each vehicle that the motor carrier proposes to operate under a seven-day, 90-day, or annual registration; or

(ii) $20 for each vehicle that the motor carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof of insurance or financial responsibility and the insurance filing fee as required by §218.16.

(D) An application must include the completed New Applicant Questionnaire (Applicant Questionnaire), which consists of questions and requirements, such as the following:

(i) Have you ever had another motor carrier certificate of registration number issued by the department in the three years prior to the date of this application? If your answer is yes, provide the certificate of registration number for the motor carrier(s). In the Applicant Questionnaire, the word "you" means the applicant or any business that is operated, managed, or otherwise controlled by or affiliated with the applicant or a family member, corporate officer, manager, operator, or owner (if the business is not a publicly traded company) of the applicant. In the Applicant Questionnaire, the word "manager" means a person who has or exercises authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier, excluding sales functions.

(ii) Have you had a Compliance Review or a New Entrant Audit by the Texas Department of Public Safety that resulted in an Unsatisfactory Safety Rating in the three years prior to the date of your application? If your answer is yes, provide the USDOT number(s) and the certificate of registration number(s) issued by the department.

(iii) Are you currently under an Order to Cease from the Texas Department of Public Safety? If your answer is yes, provide the motor carrier's USDOT number(s) and the Carrier Profile Number(s). The Texas Department of Public Safety assigns a Carrier Profile Number (CP#) when they perform a compliance review on a motor carrier's operations to determine whether the motor carrier meets the safety fitness standards.

(iv) Are you related to another motor carrier, or have you been related to another motor carrier within the three years prior to the date of your application? The relationship may be through a person (including a family member), corporate officer, or partner who also operates or has operated as a motor carrier in Texas. If your answer is yes, state how you are related and provide the motor carrier's name and the motor carrier's USDOT number, or the certificate of registration number issued by the department for each related motor carrier.

(v) Do you currently owe any administrative penalties to the department, regardless of when the final order was issued to assess the administrative penalties? If your answer is yes, provide the following information under which the administrative penalties were assessed:

(I) department's notice number(s); and

(II) the motor carrier's USDOT number and certificate of registration number issued by the department;

(vi) Name and title of person completing the Applicant Questionnaire; and

(vii) Is the person completing the Applicant Questionnaire an authorized representative of the applicant? If your answer is yes, please add the person's name, job title, phone number, and address.

(E) An applicant must state if the applicant is domiciled in a foreign country.

(F) An application must include a certification that the information and documents provided in the application are true and correct and that the applicant complied with the application requirements under Chapter 218 of this title (relating to Motor Carriers) and Transportation Code, Chapter 643.

(G) An application must be accompanied by any other information and documents required by the department to evaluate the application under current law, including board rules.

(13) Additional requirements for household goods carriers. The following information, documents, and certification must be submitted with all applications by household goods carriers:

(A) A copy of the tariff that sets out the maximum charges for transportation of household goods, or a copy of the tariff governing interstate transportation services. If an applicant is governed by a tariff that its association has already filed with the department under §218.65 of this title (relating to Tariff Registration), the applicant complies with the requirement in this subparagraph by checking the applicable box on the application to identify the association's tariff.

(B) If the motor vehicle is not titled in the name of the household goods carrier, the following lease information and documentation, notwithstanding §218.18(a) of this title (relating to Short-term Lease and Substitute Vehicles):

(i) a copy of a valid lease agreement for each motor vehicle that the household goods carrier will operate; and

(ii) the name of the lessor and their USDOT number for each motor vehicle leased to the household goods carrier under a short-term lease.

(C) A certification that the household goods carrier has procedures that comply with Code of Criminal Procedure, Article 62.063(b)(3), which prohibits certain people who are required to register as a sex offender from providing moving services in the residence of another person without supervision.

(14) Additional requirements for passenger carriers. The following information and documents must be submitted with all applications for motor carriers that transport passengers in a commercial motor vehicle as defined by Transportation Code, §548.001(1)(B):

(A) If the commercial motor vehicle is titled in the name of the motor carrier, a copy of the International Registration Plan registration receipt or a copy of the front and back of the title for each commercial motor vehicle; or

(B) If the commercial motor vehicle is not titled in the name of the motor carrier, the following lease information and documentation, notwithstanding §218.18(a) of this title:

(i) A copy of a valid lease agreement for each commercial motor vehicle; and

(ii) The name of the lessor and their USDOT number for each commercial motor vehicle leased to the motor carrier under a short-term lease.

(b) Conditional acceptance of application. If an application has been conditionally accepted by the director pursuant to Transportation Code, §643.055, the applicant may not operate the following until the department has issued a certificate under Transportation Code, §643.054:

(1) a commercial motor vehicle or any other motor vehicle to transport household goods for compensation, or

(2) a commercial motor vehicle to transport persons or cargo.

(c) Approved application. An applicant meeting the requirements of this section and whose registration is approved shall be issued the following documents:

(1) Certificate of registration. The department shall issue a certificate of registration. The certificate of registration must contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles requiring registration that the carrier operates.

(2) Insurance cab card. The department shall issue an insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the motor carrier's principal business address. The insurance cab card must be valid for the same period as the motor carrier's certificate of registration and shall contain information regarding each vehicle registered by the motor carrier.

(A) A current copy of the page of the insurance cab card on which the vehicle is shown shall be maintained in each vehicle listed, unless the motor carrier chooses to maintain a legible and accurate image of the insurance cab card on a wireless communication device in the vehicle or chooses to display such information on a wireless communication device by accessing the department's online system from the vehicle. The appropriate information concerning that vehicle shall be highlighted if the motor carrier chooses to maintain a hard copy of the insurance cab card or chooses to display an image of the insurance cab card on a wireless communication device in the vehicle. The insurance cab card or the display of such information on a wireless communications device shall serve as proof of insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the department.

(B) On demand by a department investigator or any other authorized government personnel, the driver shall present the highlighted page of the insurance cab card that is maintained in the vehicle or that is displayed on a wireless communication device in the vehicle. If the motor carrier chooses to display the information on a wireless communication device by accessing the department's online system, the driver shall locate the vehicle in the department's online system upon request by the department-certified inspector or other authorized government personnel.

(C) The motor carrier shall notify the department in writing if it discontinues use of a registered motor vehicle before the expiration of its insurance cab card.

(D) Any erasure or alteration of an insurance cab card that the department printed out for the motor carrier renders it void.

(E) If an insurance cab card is lost, stolen, destroyed, or mutilated; if it becomes illegible; or if it otherwise needs to be replaced, the department shall print out a new insurance cab card at the request of the motor carrier. Motor carriers are authorized to print out a copy of a new insurance cab card using the department's online system.

(F) The department is not responsible for a motor carrier's inability to access the insurance cab card using the department's online system.

(d) Additional and replacement vehicles. A motor carrier required to obtain a certificate of registration under this section shall not operate additional vehicles unless the carrier identifies the vehicles on a form prescribed by the director and pays applicable fees as described in this subsection.

(1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of $10 for each additional vehicle that the motor carrier proposes to operate under a seven-day, 90-day, or annual registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee of $20 for each vehicle. To add a vehicle during the second year of a biennial registration, a motor carrier must pay a fee of $10 for each vehicle.

(2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier must notify the department, identify the vehicle being taken out of service, and identify the replacement vehicle on a form prescribed by the department. A motor carrier registered under seven-day registration may not replace vehicles.

(e) Supplement to original application. A motor carrier required to register under this section shall electronically file in the department's designated motor carrier registration system a supplemental application under the following circumstances.

(1) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier submits a supplemental application to the department and shows the department evidence of insurance or financial responsibility in the amounts specified by §218.16.

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the amounts specified by §218.16. A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the state of Texas must complete the name change under the law of its state of incorporation before filing a supplemental application.

(3) Change of address or legal agent for service of process. A motor carrier shall file a supplemental application for any change of address or any change of its legal agent for service of process no later than the effective date of the change. The address most recently filed will be presumed conclusively to be the current address.

(4) Change in principal officers and titles. A motor carrier that is a corporation shall file a supplemental application for any change in the principal officers and titles no later than the effective date of the change.

(5) Conversion of corporate structure. A motor carrier that has successfully completed a corporate conversion involving a change

in the name of the corporation shall file a supplemental application for registration and evidence of insurance or financial responsibility reflecting the new company name. The conversion must be approved by the Office of the Secretary of State before the supplemental application is filed.

(6) Change in drug-testing consortium status. A motor carrier that changes consortium status shall file a supplemental application that includes the names of the persons operating the consortium.

(7) Retaining a revoked or suspended certificate of registration number. A motor carrier may retain a prior certificate of registration number by:

(A) filing a supplemental application to reregister instead of filing an original application; and

(B) providing adequate evidence that the carrier has satisfactorily resolved the issue that gave rise to the suspension or revocation.

(f) Change of ownership. A motor carrier must file an original application for registration when there is a corporate merger or a change in the ownership of a sole proprietorship or of a partnership.

(g) Alternative vehicle registration for household goods agents. To avoid multiple registrations of a motor vehicle, a household goods agent's vehicles may be registered under the motor carrier's certificate of registration under this subsection.

(1) The carrier must notify the department on a form approved by the director of its intent to register its agent's vehicles under this subsection.

(2) When a carrier registers vehicles under this subsection, the carrier's certificate shall include all vehicles registered under its agent's certificates of registration. The carrier must register under its certificate of registration all vehicles operated on its behalf that do not appear on its agent's certificate of registration.

(3) The department may send the carrier a copy of any notification sent to the agent concerning circumstances that could lead to denial, suspension, or revocation of the agent's certificate.

(h) Substitute vehicles leased from leasing businesses. A registered motor carrier is not required to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a business registered under §218.18 of this title (relating to Short-term Lease and Substitute Vehicles). A motor carrier is not required to carry proof of registration as described in subsection (d) of this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

(i) Once the motor carrier obtains a certificate of registration, the motor carrier shall update its principal business address, mailing address, and email address in the department's online system within 30 days of a change to the information.

§218.16. Insurance Requirements.

(a) Automobile liability insurance requirements. A motor carrier must file proof of automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier shall carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, and loss or damage to property (excluding cargo) per occurrence. Extraneous information will not be considered acceptable, and the department may reject proof of automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table. However, a motor carrier that is required to register with the department under Transportation Code, Chapter 643 and operates a foreign commercial motor vehicle must comply with the minimum level of financial responsibility in 49 C.F.R. Part 387 for such vehicle. The department adopts by reference 49 C.F.R. Part 387 regarding the required level of financial responsibility, including any amendments that became effective through July 1, 2024.
Figure: 43 TAC §218.16(a)

(b) Cargo insurance. Household goods carriers shall file and maintain with the department proof of financial responsibility.

(1) The minimum limits of financial responsibility for a household goods carrier is $5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

(2) The minimum limits of financial responsibility for a household goods carrier is $10,000 for aggregate loss or damage to multiple shippers' cargo carried on any one motor vehicle. In cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

(c) Workers' compensation or accidental insurance coverage.

(1) A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more municipalities shall provide workers' compensation for all its employees or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) $300,000 for medical expenses for at least 104 weeks;

(B) $100,000 for accidental death and dismemberment;

(C) 70 percent of the employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(D) $500 for the maximum weekly benefit.

(d) Qualification of motor carrier as self-insured motor carrier.

(1) General qualifications. A motor carrier may meet the insurance requirements of subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to qualify as a self-insured motor carrier. The application must include a true and accurate statement of the motor carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily injury and property damage liability, or cargo liability, if applicable, without affecting the stability or permanency of its business. The department may accept USDOT evidence of the motor carrier's qualifications as a self-insured motor carrier.

(2) Applicant guidelines. In addition to filing an application as prescribed by the department, an applicant for self-insured status must submit information and documents that will enable the department to determine the following information.

(A) Applicant's net worth. An applicant's net worth must be adequate in relation to the size of its operations and the extent of its request for self-insurance authority. The applicant must demonstrate that it can and will maintain an adequate net worth.

(B) Self-insurance program. An applicant must demonstrate that it has established and shall maintain a sound insurance program that will protect the public against all claims involving motor vehicles to the same extent as the minimum insurance levels applicable

under this section. In determining whether an applicant is maintaining a sound insurance program, the department shall consider:

(i) reserves;

(ii) sinking funds;

(iii) third-party financial guarantees;

(iv) parent company or affiliate sureties;

(v) excess insurance coverage; and

(vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant must submit evidence of a current "satisfactory" safety rating from the Texas Department of Public Safety under Transportation Code, Chapter 644 and administrative rules adopted under Transportation Code, Chapter 644 or a "satisfactory" safety rating from FMCSA under federal law. An application by a motor carrier with less than a current "satisfactory" safety rating or no safety rating will be summarily denied.

(3) Other securities or agreements. The department may accept an application for approval of a security or agreement if satisfied that the security or agreement offered will adequately protect the public.

(4) Periodic reports. An approved self-insured motor carrier shall file with the department annual statements and any reports required by the department reflecting the motor carrier's financial condition and the status of its self-insurance program while the motor carrier is self-insured.

(5) Duration and coverage of self-insured status. The department may approve an applicant as a self-insured motor carrier for any specific time or for an indefinite time. An approved self-insured status only applies to the type of cargo that the motor carrier reported to the department in the application for self-insured status, and is subject to any limitations, restrictions, or requirements that the department includes in any letter approving self-insured status.

(6) Revocation of self-insured status. On receiving evidence that a self-insured motor carrier's financial condition has changed, that its safety program or record is inadequate, or that it is otherwise not in compliance with this subchapter, the department may at any time require the self-insured motor carrier to provide additional information and documents. On 10 days' notice from the department, the self-insured motor carrier shall provide the department with information and documents, as applicable, that demonstrate that it remains in compliance with the requirements of this section and of any active self-insurance requirements included in the department's approval letter. If a motor carrier fails to comply with the applicable requirements under this section, its self-insured status may be revoked. The revocation of self-insured status will be governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 643.

(7) Appeal of denial of application for self-insured status. An applicant may appeal a denial of self-insured status by filing an appeal in accordance with §224.126 of this title (relating to Appeal of a Denial of Self-Insured Status).

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) A household goods carrier shall also file and maintain proof of cargo insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

(2) Filing proof of insurance. A motor carrier's insurer shall file and maintain proof of insurance on a form acceptable to the director:

(A) at the time of the original application for a motor carrier certificate of registration;

(B) on or before the cancellation date of the insurance coverage as described in subsection (f) of this section;

(C) when the motor carrier changes insurers;

(D) when the motor carrier asks to retain the certificate number of a revoked certificate of registration;

(E) when the motor carrier changes its name under §218.13(e)(2) of this title (relating to Application for Motor Carrier Registration);

(F) when the motor carrier, under subsection (a) of this section, changes the classification of the cargo being transported; and

(G) when replacing another active insurance filing.

(3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with the department for the coverage required under this section must be accompanied by a nonrefundable filing fee of $100 when the carrier submits an original application and when the carrier submits a supplemental application when retaining a revoked certificate of registration number.

(4) Acceptable filings. The motor carrier's insurer must file proof of insurance with the department in a form prescribed by the department and approved by an authorized agent of the insurer.

(f) Cancellation of insurance coverage. Except when replaced by another acceptable form of insurance coverage or proof of financial responsibility approved by the department, insurance coverage may not be canceled or withdrawn until 30 days after notice has been given to the department by the insurer in a form approved by the department. Nonetheless, proof of insurance coverage for a seven-day or 90-day certificate of registration may be canceled by the insurer without 30 days' notice if the certificate of registration is expired, suspended, or revoked, and the insurer provides a cancellation date on the proof of insurance coverage.

(g) Replacement insurance filing. The department shall consider a new insurance filing as the current record of financial responsibility required by this section if:

(1) the new insurance filing is received by the department; and

(2) a cancellation notice has not been received for previous insurance filings.

(h) Insolvency of insurance carrier. An affidavit required by Transportation Code, §643.105 must be executed by an owner, partner, or officer of the motor carrier.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202405997

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Effective date: January 2, 2025
Proposal publication date: August 23, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §218.31, §218.32

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a commercial motor vehicle, as defined by Transportation Code, §548.001, on a road or highway in Texas, and may not operate a vehicle, regardless of size, to transport household goods for compensation on a road or highway in Texas unless the motor carrier registers with the department under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §643.254, which authorizes the department to investigate an alleged violation of Transportation Code, Chapter 643 or a rule or order adopted under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202405998
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General Counsel
Texas Department of Motor Vehicles
Effective date: January 2, 2025
Proposal publication date: August 23, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER D. MOTOR TRANSPORTATION BROKERS

43 TAC §218.41

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §646.003, which prohibits a person from acting as a motor transportation broker unless the person provides a bond to the department; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapter 646; and Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202405999
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: January 2, 2025
Proposal publication date: August 23, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §§218.53, 218.54, 218.56, 218.57, 218.61, 218.62, 218.64, 218.65

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §643.152, which authorizes the department to establish voluntary standards for uniform cargo liability and uniform bills of lading or receipts for cargo, which standards must be consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law; Transportation Code, §643.153, which authorizes the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and authorizes the department to adopt rules that are necessary to ensure that a customer of a household goods carrier is protected from deceptive or unfair practices and unreasonably hazardous activities; Transportation Code, §643.153(d), which requires a household goods carrier that is required to register under Subchapter B of Transportation Code, Chapter 643 to file a tariff with the department that establishes the maximum charges for all transportation services; Transportation Code, §643.154(c), which authorizes the department to adopt a rule to exempt a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643, from Chapter 15, Business and Commerce Code, for an activity relating to the establishment of a joint line rate, route, classification, or mileage guide; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a vehicle, regardless of size, to transport household goods for compensation on a road or highway in Texas unless the motor carrier registers with the department under Subchapter B of Transportation Code, Chapter 643; Transportation Code,

§1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

§218.62. Mediation by the Department.

(a) The claimant may make a written request to the department for mediation regarding a dispute over a fee, or damage to the shipper's household goods.

(b) The claimant must attempt to resolve the claim with the household goods carrier by making a reasonable effort to follow the household goods carrier's claim process before requesting mediation by the department.

(c) Requests for mediation must be made within 35 days after the earliest of the following events:

(1) any portion of the claim is denied by the carrier;

(2) the carrier makes a firm settlement offer that is not acceptable to the claimant; or

(3) 90 days have elapsed since the carrier received the claim and the carrier has not responded to the claimant as prescribed in §218.61(b)(2) of this title (relating to Claims).

(d) Except as provided in subsection (e) of this section, the department shall deny a request for mediation made more than 125 days after the carrier received the claim. Additionally, the department shall deny a request for mediation if the carrier did not receive the claim within 90 days after the delivery of the shipment to the final destination or within 90 days after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(e) The department may grant a mediation request if the claimant and the carrier agree to participate in the mediation process and:

(1) the claimant was not advised in writing at least one time of the right to mediation as required by §218.61(b)(1)(A) or (2); or

(2) the claimant does not receive the written denial or settlement offer letter required by §218.61(b)(2).

(f) For purposes of subsection (c)(1) and (2) of this section, the 35-day deadline for requesting mediation is calculated from the latter of:

(1) the date of the claim denial or settlement offer letter; or

(2) the date the claim denial or settlement offer letter is mailed, emailed, or faxed to the claimant.

(g) The department will not grant more than one mediation request to a claimant for one shipment of household goods.

(h) The department will coordinate the selection of a mediator. The mediation will be conducted by written submissions, telephone conferences, or mediation sessions held at the department's facilities in Austin. The department will establish the time, date, and form of the mediation session.

(i) Participation in this mediation process by a household goods carrier.

(1) A household goods carrier shall participate in this mediation process if the department grants a mediation request under this section regarding the following:

(A) a fee under the moving services contract; or

(B) the household goods carrier's liability for loss or damage to the shipper's household goods to the extent the following occurs:

(i) the shipper and household goods carrier agreed in the moving services contract that the household goods carrier's cargo liability exceeds $0.00;

(ii) a pre-existing transportation contract described by §218.57(d) of this title (Relating to Moving Services Contract) states that the household goods carrier's cargo liability exceeds $0.00; or

(iii) if the shipper purchases insurance from the household goods carrier and the household goods carrier does not obtain the insurance policy or other appropriate evidence of purchased insurance for the shipper under §218.54 of this title (Relating to Selling Insurance to Shippers).

(2) The department may impose administrative penalties, under §218.71 of this title (relating to Administrative Penalties), on a household goods carrier who refuses to participate in the mediation process or otherwise fails to comply with the requirements of this section.

(j) If the claimant fails to appear at the mediation after due notice or, if the mediator determines the claimant has not cooperated in the mediation process, the department's mediation process shall be considered concluded. The claimant may consider pursuing the claim through an appropriate court of law.

(k) The mediator shall preside and have discretion over the mediation procedures, including the ability to require the claimant and the household goods carrier to provide information and documents in a timely fashion.

(l) If the household goods carrier makes a written report of the results of the inspection documenting the lost or damaged household goods and uses the report during the department's mediation, then the carrier shall provide the original or a legible copy of the report to the claimant.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406001
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: January 2, 2025
Proposal publication date: August 23, 2024
For further information, please call: (512) 465-4160

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43 TAC §218.58

STATUTORY AUTHORITY. The department adopts the repeal under Transportation Code, §643.152, which authorizes the department to establish voluntary standards for uniform cargo liability and uniform bills of lading or receipts for cargo, which

standards must be consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted repeal implements Transportation Code, Chapter 643.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406000
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: January 2, 2025
Proposal publication date: August 23, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER F. ADMINISTRATIVE PENALTIES AND SANCTIONS

43 TAC §218.72

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §643.252, which authorizes the department to suspend or revoke a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.257, which authorizes the department to order a motor carrier that violates Transportation Code, Chapter 643 or a rule or order adopted under Transportation Code, Chapter 643 to pay a refund to a consumer who paid the motor carrier to transport household goods; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406002
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: January 2, 2025
Proposal publication date: August 23, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER G. FINANCIAL RESPONSIBILITY FOR FOREIGN COMMERCIAL MOTOR VEHICLES

43 TAC §218.80, §218.82

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §648.102, which authorizes the department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility; Transportation Code, §643.101(b), which authorizes the department to adopt rules to set the amount of liability insurance that a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643 must maintain, at an amount that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, §648.102; and Government Code, §2001.004.

§218.80. Purpose and Scope.

(a) The purpose of this subchapter is to comply with Transportation Code, §648.102. For the purposes of this subchapter, the term "motor carrier" is defined by Transportation Code, §648.001, and does not include the following, except as provided by subsection (b) of this section:

(1) a motor carrier that is required to register with the department under Transportation Code, Chapter 643; or

(2) a motor carrier that is required to register with FMCSA for interstate transportation, and is not operating in intrastate transportation within this state.

(b) If a motor carrier is required to register with the department under Transportation Code, Chapter 643, the motor carrier must comply with the financial responsibility requirements in §218.16 of this title (relating to Insurance Requirements).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2024.

TRD-202406003

Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: January 2, 2025
Proposal publication date: August 23, 2024
For further information, please call: (512) 465-4160

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