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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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) that was published in the September 19, 2025 issue of the *Texas Register* (50 TexReg 6097). Subchapter A, §11.4, Subchapter D, §11.303 and §11.306, and Subchapter F, §§11.1004 - 11.1007 are being adopted with changes to the rules titles from the proposal and will be republished. The other rules being repealed in Subchapters A through Subchapter F are being adopted without changes and will not be republished.

The Department has analyzed this adopted 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 adopted repeal would be in effect, the adopted 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 adopted repeal does not require a change in work that would require the creation of new employee positions, nor is the adopted repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

The adopted repeal does not require additional future legislative appropriations.

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

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

The adopted 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 adopted repeal will not increase or decrease the number of individuals subject to the rules' applicability.

The adopted 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 adopted repeal and determined that the adopted 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 adopted 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 adopted repeal as to its possible effects on local economies and has determined that for the first five years the adopted 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 rules.

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 adopted 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 adopted 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.

§11.4. Tax Credit Request, Award Limits, and Increase in Eligible Basis.

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 8, 2025.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 19, 2025
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.

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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.

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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.

§11.303. Market Analysis Rules and Guidelines.

§11.306. Scope and Cost Review Guidelines.

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

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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.

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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.

§11.1004. Procedural Requirements for Requests for State Housing Tax Credits Associated with Competitive HTC Applications.

§11.1005. Required Documentation for State Housing Tax Credit Request Submission Associated with Competitive HTC Applications.

§11.1006. State Housing Tax Credits Underwriting and Loan Policy Associated with Competitive HTC.

§11.1007. State Housing Tax Credits Selection Criteria Associated with Competitive HTC Applications.

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 8, 2025.

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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 new 10 TAC Chapter 11, Qualified Allocation Plan (QAP), containing §§11.1 - 11.10, 11.101, 11.201 - 11.207, 11.301 - 11.306, 11.901 - 11.907, and 11.1001 - 11.1008, with changes to the text previously published in the September 19, 2025 issue of the *Texas Register* (50 TexReg 6100). 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; revise or eliminate several scoring items; increase eligible building costs to respond to inflation; increase Rehabilitation Cost thresholds; introduce a per unit Total Development cost limit; allow staff to approve one-time, six-month extensions to the deadline to place-in-service for good cause; prohibits cash-out to a related-party seller in an identity of interest transaction for Competitive Housing Tax Credit Applications; create a minimum score for all 9% Applications; Add a new tie breaker preference for the lowest Housing Tax Credit request per Low-Income Unit; and introduce a scoring option for Developments in an Opportunity Zone.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted 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 adopted new rule would be in effect:

1. The adopted 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 adopted 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 adopted 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 clarifies no additional fee will be charged for Competitive HTC Applications that include a request for State Housing Tax Credits. The cost of this fee was previously $2500 per Application.

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

6. The adopted rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the adopted 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 adopted rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The adopted 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 adopted 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 adopted 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 adopted 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 adopted rule for which the economic impact of the rule is projected to be $0. The adopted 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 adopted 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 19, 2025, to October 11, 2025, to receive stakeholders comment on the new proposed sections. Comment was received from 41 commenters as listed below:

(1) Auxano Development, (2) Betco Housing Lab, (3) Brinshore Development, (4) Charles Holcomb, (5) City of Austin, (6) City of San Antonio, (7) Coalition of Texans with Disabilities, (8) Coats Rose, (9) Daikin Comfort Technologies, (10), National Drowning Prevention Alliance, (11) Disability Rights Texas, (12) DMA, (13) Dominium, (14) Express Group, (15) Fort Worth Housing Solutions, (16) Representative Gary Gates, (17) Generation Housing Partners, (18) Gyani Capital, (19) Hearthly, (20) Hoke Development Services, (21) Houston Housing Authority, (22) Inclusive Communities Project, (23) Institute of RE Management, (24) ITEX, (25) JES Holdings, (26) Knight Development, (27) Lakewood Property Management, (28) Lonestar Development Partners, (29) National Church Residences, (30) Palladium USA, (31) Pivotal, (32) Purple Martin Real Estate, (33) Rural Rental Housing Association, (34) Strategic HFC, (35) Structure Development, (36) Texas Affiliation of Affordable Housing Providers, (37) Texas Association of Local Housing Finance Agencies, (38) Texas Homeless Network, (39) Texas Housers, (40) Texas Water Safety Coalition, and (41) Safe Kids Austin.

It should be noted that in the interest of brevity, some of the more extensive comments received have been summarized significantly; however, copies of all comments received have the commenter's number denoted, and are all available on the Department Website.

Section 11.5(3)(F) - At-Risk Set-Aside.

COMMENT SUMMARY:

Commenter 8 is concerned that the new At-Risk language related to the definition of nearing expiration is too restrictive and should be limited only to Section 42 requirements. They suggest removing the insertion regarding the Department's rules since this does not affect/shorten the Affordability Period for the Development.

Commenter 26 recommends TDHCA should explicitly list RAD and Section 18 conversions under the At-Risk Set-Aside for 9% deals.

STAFF RESPONSE:

Staff appreciates Commenter 8's concerns about the adjustments to language and how this may be more restrictive to developments. Staff believes that this proposed language clarifies the intention of the existing rule

Staff appreciates Commenter 26's suggestion to allow units with RAD and Section 18 funding to be eligible for the At-Risk Set-Aside for 9% deals. Staff was not able to make this change as State statute dictates what type of subsidy qualifies an At-Risk Development.

Section 11.6(d)(126)(B)(vi) Definition of Supportive Housing.

COMMENT SUMMARY:

Commenter 39 suggests removing the language regarding prior eviction history and sex offender registration as part of the Tenant Selection Criteria. Commenter 39 believes this is a detriment to potential tenants who are applying to live in Supportive Housing developments and that the language should better mirror federal and state rules on lookback periods.

STAFF RESPONSE:

Staff appreciates Commenter 39's concerns regarding the possible effects of this item. The rule in question was originally introduced to bring clarity and consistency to tenant screening criteria imposed by Supportive Housing developments. Staff does not recommend making adjustments to the definition at this stage in the 2026 QAP Development process without additional research and discussion with the relevant stakeholders. Staff encourages Commenter 39 to introduce this concept during the 2027 QAP development process.

Section 11.6(3)(C)(iii) Competitive HTC Allocation Process.

COMMENT SUMMARY:

Commenter 2 supports the removal of the 50% limitation of Rehabilitation and Reconstruction developments in each Subregion.

STAFF RESPONSE:

Staff appreciates the support from Commenter 2 for removing the 50% limitation of Rehabilitation and Reconstruction developments in all Subregions.

Section 11.6(6) Credit Returns Due to Unforeseen Short-term Delays.

COMMENT SUMMARY:

Commenter 39 proposes to make financial statements and underwriting reports publicly available when a development uses this rule in order to improve transparency.

Commenter 8 supports the refining of these criteria since originally drafted but suggests additional adjustments to the language should be made. Suggested language is provided that refines the requirement for the development owner to be properly insured, given there would be no such insurance prior to construction and closing. Additionally, Commenter 8 is concerned that the requirement of this rule that it can only be used once is problematic for the affordable housing industry given the varying circumstances that may cause delay at any time. Commenter 8 suggests removing subsection (G) of the language in response.

Commenter 2 requests clarification between the distinction of "existing deadline" and "original deadline" in this paragraph.

STAFF RESPONSE:

Staff appreciates Commenter 39's interest in enhancing transparency regarding Force Majeure requests. Staff does not find it necessary to underwrite each request, as they typically involve only a time extension with no material changes to the deal. In cases where significant changes are proposed, a material amendment is processed, and a new underwriting report is published to the Department website.

Staff acknowledges Commenter 8's concerns regarding the insurance requirement but does not believe a change is warranted in response. The term "properly insured" may vary in meaning depending on the stage of development. If no insurance coverage is required at a particular stage, the development would be considered "properly insured" for that point in time. Regarding subsection (G), staff maintains that the limitation remains appropriate, as there is no restriction on requesting Board approval for an additional extension if circumstances warrant it.

Regarding Commenter 2, staff concurs that clarification is needed and has made a responsive change to consistently use "original deadline" in the paragraph.

Section 11.7 Tie Breaker Factors.

COMMENT SUMMARY:

Commenters 1, 24, 31, 35 recommend giving applicants the ability to use a single plot of land with multiple amenities for this tie breaker as they believe this follows the intent of the tie breaker item. Commenter 24 speaks to the fact that some campuses have amenities that are co-located with schools and because of the way the rule is written, only one amenity on the site can be counted. Commenters 24, 31, 35 do not believe this goes along with the intent of Tie Breaker as it prevents some amenities from being counted.

Commenter 32 supports the continued prohibition of using a school campus facility as a park.

Commenter 6 supports expanding the second Tie Breaker proximity beyond just elementary schools.

Commenters 11 and 39 believe there should be a Tie Breaker that incentivizes the lowest income units, which are of the highest need in the state. Commenter 11 supports a suggestion by Commenter 39 regarding a proposed Tie Breaker that prioritizes more affordable units over efficient use of tax credits. Commenter 39 has provided suggested language and further explanation on how the potential Tie Breaker could function.

Commenters 14, 15, 17, 32 believe the refined language regarding a public announcement regarding school closure would be too administratively difficult for staff to administer. Commenters 14, 15, 17, 32 suggest that this item should be based on the school being in operation as of the Application Acceptance Period.

STAFF RESPONSE:

Staff appreciates Commenters 6 and 32 for their support on the revisions related to the schools and parks aspects of the Tie Breaker.

Staff appreciates the suggestion by Commenters 1, 24, 31, 35 to allow a single plot of land with multiple amenities to count as separate items in this Tie Breaker. Adjustments have been made to the QAP in response to these comments.

Staff appreciates hearing from Commenters 11 and 39 and thanks them for proposing an alternative method to determine Tie Breaks. Staff recognizes the importance of incentivizing and increasing the number of 30% units in the program, as they are the most in-demand in the state. Given that there have been several adjustments to the existing language, including adding a new level to the Tie Breaker, staff does not recommend additional significant change to this rule immediately preceding adoption.

Staff appreciates the concern from Commenter 14, 15, 17, and 32's regarding potential administrative difficulties in reviewing the public announcement requirement but believes that this item is acceptable as is and can be revised in the 2027 QAP development process if needed.

Section 11.7(3) Tie Breaker Factors- Housing Tax Credit Per Low Income Unit.

COMMENT SUMMARY:

Commenters 2 and 33 believe this additional Tie Breaker would create a "race to the bottom" and would not be good for residents, developers, or stakeholders. Commenter 2 speaks to this provision being something that has already been tried and did not provide the desired result. Commenter 2 suggests that if this Tie Breaker cannot be removed, it should be made the final Tie Breaker. Commenter 33 believes that while this item has good intentions, it may lead to lower construction quality and a diminished impact for the community.

Commenter 14, 15, 17, 32 supports the placement of this new Tie Breaker behind the community amenities Tie Breaker.

Commenter 14, 15, 17, 32, 33 is worried that with this new Tie Breaker, applicants will not be as informed to make business decisions on whether to pursue a project. Additionally, this Tie Breaker incentivizes applicants to limit the amount of tax credits requested, which would create issues given the difficult economic environment. Commenters 14, 15, 17, 32, 33 request for this Tie Breaker option to be removed and an alternative be developed in future years.

STAFF RESPONSE:

Staff appreciates Commenter 14, 15, 17 and 32 for their support of the placement of this new Tie Breaker behind the amenities Tie Breaker.

Staff recognizes the risks noted by Comments 2, 14, 15, 17, 32, and 33 regarding the potential for the policy to incentivize developments to request fewer Tax Credits than may be needed; however, staff believes the policy advances a Department priority to promote the efficient use of public resources and does not anticipate that it will result in lower-quality construction.

Regarding the concern from Commenters 14, 15, 17, 32, and 33 that this tie breaker will lead to less informed business decisions, staff is sympathetic but emphasizes that since this not a first priority Tie Breaker it will not be pertinent in determining the competitiveness of many Applications.

Section 11.9(a)(3) Competitive HTC Selection Criteria.

COMMENT SUMMARY:

Commenter 2 appreciates staff's clarification of this circumstance as it has become more common.

STAFF RESPONSE:

Staff appreciates Commenter 2's support of this item.

Section 11.9(b)(2) Sponsor Characteristics.

COMMENT SUMMARY:

Commenter 2 suggests a cleanup to the language given one of the items is not properly referenced in the first part of the subsection.

Commenter 16 supports the inclusion of Item (D) as it reserves points that are intended to incentivize Developments that do not use property tax exemptions; however, Commenter 16 opposes the inclusion of Item (E) which gives a point advantage to housing authorities and their instrumentalities over other projects that use a second layer of public subsidy. Commenter 16 believes that receiving this second layer of subsidy should come along with increased benefit so that the return to the community is clear and measurable.

Commenters 5, 14, 15, 17, and 32 though request that the Item (E) be expended to include Housing Finance Corporations in addition to Housing Authorities.

Commenters 34 and 39 are confused by the section as it appears some public entities can be awarded these points while others are restricted. Commenter 34 says that this change disincentives partnerships with entities that have been reformed by the legislature, even though reforms were done to increase the

public benefit of Housing Finance Corporation (HFC) partnerships. Commenter 34 recommends that the Department revisit this subsection to include entities that have been reformed by recent legislation in the 89th legislature.

Commenters 16 and 39 agree with the Board's concerns regarding the level of benefit that is delivered from Tax-Exempt partnerships. Commenters 16 and 39 recommend that this section should be rewritten to make points available to all types of Tax-exempt partnerships, but only if they provide additional benefits in exchange for accessing both tax credits and tax exemption. Commenters 16 and 39 have separately provided language to this extent. Commenters 16 and 39 believe their suggested language will assist in incentivizing applicants to pay property taxes while also providing more benefits to the residents.

Commenter 1 states that the new HUB language could disadvantage some third-party independent HUBs that are building capacity to become primary developers or applicants. Commenter 1 suggests excluding related parties and contracted consultants would be a good step forward to get what the agency aims for.

Commenter 5 appreciates the changes to the section that allow for HUBs to be either General Partner or Special Limited Partner, a change that better facilitates with Housing Finance Corporations.

Commenters 14, 15, 17, and 32 believe this newly added subsection should be deleted as they believe the tax credit development industry benefits from experienced sponsors. Commenters 14, 15, 17, and 32 believe that with the removal of previously required experience metrics, the agency should better establish programs to partner experienced individuals with newer individuals. Commenters 14, 15, 17, and 32 suggest that the HUB scoring option should not exclude those HUBs with significant experience in the tax credit program.

Commenter 19 believes that no change should be made to the HUB section in Sponsor Characteristics as it still meets the standards of the State of Texas.

Commenter 27 requests clarification on whether this includes developments where the Applicant's control has ended. Commenter 27 has provided language to this extent that clarifies that developments listed on the Previous Participation Form should not include those where the Control has ended.

STAFF RESPONSE:

In response to a recent announcement from the Texas Comptroller of Public Accounts that new HUB certificates are not being issued currently, staff has removed the scoring item for HUBs from the QAP. Staff appreciates all stakeholder input that was received on this item.

Staff appreciates Commenter 2's recommendation to address language in this section so that the section reads as intended, and has made a responsive change to this section of the proposed Rule.

Staff appreciates Commenter 16's support of this addition to allow Sponsor Characteristic points to be scored based on a project paying ad valorem taxes to the local taxing jurisdiction.

Staff acknowledges Commenter 5, 14, 15, 17, and 32's request to expand item (E) to also include Housing Finance Corporations in addition to Housing Authorities. Additionally, Commenter's 34 and 39 support including entities that have been reformed in the 89th legislature. Staff has made a response change to this request to include Housing Finance Corporations in the section.

Staff appreciates Commenter 16 and 39's suggestion to allow developments to received Tax Credits and additional public subsidy only if they provide additional benefit to residents. Staff believes that the discussion around these additional benefits is warranted and would suggest bringing these ideas up during the 2027 Roundtable discussions.

Section 11.9(b)(3) Quantity of Low-Income Units.

COMMENT SUMMARY:

Commenters 2 and 32 support the removal of this scoring item.

STAFF RESPONSE:

Staff appreciates Commenters 2 and 32 support for removing Quantity of Low-Income Units scoring item.

Section 11.9(c)(4) Residents with Special Housing Needs- 811 PRA Program.

COMMENT SUMMARY:

Commenter 33 has serious concerns regarding this section of the QAP as it has caused many difficulties for Rural Applicants. Commenter 33 requests USDA and At-Risk be exempt from these points since the developments compete statewide.

Commenter 30 speaks to issues related to timing, lack of support for residents completing required forms, and general confusion among applicants and residents. Commenter 30 explains that this causes difficulties for their management teams in complying with all rules and regulations around this item, and believes the program has intrinsic issues that need to be addressed before developments participate in this program.

STAFF RESPONSE:

Staff acknowledges the concerns from Commenters 30 and 33 regarding the difficulties of working with 811 PRA funding. Staff recognizes these issues and has made additions to the rule that allow for flexibility in the resolution of issues that come up when working with the 811 Program. Despite the complexities of the program, Staff believes the scoring item serves a key Department goal and has retained it in the draft proposed Rule.

Section 11.9(c)(4)(C) Residents with Special Housing Needs - Continuum of Care.

COMMENT SUMMARY:

Commenters 7, 11, 38, and 39 oppose the proposed reduction of the initial Continuum of Care (CoC) hold period in both urban and rural subregions as it would significantly hinder efforts to connect homeless Texans with stable affordable housing. Commenters 7, 11, 38, and 39 say that these hold periods are in place to provide the necessary timeframes so that eligible residents can be identified and assisted towards long-term housing stability.

Commenter 11 suggests that the agency should encourage developers to work more closely with their CoC to effectively market these units. Commenter 7 e'ho's all the recommendations provided by Commenter 11.

Commenter 38 suggests willingness to enter into formal partnerships with tax credit developers to coordinate this process.

Commenter 39 suggests that the shortcomings from this effort are more to do with shortcomings in coordination between property owners, the agency, and service providers. Commenter 39 believes the current hold periods should be maintained, and that the agency should take more of a connector role between developers and the Continuum of Care infrastructure. Commenter 39

suggests that the agency should more precisely update the Vacancy Clearinghouse so that it is clearer when and where these units are available so that service providers can connect the right people to the right type of unit.

Commenters 19 and 33 support reducing the hold period requirement but believes for USDA and At-Risk Developments should be exempt from the points. If not exempted in the final rule, Commenters 19 and 33 suggest requiring Continuum of Care providers to disclose all areas they cover in the Application materials. Commenter 33 also notes the difficulty of finding residents for these units, as potential residents may not live near the housing.

STAFF RESPONSE:

Staff appreciates the engagement around this issue regarding how this process can be improved to best serve tenants. Staff encourages a more open communication from all stakeholders regarding the proper coordination that should happen to connect individuals with these housing units. Staff recommends this item be brought up for further discussion during the 2027 QAP Roundtable discussions. Staff also intends to post additional resources on our website with the 2026 Application to assist in this process.

Staff is sympathetic to Commenter 7, 11, 38, and 39's opposition to reducing the initial Continuum of Care (CoC) hold period, but believes this change is necessary to better balance availability of CoC units with the feasibility of Developments as they place into service.

Staff appreciates Commenter 38 for their willingness to enter into partnerships with tax credit developers to help facilitate this process.

Staff appreciates Commenter 19 and 33's suggestion to make USDA and At-Risk Developments exempt from this item. Staff believes these hold periods are valuable, regardless of what part of the state a Development is located in. Staff has committed to providing additional resources to our website to assist in this process.

Section 11.9(c)(7) Competitive HTC Selection Criteria- Proximity to Jobs.

COMMENT SUMMARY:

Commenter 6 opposes the expansion of the radius for this item as this would negate the intent of the scoring item. Commenter 6 believes that restricting the radius is more beneficial to residents as it would represent a more realistic distance families would travel to access such amenities.

Commenter 32 suggests clean-up language regarding a deadline for the data used under this subsection.

STAFF RESPONSE:

Staff appreciates Commenter 32's suggestion to address an inconsistent deadline for data under Proximity to Jobs. Staff has made a responsive change.

Staff appreciates Commenter 6's comment regarding the appropriate radius for providing the best service to residents, and encourages further discussion and data development regarding this item up during the 2027 QAP Roundtable discussions. No change was made to this aspect of the proposed Rule.

Section 11.9(d)(4) Quantifiable Community Participation.

COMMENT SUMMARY:

Commenter 39 suggests that tenants living in existing HTC properties should be notified of any actions regarding the properties in which they reside. Commenter 39 suggests that new language should be added to specifically allow tenant organizations to be Neighborhood Organizations. This language would also include a provision that tenant organizations that consist primarily of residents of the property should be exempt from needing to be on record with the Secretary of State's office.

STAFF RESPONSE:

Staff appreciates Commenter 39's suggestion to include Tenant Organizations as Neighborhood Organizations. Since this comment is regarding a section that has not been adjusted yet this year, we suggest bringing this concept up at the 2027 QAP Roundtables.

Section 11.9(d)(7) Concerted Revitalization Plan or Opportunity Zone.

COMMENT SUMMARY:

Commenters 2, 19, 32, 33, and 36 all support the addition of Opportunity Zones as a new 7-point scoring item alongside the Concerted Revitalization Plan.

Commenters 11, 22, and 39 oppose the inclusion of Opportunity Zones within the 2026 QAP. Commenters 22 and 39 strongly opposes the way Opportunity Zones have been introduced within the 2026 QAP, specifically as a 7-point alternative to Concerted Revitalization Plans. Commenters 22 and 39 states that Opportunity Zones should not be equivalent to a Concerted Revitalization Plan, as Opportunity Zones lack local participation from municipalities.

STAFF RESPONSE:

Staff appreciates the support from Commenters 2, 19, 32, 33, and 36 for adding Opportunity Zones as a new 7- point scoring item as an alternative for Concerted Revitalization Plans.

Staff acknowledges the opposition of Commenters 11 and 22 to including Opportunity Zones as a new alternative scoring item for Concerted Revitalization Plans. Staff believes this is an appropriate new point item, as Opportunity Zones were specifically selected by the Governor as areas of the state where additional investment is encouraged.

Section 11.9(e) Funding Request Amount.

COMMENT SUMMARY:

Commenter 32 supports and appreciates the deletion of this scoring item.

STAFF RESPONSE:

Staff appreciates the support from Commenter 32 for removing the Funding Request Amount scoring item.

Section 11.9(e)(8) Readiness to Proceed.

COMMENT SUMMARY:

Commenter 30 recommends that staff reevaluate the criteria for deciding whether a project is "ready to proceed". Commenter 30 does not believe the purchase of the land should be the indicator used for making this determination, as it does not indicate whether the project will close sooner. Commenter 30 believes that this process creates tremendous risk for developers to take down land prior to closing, yet this risk is not shared evenly among all regions due to varying land costs. Commenter 30 also expresses timing issues with environmental clearance timelines.

Commenter 30 suggests that the submission of building permits and financing applications should be sufficient to demonstrate readiness to proceed.

STAFF RESPONSE: While staff acknowledges Commenter 30's concerns regarding risk and the uneven cost of land among subregions, financing applications do not appear to be an equivalent development milestone to a land purchase and thus would not be an appropriate substitute. Staff recommends no change.

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

COMMENT SUMMARY: Commenter 26 recommends allowing Federal Home Loan Bank's Affordable Housing Program (FHLB AHP) to qualify for leveraging points in scoring and financial feasibility analysis.

STAFF RESPONSE: Staff acknowledges the recommendation to include FHLB AHP funding as qualifying source for the point item; however Staff believes it would be too late to include additional ideas before the upcoming 9% Cycle. Regarding feasibility analysis, staff will consider such funding appropriately in the underwriting process.

Section 11.9(e)(6)(B) Historic Preservation.

COMMENT SUMMARY:

Commenter 2 requests clarification on the changes to this item related to syndications of historic transactions. Commenter 2 specifies that if this rule were to look at prior transactions, that 2003 awards would be the last year developments would be eligible for syndication. Commenter 2 says that rules for this topic were under a different section and eligible for a higher number of points at the time in the 2003 QAP.

STAFF RESPONSE:

Staff appreciates Commenter 2 for bringing up this issue regarding historic transactions. Staff has made a responsive change to this section for clarity.

Section 11.101 Site and Development Requirements and Restrictions.

COMMENT SUMMARY:

Commenter 9 urges TDHCA to update the metrics and values from the Department of Energy conservation standards for air conditioners and heat pumps. Commenter 9 provided a table with recommended revisions to reflect current market values.

Commenter 23 recommends that the agency includes IREM Certified Sustainable Property (CSP) certification to the section. Commenter 23 describes this certification as ensuring critical sustainability strategies and included in multifamily properties. Commenter 23 has provided language to this extent and supplied resources and explanations on the various features of this certification.

STAFF RESPONSE:

Staff appreciates the recommendations and data provided by Commenter 9 regarding energy conservation standards and the recommendations from Commenter 23 to include IREM Certified Sustainable Property within the QAP. Staff has made changes to in response to the updates made by the Department of Energy to Seasonal Energy Efficiency Ratio (SEER) ratings. Regarding the other proposed changes, Staff recommends that both commenters participate in the 2027 QAP Roundtables and bring these items up for discussion. Staff also encourages Commenters 9 and 23 to present these suggestions, and any other potentially outdated requirements--earlier in the 2027 development process so proper consideration and collection of data can be given to potential changes.

Section 11.101(a)(3) Neighborhood Risk Factors.

COMMENT SUMMARY:

Commenter 24 suggests there should be a revision to the exemption language, so it better aligns with the Department's stated policy goal of preserving both federally assisted and state-regulated affordable housing. Commenter 24 states that the current conjunction of "and" in the language excludes legitimate preservation projects, such as HUD-insured properties, that are not HUD-Assisted.

Commenter 24 does not support the use of NeighborhoodScout.com as a violent crime indicator. Commenter 24 states using data from NeighborhoodScout.com eliminates flexibility to use local law-enforcement or grid-level datasets. Commenter 24 also recommends mitigation credit should be available for developments incorporating CPTED design, dedicated security funding, and/or documented off-duty patrol agreements.

Commenter 35 requests changing the language for rehabilitation development's exemption for high violent crime Neighborhood Risk Factors. Commenter 35 states the requested linage change would allow deals with existing federal assistance and existing LURAs would be exempt from the violent crime NRF.

Commenter 39 acknowledges the removal of TEA School Ratings in the QAP due to SB 2137 and looks forward to seeing the results of the required study from TDHCA regarding the removal of TEA School Ratings. Commenter 39 hopes that schools remain a priority within the QAP after SB 2137 is not in effect.

STAFF RESPONSE:

Staff does not recommend making changes in response to Commenter 24's concerns with the conjunction ‘and.' Staff recommends that the commenter address this matter at future roundtable discussions so that the full impact of this change can be considered by stakeholders.

Staff acknowledges Commenter 24's opposition to using NeighborhoodScout.com as a violent crime indicator. If a Development Site triggers the violent crime NRF threshold, Applicants are allowed to provide local police beat data as mitigation, and this is stated in §11.101(a)(3)(E)(ii) of the QAP.

Staff appreciates Commenter 35's request to provide clarifying language regarding rehabilitation exemptions for high violent crime. Staff believes the current language is sufficient for allowing deals with existing federal assistance and LURAs to be exempt from violent crime NRFs.

Staff recognizes Commenter 39's request to have schools remain a priority within the QAP after SB 2137 is not in effect.

11.101(a)(7)(C)(vii) - Eviction Protection Program.

COMMENT SUMMARY:

Commenter 11 raises the issue of residents who rely on social security and veteran's benefits typically not receiving their payments on the first of the month and therefore are often late on rent due to circumstances outside of their control. Commenter 11 requests this item contain reasonable accommodations for those receiving certain benefits to ensure that these residents are not being charged late fees.

Commenter 39 supported the inclusion of this item in the 2025 rule but has identified several areas of improvement and clarifications for this scoring item. Commenter 39 has provided language to this extent, including but not limited to forbidding rent increases for an amount of time, caping late fees, establishing case manager standards that assists tenants in handling their concerns.

STAFF RESPONSE:

Staff appreciates Commenter 11's recognition of residents who rely on social security and veteran's benefits. Staff will not be making an addition to the rule as this issue is already addressed under 10 TAC §1.204, which covers Reasonable Accommodations.

Staff appreciates Commenter 39's suggestion to add language to this section to further the impact of this point item. Staff desires to see how this item works in practice before making any changes to it given that it is new enough and most likely has not been able to be placed-in-service yet. We recommend that the commenter continue this conversation into the coming years of QAP development.

Section 11.101(b)(1)(A)(viii) Site and Development Requirements- General Ineligibility Requirements- Minimum Age for Rehabilitation.

COMMENT SUMMARY:

Commenters 6 and 8 appreciate that this item will only apply to the 9% program but does not support making developments younger than 20 years ineligible as it will delay financing that is often critical for maintaining safe and quality housing. Commenter 6 warns this could cause properties to be sold outside of the program if they become too costly to maintain or increase the cost of delayed maintenance that would be needed to bring the property up to standard at year 20. Commenter 6 suggests the Department should only apply this standard for new developments entering for the first time but not require this for existing properties who followed the assumption of new tax credits partway through the extended affordability period. Commenter 8 requests that this provision should be eliminated entirely.

Commenter 18 shares concerns that post postponing syndication beyond Year 20 may create unintended consequences for residents, investors, and physical assets. Commenter 18 recommends that TDHCA revert back to a Year 15 eligibility for syndication, as well as adopt a condition-based criteria rather than a fixed time thresholds to determine readiness for new credits.

Commenter 39 strongly supports a proposal to make applications involving existing HTC properties that placed in service in 2006 or later ineligible.

STAFF RESPONSE:

Staff appreciates Commenter 39 for their support on this item. Additionally, staff appreciates Commenter 6 and 8 for their support on this item only applying for the 9% program.

Staff recognizes the concerns of Commenters 6, 8, and 18 regarding the impacts of delayed financing on projects less than 20 years old. Additionally, Staff appreciates Commenter 6's suggestion to apply this only to first-time properties and not to existing ones. Staff believes that introducing this item is a necessary change to appropriately balance the use of limited Competitive Housing Tax Credits between preservation projects and new construction. Staff recommends no change.

Staff appreciates hearing Commenter 18's concerns and for providing the suggestion to adopt some sort of condition-based criteria for determining readiness for new credits. Staff encourages any suggestions regarding this topic and recommends bringing these concerns up during the 2027 Roundtable discussions.

Section 11.101(b)(1)(A)(x) Site and Development Requirements- General Ineligibility Requirements - Minimum Score.

COMMENT SUMMARY:

Commenters 1, 18, 19, 31, 33, 35, and 36 request that this minimum score threshold be lowered to 120-130 points instead of 150, as the proposed higher threshold would hurt otherwise viable projects. Commenters 14, 15, 17, 18, 31, 32, 33, and 36 recommend a 120 minimum score citing that this is 74% of the average over the past two tax credit cycles. Commenters 14, 17, 18, and 32 believe that a development that still meets more than 70% of the Department's benchmarks will still provide significant benefit to the region. Commenter 18 believes this would significantly hinder the production of Rural housing projects and does not allow for equity across subregions. Commenter 19 believes a lower minimum score would help make project viable in challenging subregions.

Commenters 2, 33, and 35 understand that it is important to establish other minimum and threshold items in the QAP but is concerned that establishing a minimum score would result in overprescribing a program that is already complex, especially for rural subregions. Commenters 2, 33, and 36 suggest that this could impede affordable housing in areas that may not receive tax credits otherwise.

Commenter 20 believes this minimum score item should be removed or should be closer to 100 points if it remains.

Commenter 29 believes the minimum score for At-Risk deals should be lowered by an equal number of points not available to those applications. Commenter 29 believes a minimum score of 160 is too high and would exclude projects that should otherwise be feasible. Commenters 31 and 35 believe a minimum score of 120 would help deals in the At-Risk Set-Aside remain feasible and competitive. Commenter 33 believes this will hurt some USDA Applications that are in areas of that state that generally do not score well and that a minimum score of 120 is appropriate.

Comment 39 recommends that staff reinstate the proposed language under §11.101(b)(1)(A)(x) in the prior version of the Draft published for the September 4, 2025, Governing Board meeting, in order to render ineligible for tax credit awards any applications that receive no points under §11.9(c)(1) and (2)."

STAFF RESPONSE:

Staff acknowledges Commenters 1, 3, 14, 15, 17, 18, 19, 29, 31, 32, 33, 35, and 36 request to lower the minimum score threshold from 160 to 120. Staff has made a responsive change in response to the comments received.

Staff acknowledges Commenters 2, 33, and 35 concerns regarding the new minimum score threshold item.

Staff acknowledges Commenter 20's request to remove the minimum scoring threshold or the make the minimum score 100 points. Staff will make a responsive change to make the minimum score 120 as opposed to 150 listed in the 2027 QAP Draft.

Staff acknowledges Commenter 39's recommendation to reinstate the proposed language in the staff draft for

§11.101(b)(1)(A)(x). Staff believes that the new minimum score threshold is a comparable requirement to the language in the staff draft for §11.101(b)(1)(A)(x). Staff will monitor the impact of the new minimum score threshold in the upcoming 9% cycle, but for the moment recommends no change.

Section 11.101 (b)(1)(A)(viii-xi) Ineligible Developments - Per-Unit Cost Cap.

COMMENT SUMMARY:

Commenter 36 supports keeping the $500,000 per unit cap to prevent excessive costs but recommends allowing waivers for projects with clearly documented, extraordinary cost factors like historic rehab or infrastructure needs.

STAFF RESPONSE:

Staff appreciates Commenter 36's support of the cap. Staff acknowledges that some projects have unique cost factors, but does not believe a change to the item is necessary as Applicants may request a waiver of the rule as written if these circumstances arise.

Section 11.101(b)(3)(C) Site and Development Requirements-General Ineligibility Requirements - Rehabilitation Costs.

COMMENT SUMMARY:

Commenter 28 expresses concern regarding the proposed increase in the minimum rehabilitation cost from $30,000 to $35,000 per unit under Building Costs and Site Work. Commenter 28 believes this is a substantial increase that will unnecessarily inflate the tax credit request, particularly for those projects built on or after 2000. Commenter 28 recommends the $30,000 minimum cap remain in place for developments built on or after 2000.

Commenter 39 supports the new minimum per unit spending of building work and site costs for rehabilitation projects. Commenter 39 believes these items should help address properties with poor conditions as a result of poor management seeking resyndication and sets a stronger baseline investment in rehabilitation.

STAFF RESPONSE:

Staff acknowledges the concerns from Commenter 28 regarding the increase in the minimum rehabilitation cost per unit. Staff notes that it has been several years since this threshold was last updated, and during that time, inflation has occurred. While staff understands that the change may increase the cost of conducting rehabilitation work, staff also recognizes the benefit of requiring additional capital to better address properties that may be in poor condition.

Staff appreciates Commenter 39 for their support on this item.

Section 11.101(b)(4) - Mandatory Development Amenities.

COMMENT SUMMARY:

Commenter 4 believes that if washers and dryers are installed in each unit, then there should be no reason to provide a central laundry area.

STAFF RESPONSE:

Staff acknowledges Commenter 4's request that if washers and dryers are installed in every unit, then no laundry area should be provided. Staff will need further information and data regarding this issue in order to respond appropriately and incorporate into the QAP. No change is recommended at this time.

Section 11.101(b)(5) & (6) Site and Development Requirements-Common Amenities & Unit Requirements.

COMMENT SUMMARY:

Commenter 39 strongly supports both additions to this section related a new point item for transit stop seating and extended hours for use of swimming pools. Additionally, Commenter 39 supports the proposed changes to Unit Requirements that remove the automatic 5-point base score for rehabilitation developments with new construction. Commenter 39 believes that TDHCA should remove or amend unit requirements as to not incentivize bar seating units for elderly population units and should incentivize properties to provide generator-powered refrigerators to keep medicine cold during emergencies. Commenter 39 urges TDHCA to continue seeking out tenant feedback on rules and policies that impact their lives and look forward to future opportunities for community input and collaboration.

STAFF RESPONSE:

Staff appreciates the support from Commenter 39 on adding the new point item for transit stop seating and extended hours for swimming pools. Staff also appreciates Commenter 39's support for the changes under Unit Requirements that remove the automatic 5-point base score for rehabilitation developments with new construction. Staff acknowledges Commenter 39's statement on tenant feedback on rules and policies related to the QAP.

Section 11.101(b)(5) Site and Development Requirements-Common Amenities- Health Fitness.

COMMENT SUMMARY:

Commenters 10, 40, and 41 recommend the inclusion of a point item related to the implementation of the most up to date pool safety standards. Commenters 10, 40, and 42 have provided language and resources to this extent.

STAFF RESPONSE:

Staff appreciates Commenters 10, 40, and 41 recommendations on developing a scoring item for swimming pool safety in developments. The water safety features listed from Commenters 10, 40, and 41 appear to already be required under various laws and statutes for swimming pools on multifamily developments. Staff believes there is no need to replicate the rule within the QAP, but requests that the Commenters in question continue to provide suggestions in future QAP development cycles that may result in enhanced pool safety.

Section 11.101(b)(5)(C)(iv)(XVI) Common Amenities - Design/Landscaping Amenities.

COMMENT SUMMARY:

Commenters 19 and 33 recommend that staff also include a School Bus Stop in the language for the new point item related to a covered waiting area for public transportation.

STAFF RESPONSE:

Staff appreciates Commenters 19 and 33 recommendations to include school bus stops under the new point item for public transportation waiting areas. Staff has made a responsive change.

Section 11.101(b)(7) Site and Development Requirements- Resident Supportive Services.

COMMENT SUMMARY:

Commenters 19 and 33 would like The Department to add a few items back to the list that were available under prior rules and very valuable to small rural areas where services are difficult to come by. Commenters 19 and 33 suggest options include Resident assisted business services, quarterly health and nutrition programs, and arts, crafts and other recreational and social events. Commenter 19 and 33 have provided language to this extent.

Commenter 39 states that they conducted research among low-income tenants and found out that a major issue was the provision and availability of amenities. Commenter 39 says that tenants have signed leases expected certain amenities to end up being told that those amenities were switched out for other items without the tenant's knowledge. Commenter 39 says that tenants should be notified when amenities change because tenants often move to housing for certain amenities.

Commented 11 states that some residents move into Developments to have access to certain amenities but subsequently find out they were swapped out for a different option. Commenter 11 has provided suggested language which maintains developer's ability to switch amenities being offered at the property but requires notification of tenants prior to the changes of these services and that the services replaced are of the same point value.

STAFF RESPONSE:

Staff appreciates Commenters 19 and 33 suggestions to add back items to Resident Supportive Services. Staff believes it would be too late to include additional scoring options before the upcoming 9% Cycle.

Staff acknowledges Commenter 39's study on tenants and the issue of amenity availability and recommends that Commenter 39 bring up this topic during the comment period for 10 TAC §10, the Compliance Monitoring Rule. Staff also appreciates hearing the concerns of Commenter 11 regarding the amenities tenants expect and how this rule works in practice, and likewise recommends that this issue be brought forward for further discussion during the comment period for 10 TAC §10, the Compliance Monitoring Rule.

Section 11.202(1)(O) Ineligible Applicants and Applications- Repeated Return and Reallocation of Credits.

COMMENT SUMMARY:

Comment 12 opposes this new rule as the use of the Force Majeure rule has been critical for developers in the 9% round in the past 3 years due to labor and material shortages, rising interest rates, and decreased equity pricing. Commenter 12 explains that developers need more time to complete projects in this environment and that the retroactive nature of this rule will hurt developers who went through these difficult situations. Commenter 12 recommends this rule be removed. If the item cannot be removed, Commenter 12 requests that this item be contingent upon receiving a certificate of substantial completion by the July date.

Commenter 25 believes this item should be revised to read as "started construction" rather than "placed in service". Commenter 25 believes projects under construction meet the intent of this provision. Commenter 25 believes the consequence of sitting out until remaining projects are placed in service is unproductive for both the development community and the State of Texas as they pursue affordable housing goals..

STAFF RESPONSE:

Staff acknowledges the concerns of Commenters 12 and 25 regarding the proposed rule and the challenges developments have faced in recent years; however, Staff believes this is an important addition to ensure that all applicants have the capacity to take on additional new Developments. Staff acknowledges the recommendations from each Commenter regarding the potential triggering events in the rule and recommends bringing these suggestions up for discussion during the 2027 Roundtables.

Section 11.203 Public Notifications.

COMMENT SUMMARY:

Commenter 39 recommends that staff update this section to increase transparency with tenants and support tenant engagement. Language suggestions include defying tenant organizations, clarifying when and for what tenants should be notified of when it comes to property amenities, and providing clear instructions on how tenants can provide input for the HTC application process. Commenter 39 has provided language to this extent.

STAFF RESPONSE:

Staff acknowledges Commenter 39's recommendation on notifying tenants about how they can provide input during the HTC application process. Staff recommends bringing up this item up for discussion during the 2027 QAP Roundtables to solicit feedback and data from staff and stakeholders, but recommends no changes to the draft proposed QAP.

Section 11.204(1)(J) Required Documentation for Application Submission- Certification, Acknowledgement, and Consent of Development Owner.

COMMENT SUMMARY:

Commenter 8 requests revisions to this item be clarified to reflect that there are some exceptions in place and that will be followed for situations where the alterations needed to achieve current standards are infeasible or too expensive for the project to reasonably make such changes. Commenter 8 has provided suggested language for how this exception could be added to the proposed rule.

Commenter 11 is concerned that existing Tax Credit properties, most of which built prior to 2008, that have major disability-accessibility issues. Commenter 11 estimates that with over 1,000 units in the program built prior to 2008, there is a chance that a large portion of those may also be out of compliance with federal accessibility requirements, and therefore the QAP.

Commenters 11 and 39 recommend that the Department require that any applicant certify that all properties in their TX portfolio are accessible, according to federal law. Commenter 11 has provided evidence and suggested language to this extent.

Commenter 39 supports the addition of this item but recommends strengthening the language to achieve compliance with accessibility standards. Commenter 39 does not believe the proposed language prevents applicants from receiving new awards while their older properties are out of compliance with accessibility regulations. Commenter 39 has provided language to this extent.

Commenter 19 recognizes the importance of applicant certification but emphasizes that Department reviews must happen upfront to ensure compliance at the beginning.

STAFF RESPONSE:

Staff appreciates Commenter 39's support for the inclusion of this item.

Staff appreciates Commenter 8 for providing context around possible exceptions to the rule based on these requirements being too costly for some developments. Staff believes this rule is nonetheless important to include so that accessibility requirements are understood and followed.

Staff appreciates Commenter 11 for raising this issue and for suggesting language for how this rule can be adjusted. Staff desires to see data regarding the impact of this language before any additions are made, so it is recommended that this information be presented for discussion during the 2027 QAP Roundtables.

Staff acknowledges the concern by Commenter 11 and 39 that this language is not strong enough to get existing Tax Credit properties to remediate any deficiencies with accessibility rules. Staff believes this is a starting point for language around this subject and would recommend bringing any suggestions for further changes to the 2027 QAP Roundtable discussions.

Staff appreciates Commenter 19's recognition of the importance of this item and suggestion that Department reviews must happen upfront. Staff recognizes this, but also recognizes the importance of enforcing rules related to accessibility.

Section 11.302(d)(4)(D) - Acceptable Debt Coverage Ratio Range.

COMMENT SUMMARY:

Commenters 3 and 36 believe the Debt Coverage Ratio language should be changed to allow for a maximum of 1.50 for Housing Tax Credit Developments with seller notes required by §11.302(e)(1)(A)(iii), and for Housing Tax Credit Developments at cost certification. Commenters 3 and 36 believe this change is necessary due to implications of their additional request related to Cash-Out on Identity of Interest Transactions. Commenters 3 and 36 have provided language to this extent.

STAFF RESPONSE:

Staff acknowledges Commenter 3 and 36's concerns on the maximum DCR in regard to cash flow seller's notes. Staff does not believe a rule change is necessary. It is current practice for any application, that if the DCR is above the maximum 1.35, Real Estate Analysis assumes any payment amount up to the fully amortized payment to keep the DCR below the 1.35.

Section 11.302(e)(1)(A)(iii) Underwriting and Loan Policy- Cash-Outs.

COMMENT SUMMARY:

Commenters 2, 5, and 8 oppose the suggested language for cash-outs in the 2026 QAP, and recommend the suggested language be removed. Commenter 2 requests a revision to cash-out, so it is defined as the less of the appraised value or purchase price.

Commenters 3, 15, 21 and 32 request a revision to provide an exemption for Cash-Outs on Competitive Tax Credit developments sponsored by affiliates of Housing Authorities that qualify for HUD Choice Neighborhood or Housing Authorities who score under §11.9(b)(2) Sponsor Characteristics. Commenters 3, 15, 21 and 32 provide recommended language regarding the exemptions.

Commenter 20 requests language to be added to provide an exemption for any Development owned by a Public Housing Authority.

Commenters 3, 14 and 17 believe that Developments that are required to use a seller note as a source of funds should be able to structure hard pay permanent debt with a maximum of 1.50-year one debt coverage ratio. Commenters 14 and 17 provided suggested language in §11.392(d)(4)(D) Acceptable Debt Coverage Ratio Range regarding the seller notes.

Commenter 18 provides recommendations regarding cash-outs by listing a valuation-based approach. Capping at the lesser of purchase price or restricted appraised value, determined by an independent appraisal approved by The Department. Maintaining requirements for restricted appraisals, related-party disclosure, and cost certification.

Commenter 24 recommends The Department should clarify that "cash-out" applies only when a related party receives net proceeds beyond repayment of unrelated third-party debt and bona fide seller notes that remain in place post-acquisition.

Commenter 29 provides suggested language on defining "cash-out" by adding a requirement for documentation such as an audit or confirmation from a 3rd party accountant regarding estimated balance at closing and accrued simple interest at market rate, which should not exceed 7%.

Commenter 36 provide recommendations on cash-outs by listing the following refinements: Define what is *not* cash-out; Seller-note expectations; Clarification on the Appraised Value; and Higher starting debt coverage ratio (1.5 DSCR in year one). Commenter 36 provides suggested language that defines "cash-out" as the as-is restricted appraised values to be determined by an independent 3rd party appraisal.

STAFF RESPONSE:

Staff appreciates Commenters 2, 5, and 8's opposition to the rule. Staff believes the rule encourages a priority of the Department for the efficient use of limited 9% tax credits. Staff does not recommend to adjust the rule at this stage in the 2026 QAP Development process, as the decision warrants additional discussion with the relevant stakeholders. Staff encourages Commenters to bring this item up at the 2027 QAP Roundtable on Rules Committee for discussion.

Regarding Commenter 2, staff concurs that clarification is needed and has made a responsive change to clarify that cash-out should be defined as " the lesser of the amount reflected in the Site Control documents for the property or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter."

Staff appreciates Commenters 3, 15, 20, 21 and 32's request for a revision to provide an exemption for some Cash-Outs, but believes this is a significant change and warrants additional data and discussion with the relevant stakeholders. Staff encourages Commenters 3, 15, 20, 21 and 32 to bring this item up at the 2027 QAP Roundtable and Rules Committee for discussion.

Staff acknowledges Commenters 3, 14 and 17's concerns on the maximum DCR in regard to cash flow seller's notes. Staff does not believe a rule change is necessary. It is current practice for any application that if the DCR is above the maximum 1.35, REA assumes any payment amount up to the fully amortized payment to keep the DCR below the 1.35.

Staff acknowledges Commenter 18's recommendations regarding cash-outs and believes the rule as amended with this clarification, "the lesser of the amount reflected in the Site Control documents for the property or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter," meets Commenter 18's recommendation.

Staff acknowledges Commenter 24's recommended wording for clarification but does not believe a clarification of rule is needed. The cash-out rule is written in context of the larger appraisal rules.

Staff appreciates Commenter 29's suggestion to add language on defining "cash-out" by adding documentation requirements. Staff does not believe the audits are necessary for calculating cash-outs and do not want to add undue burden or costs. In regard to allowing interest on seller's notes up to 7%, Staff believes the draft proposed rule as-is encourages a priority of the Department for the efficient use of limited 9% tax credits. Staff does not recommend making adjustments to the definition at this stage in the 2026 QAP Development process, as the decision warrants additional research and discussion with the relevant stakeholders. Staff encourages Commenter 29 to bring this item up at the 2027 QAP Roundtable and Rules Committee for discussion.

Staff appreciates Commenter 36's language recommendations and believes all points have been addressed with the inclusion of the clarification language, "the lesser of the amount reflected in the Site Control documents for the property or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter," and noting that it is current practice for any application that if the DCR is above the maximum 1.35, REA assumes any payment amount up to the fully amortized payment to keep the DCR below the 1.35.

Section 11.302(e)(6) Underwriting Rules and General Guidelines - General Contractor Fee.

COMMENT SUMMARY: Commenters 5, 13, 28, 34, 36, and 37 all oppose the proposed 2026 language for general contractor fees. Commenters 5, 13, 36, and 37 all recommend the proposed changes be tabled for the 2026 QAP, while having general contractor fees be brought up during discussion during the 2027 QAP Planning Process. Commenter 34 recommends striking the proposed language entirely. Commenter 28 suggests that sales tax exemption related fees be included within the Developer Fee, stating that the proposed language inaccurately assigns responsibility for sales tax exemption related fees to the General Contractor.

STAFF RESPONSE:

Staff appreciates Commenter 5, 13, 28, 34, 36, and 37's concern that including the sales tax exemption fee paid to the entity listed as the General Contractor within the General Contractor Fee may limit the profit realized by the actual General Contractor. Staff acknowledges this concern and believes this is ultimately a business decision for the Developer. Staff believes that any fee paid to the General Contractor should appropriately be included in the General Contractor Fee.

Staff believes Commenter 28's suggestion to have the sales tax exemption fee included in Developer Fee is too significant of a change that has not been discussed with relevant stakeholders. Staff encourages Commenter 28 to bring this item up at the 2027 QAP Roundtable for discussion.

Section 11.302(e)(10) Underwriting Rules and General Guidelines- Soft Costs.

COMMENT SUMMARY: Commenters 13, 36 and 37 both recommend removing the proposed language for soft costs in the 2026 QAP. Commenters 36 and 37 suggest this item be brought up during a roundtable discussion for the 2027 QAP. Commenter 13 believes that the proposed 2026 provisions work against the objective by widening funding gaps and complicating the underwriting process. Commenter 36 notes that soft costs can result in increased funding gaps if the proposed language is accepted. Commenter 37 notes that the proposed language is a major change that has had little to no discussion, which can affect the partnerships and economic viability of future developments.

Commenter 39 recommends amending the proposed language to include a cap of how much of the payments to tax-exempt entities in exchanging for participation in the project can count towards the eligible basis.

STAFF RESPONSE:

Staff appreciates Commenter 36 and 37's comment that this should be discussed at the 2027 QAP roundtables. The rule in question was introduced at the 2026 QAP roundtables and was adjusted in response to those discussions. Originally, the proposed rule required that the property tax exemption fees be included in developer fee, but the industry felt strongly that this was limiting on their already tight developer fee, therefore, staff updated the rule to include these fees in the soft costs, where there is no cap.

Staff acknowledges Commenters 13 and 36's comments that soft costs can increase the funding gap but does not believe that showing fees paid for property tax exemption in soft costs increases the funding gap or affects the partnerships or economic viability of developments. These fees are already being paid as a cost to the development and should be reflected in the development cost schedule; this rule clarifies where they should be entered on the development cost schedule.

Staff acknowledges Commenter 39's comment to include a cap on these fees. Staff does not recommend making adjustments to the rule at this stage in the 2026 QAP Development process, as the decision warrants additional data, research and discussion with the relevant stakeholders.

Section 11.304(c)(10) Appraisal Rules and Guidelines.

COMMENT SUMMARY:

Commenter 13 opposes the favorable financing within the land and building split. Commenter 13 states the prescribed 25/75 allocation is inherently arbitrary and will negatively impact depreciation, taxable value, and LIHTC eligible basis. Commenter 13 also states that comp sheets will become less reliable as appraisals embedded with financing adjustments while others do not, complicates reconciliation and underwriting.

Commenter 33 appreciates staff codifying a process for how favorable financing will be approached going forward. Commenter 33 has provided recommended language regarding favorable financing. The recommended language requests that a "lesser of" approach be made related to favorable financing. Commenter 19 supports the comments of Commenter 33, while recommending the suggested language of Commenter 33.

STAFF RESPONSE:

Staff appreciates Commenter 13's response. Favorable financing is associated with below market rate loans provided by government entities, usually USDA or Department loans, and are transferable when properties are purchased. Favorable financing is a separate value in the appraisal and has historically been applied to land and building value in proportion to values ascribed in the appraisal. Favorable financing is usually involved with USDA developments and the Department feels they should benefit from the 25%/75% split on the favorable financing value only. Staff believes that clarification is needed and has made a responsive change to include "with favorable financing from a government entity".

Staff believes Commenter 19 and 33's comment is too significant of a change from what was discussed with relevant stakeholders and does not recommend changes at this stage in the 2026 QAP Development process. The as-is land value in the appraisal will be attributed to land, and the as-is building value will be attributed to the building value; in addition, 25% of the favorable financing will be attributed to land value and 75% of favorable financing will be attributed to building value.

Section 11.1003 & §11.1007 State Housing Tax Credit Allocation Process Associated with Competitive HTC Applications.

COMMENT SUMMARY:

Commenter 39 supports the proposed language of a minimum $3 million request amount; however, Commenter 39 opposes striking eligibility restrictions regarding high violent crime and poverty rate Neighborhood Risk Factors. Commenter 39 requests that neighborhood risk factors not be considered for the State Housing Tax Credit Application Process.

STAFF RESPONSE:

Staff appreciates the support for the new $3 million request amount for State Housing Tax Credit Requests. Staff acknowledges the suggestion to retain the restrictions on Applications containing neighborhood risk factors; however this change serves to increase the pool of potential Applicants in response to limited demand for State Credits at this time.

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 adopted 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) Bathroom--either:

(A) Full Bathroom--A portion of a Unit that is self-contained and includes all of the components of a Half Bathroom, plus a shower or bathtub (including a shower curtain rod if applicable) and towel bar. Rehabilitation (excluding Reconstruction) Developments in which Full Bathroom configurations are not being altered, will be exempt from the requirements, except as needed to comply with accessibility requirements.

(B) Half Bathroom--A portion of a Unit that is self-contained with a door and that has at least one toilet, wall-hung toilet paper holder, ventilation fan, electrical outlets, wall mirror, sink, and a faucet. Rehabilitation (excluding Reconstruction) Developments in which Half Bathroom configurations are not being altered, will be exempt from the requirements, except as needed to comply with accessibility requirements.

(11) 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.

(12) 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.

(13) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(14) 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.

(15) 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).

(16) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(17) 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.

(18) 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).

(19) 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.*

(20) 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.

(21) 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.

(22) Common Area-- All enclosed or covered space not included in Net Rentable Area.

(23) 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.

(24) Competitive Housing Tax Credits --Sometimes referred to as Competitive HTC. Tax credits available from the State 9% Housing Credit Ceiling.

(25) 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).

(26) Continuously Occupied--The same household has resided in the Unit for at least 12 months.

(27) 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.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state, or local governmental agency.

(29) Contractor--See General Contractor.

(30) 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.

(31) 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).

(32) 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).

(33) 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.

(34) 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).

(35) 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.

(36) 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.

(37) 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.

(38) 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 earlier 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.

(39) 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.

(40) 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)).

(41) 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.

(42) 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.

(43) 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.

(44) 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.

(45) 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.

(46) 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.

(47) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(48) 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.

(49) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(50) 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.

(51) 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.

(52) 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.

(53) 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.

(54) 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.

(55) 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.

(56) 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.

(57) 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.

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

(59) 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).

(60) 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).

(61) 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.

(62) 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.

(63) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs, and contingency.

(64) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(65) 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.

(66) 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.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(68) 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.

(69) HTC Development (also referred to as HTC Property)--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(70) HTC Property--See HTC Development.

(71) 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.

(72) 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.

(73) 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)

(74) 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.

(75) 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.

(76) 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.

(77) 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.

(78) 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.

(79) Market Study--See Market Analysis.

(80) 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.

(81) 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.

(82) National Standards for the Physical Inspection of Real Estate (NSPIRE)-- As developed by the Real Estate Assessment Center of HUD.

(83) 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).

(84) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(85) 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.

(86) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(87) 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.

(88) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(89) 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.

(90) 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.

(91) Owner--See Development Owner.

(92) 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.

(93) 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.

(94) Physical Needs Assessment--See Scope and Cost Review.

(95) 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.

(96) 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.

(97) 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.

(98) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(99) 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.

(100) Primary Market Area (PMA)--See Primary Market.

(101) 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.

(102) 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.

(103) 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.

(104) Qualified Census Tract (QCT)--those tracts designated as such by the U.S. Department of Housing and Urban Development.

(105) 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.

(106) 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).

(107) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(108) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(109) 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.

(110) 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.

(111) 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.

(112) 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.

(113) 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.

(114) Report--See Underwriting Report.

(115) Request--See Qualified Contract Request.

(116) 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.

(117) 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.

(118) 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.

(119) 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.

(120) 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.

(121) 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.

(122) 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.

(123) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(124) 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.

(125) 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.

(126) 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.

(127) 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.

(128) 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).

(129) 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.

(130) 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).

(131) 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.

(132) 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.

(133) 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.

(134) Underwriter--The author(s) of the Underwriting Report.

(135) 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.

(136) 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.

(137) 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.

(138) 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.

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

(140) 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.

(141) 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.

(142) 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.

(143) 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).

(144) 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, 2025 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 2026 QCTs designated by HUD to be effective in 2026.
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 in-

formation 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;

(4) Receives fees as a consultant or advisor that do not exceed $200,000; or

(5) Is a mezzanine finance company that does not have Control.

(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. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b)).

(c) Increase in Eligible Basis (30% 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)(5)(A)(i), 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)(5)(A)(ii)(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)(5)(A)(ii)(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 both Code, §42 and Department rules. 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 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.

(iv) 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.

(v) 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.

(vi) 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 Nonprofit 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, and the Development cannot be completed within six months of its initial deadline to place in service, 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.

(6) Credit Returns Due to Unforeseen Short-term Delays. 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, and the Development is anticipated to be completed within six months of its original deadline to place in service, such returned credit will, if the staff 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 Multifamily Rules from the initial year of allocation shall be applicable to the Development, to the extent allowed by federal or state law. The new deadline to place in service will be no more than six months from the original deadline. 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. 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. Staff may issue and execute a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only the following requirements are met. In the event that staff cannot reasonably conclude that all necessary conditions have been met, it may present the matter to the Board for determination:

(A) The credits were returned for good cause as solely determined by staff or the Board;

(B) A Development Owner claiming good cause must provide evidence of the circumstances;

(C) 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 reasonable obligations, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood of delay;

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

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

(F) If the good cause event necessitates an insurance claim, 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; and

(G) The Development Owner has not previously returned the credit allocation and had it reallocated under any provision of this chapter.

§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 paragraph.

(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. A feature will be disqualified if, as of the Full Application Delivery Date, a public announcement has been made regarding its anticipated closure:

(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 and operating as a public park 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. Unimproved land that has been dedicated but that is not operating as a public park will not qualify; however, wilderness areas with an intentional recreational use (e.g., established hiking trails, bird-watching areas, community gardens, or natural retreats) may qualify so long as they meet all requirements.

(ii) The closest public school campus of any grade level that is part of an independent school district.

(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 given to the Application that proposes the lowest Housing Tax Credit request per Low-Income Unit. This calculation will be determined based on the initial Application, and will not be adjusted in the event that the Department's Real Estate Analysis Division recommends a lower Housing Tax Credit award than was initially requested.

(4) 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 set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section.

(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 school to be used for the Tie Breaker;

(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 officeholder 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, 2026. 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.

(1) 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.

(2) 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.

(3) For scoring items that relate directly to the Application's finances, when costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); 2306.6725(b)(1); §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)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets the requirements of either subparagraphs (A), (B), (C), or (D) of this paragraph.

(A) 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).

(B) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of IRC §42(h)(5)(C) 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.

(C) Property Tax Status. The Application does not include any exemptions, abatements, rebates, or similar reductions related to the ad valorem taxes imposed by the taxing units in the Development Site's district. The Application must include a certification from the Development Owner that no such exemption or abatement will be sought or effected prior to the expiration of the federal Compliance period, as defined by Code, §42 (2 points).

(D) Housing Authority or HFC. The ownership structure contains a Housing Finance Corporation organized under Local Government Code Chapter 394, a Housing Authority organized under Local Government Code Chapter 392 or an instrumentality thereof, and the entire Development Site is located within that entity's area of operation. (2 points)

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

(1) Income Levels of Residents. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42 (m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A), (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 equaling at least ten points, 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)(4); §42(m)(1)(C)(v)) An Application may qualify to receive up to four (4) 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) of this paragraph 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. Due to the complexity of determining a Development's eligibility for 811 PRA, the Department will work with Applicants to resolve any errors made in good faith pertaining to this scoring item to allow the Application to maintain the requested points.

(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 six-month period in Urban subregions, and an initial three-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 six-month or three-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) (§2306.6710(b)(4)) 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).

(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, 2025. 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, 2026. 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 or Opportunity Zone. (§42(m)(1)(B)(ii)(III) and (C)(iii)). An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(5) of this section, related to Opportunity Index.

(A) Concerted Revitalization Plans 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:

(I) 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

(II) 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

(III) the proposed Development Site does not have a letter described in items (I) and (II) 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)

(C) Opportunity Zones For Developments located in either an Urban or Rural Area. The Development Site is located entirely within a Federal Opportunity Zone as designed by the Governor no later than the Full Application Delivery Date (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) and (§2306.67022(b)-(c)); §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 increase in the Consumer Price Indexes for All Urban Consumers between the two most recently available full years and adjust the square foot cost targets in this item by that same percentage.

(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 $155.12 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $207.21 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 $165.54 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $217.63 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 $207.21 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 $268.57 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 $268.57 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:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 10% 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 10% of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than 11% of the Total Housing Development Cost (2 points); or

(iv) if the Housing Tax Credit funding request is less than 12% 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.

(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 two (2) 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.

(C) Each Development may qualify for these points only once. An Application may not receive these points if it involves a Development that was previously awarded Competitive Housing Tax Credits through an Application that earned points based on eligibility of a Certified Historic Structure (2 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) 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 (B) of this paragraph. These points are not available in the At-Risk or USDA Set-Asides. (1 point)

(A) 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.

(B) 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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504463
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
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 adopted 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) - (ii) of this subparagraph and additional infor-

mation 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.

(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) - (ii) 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.

(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.

(viii) Competitive Housing Tax Credit Applications that involve any existing Housing Tax Credit Development that has any building that placed in service on or after January 1, 2006, for its most recent award of Housing Tax Credits.

(ix) Applications that represent a Total Housing Development Cost of $500,000 or more per Unit.

(x) Competitive Housing Tax Credit Applications that scores fewer than 120 total points, inclusive of any scoring reductions.

(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 Areas of High Crime. Any Development involving New Construction or Adaptive Reuse located in an area described in (a)(3)(D)(ii) of this subsection and for which mitigation submitted under subparagraph (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 $25,000 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 $35,000 per Unit in Building Costs and Site Work.

(C) For all other Developments, the Rehabilitation will involve at least $35,000 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 with after-hours access (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).

(XVI) A covered outdoor area with seating to be used as a waiting area for public transportation or a school bus (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. Rehabilitation Developments that also include New Construction will not start with a base score, and must include enough amenities to meet a minimum of nine (9) 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) 15.2 SEER2 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) 16.0 SEER2 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 Applica-

tion 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 provided 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 Full Bathrooms/Half Bathrooms (as applicable), 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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 8, 2025.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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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 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 adopted 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 Development 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. Depending on the timing associated with the release of the online Multifamily Management System, in lieu of submitting the Application as described herein for Priority 1 and 2 applications, staff may allow an Applicant to submit an Intent to Apply for 4% Housing Tax Credits form, and the required Application Fee, to meet the requirement to have the Certificate of Reservation issued by the TBRB.

(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 Tex. Gov't Code §1372.0321(a), 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. If, at the time of Application submission, other Department funding is over-subscribed, the submitted Application cannot include a request for such funds. 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 ma-

terials 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, except as specifically allowed by 10 TAC §11.1(d)(2).

(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 terminated, 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, documen-

tation 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;

(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; or

(O) Controls an existing Housing Tax Credit Development that has been approved by staff or the Governing Board for return and reallocation of tax credits under any option established at 10 TAC §11.6 two or more times and that has not yet commenced construction. Controlling multiple existing Housing Tax Credits Developments that have been approved under 10 TAC §11.6 one time each will not trigger this ineligibility criteria. For Applications that are only requesting Competitive Housing Tax Credits, an ineligible Applicant under this subparagraph may submit an Application by the Full Application Delivery Date and be considered eligible if the disqualifying Development has commenced construction as of the May meeting of the Governing

Board or May 31st, whichever is sooner. Any ineligible Applicant under this subparagraph that chooses to submit a Competitive Housing Tax Credit Application assumes the risk of doing so, and staff will not recommend to the Board any waiver in the event that the disqualifying Development does not commence construction in time for the Applicant to become eligible.

(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 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.

(F) 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.

(G) The Development Owner will comply with any and all notices required by the Department.

(H) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(I) The Development Owner acknowledges that all Applications are subject to a review for compliance with applicable accessibility standards, including those proposing the Rehabilitation of an existing Development.

(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. Applicants that are uncertain about the applicability of a Utility Allowance to the proposed Development are encouraged to contact the Department as early as possible prior to submitting the Application for guidance.

(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) The items identified in subclause (I) below. If (I) cannot be submitted, explain the reason and submit (II). Proceed in this manner through subclause (IV):

(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 over the Development 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. Notwithstanding the foregoing, in the case of Housing Tax Credit Applications only if the entity is owned by a fund regulated by the U.S. Securities and Exchange Commission, no Natural Person is required to be listed or sign any applications 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 entity shown on the organizational charts described in subparagraph (B) of this paragraph and each individual who exercises Control over the Development 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 and 811 PRA. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds or claiming points for serving tenants with special housing needs through participation in 811 PRA 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. In addition, for 811 PRA, if claiming points for an Existing Development(s) the organizational chart for the Existing Development(s) must also be included in the Application.

(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 chapter (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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504465
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
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 adopted 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:
(FHA senior debt service + ((1st year NOI - FHA senior debt service)*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 buildings 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) TDHCA prohibits cash-out to a related-party seller in an identity of interest transaction for Competitive Housing Tax Credit Applications (This section does not apply to Existing Developments funded by USDA, or those that include a Non-Profit, a Housing Authority, or an instrumentality of a Housing Authority in the ownership structure). For purposes of this paragraph, cash-out is defined as the lesser of the amount reflected in the Site Control documents for the property or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter, minus the payoff of any third-party debt unrelated to the seller, related-party notes that are in place specifically for substantiated capital expenditures or acquisition costs, and the principal balance of any seller note to remain in place post-acquisition. Holding costs and operating expenses, such as broker fees, property taxes, deferred maintenance, or deferred management fees, shall not be considered in calculating or justifying seller cash-out.

At Application, amortization schedules and projected loan balances at closing for all existing unrelated third-party debt are required to substantiate the calculation of cash-out and to support Department underwriting. All seller notes in identity of interest transactions must comply with the following requirements:

(I) The term sheet and note must be cash-flow contingent, with no required payments unless surplus cash is available;

(II) The term sheet and note must have no debt coverage ratio (DCR) requirements for payment eligibility;

(III) The term sheet and LPA must state that the seller note is paid after deferred developer fee.

(iv) 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.

(v) 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 fees paid to an organization to achieve a sales tax exemption will be included in the General Contactor Fee. 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. This includes any one-time fees or payments, excluding any upfront ground lease payments, to a Housing Finance Corporation, Public Finance Corporation, Housing Authority, or Non-Profit that is part of the project ownership structure or is otherwise involved in the project to qualify for a property tax exemption. 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)(A) or (4) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan, including a Supportive Housing Development, will not be re-characterized as feasible with respect to paragraph (4)(B) 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 anal-

ysis 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 con-

clusions 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 replacement 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 from a government entity (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. 25% of the appraised favorable financing value will be allocated to land value and 75% will be allocated to building value, unless the below market financing was used for rehabilitation only, in which case the favorable financing will be attributed 100% to the building. Applicant's allocation of favorable financing should be clearly explained.

(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 Restric-

tions) 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), and (8)(A) and (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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504466
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
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 adopted 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 for a pre-application that was fully submitted.

(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, but generally no later than 90 days after the Certificate of Reservation 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 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. The one-year period may be extended for a period not to exceed 6 months, upon request. Should an Applicant desire 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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504467
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER F. STATE 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 adopted sections affect no other code, article, or statute.

§11.1001. General.

(a) This subchapter applies only to 2026 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 2026 HTC Competitive Cycle nor are they part of the 2026 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). No fee shall be charged for this Material Amendment.

(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 under §11.9(e)(2) and (4) of this title(relating to Costs of Development per Square Foot or Leveraging 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 that 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 (b) of this chapter (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) Minimum Request Amount. The minimum request amount is $3,000,000.

(d) 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 (relating to Site Control).

(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.

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 of this chapter (relating to Competitive HTC Selection Criteria) and, if applicable, the tie breaker factors established under §11.7 of this chapter (relating to Tie Breaker Factors).

§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 Texas Insurance 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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504468
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.9

The Texas State Library and Archives Commission (commission) adopts the repeal of Texas Administrative Code, Title 13, Part 1, Chapter 6, Subchapter A, §6.9, concerning Notification by State Records Administrator. The repeal is adopted without changes to the proposed text as published in the August 22, 2025, issue of the *Texas Register* (50 TexReg 5412) and will not be republished.

The commission recently concluded its quadrennial review of Chapter 6 as required by Government Code §2001.039. After review, the commission determined that the reasons for adopting the rules in this chapter continue to exist; however, the commission identified one section that is no longer necessary. Section 6.9 is outdated, unnecessary, and does not implement, interpret, or prescribe law or policy, nor describe a commission procedure or practice requirement. Accordingly, the commission repeals §6.9.

During the review, the commission also determined that §6.122, Records Storage Services Fee Schedule, is more appropriately located with other fee schedule provisions in Subchapter D. On adoption of the repeal of §6.9, the commission concurrently moves §6.122 into Subchapter D and eliminates Subchapter E.

SUMMARY OF COMMENTS. The commission received no comments regarding the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted under Government Code, §441.189, which provides that any state record

may be created or stored electronically in accordance with standards and procedures adopted as administrative rules of the commission; §441.199, which authorizes the commission to adopt rules it determines necessary for cost reduction and efficiency of recordkeeping by state agencies and for the state's management and preservation of records; Government Code, §441.190, which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records; and §441.182, which authorizes the commission to recover costs through the assessment of fees for operating the state records center for the economical and efficient storage, accessibility, protection, and final disposition of inactive and vital state records and performing micrographic and other imaging services for the protection, accessibility, and preservation of state records.

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 5, 2025.

TRD-202504432
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: December 25, 2025
Proposal publication date: August 22, 2025
For further information, please call: (512) 463-5460

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CHAPTER 7. LOCAL RECORDS
SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

The Texas State Library and Archives Commission (commission) adopts the repeal of Texas Administrative Code, Title 13, Part 1, Chapter 7, Subchapter D, §7.125, Records Retention Schedules. The repeal is adopted without changes to the proposed text as published in the August 22, 2025, issue of the *Texas Register* (50 TexReg 5413). The rule will not be republished.

Section 441.158 of the Government Code requires the director and librarian, under the direction of the commission, to prepare records retention schedules for each type of local government, including a schedule for records common to all types of local government, and to adopt the schedules by rule. Each schedule must list the records of the applicable local government, state the retention period prescribed by law, rule, or regulation where one exists, and prescribe retention periods for all other records, which periods have the same effect as law once adopted.

Section 7.125 was first adopted in 1992 and included full images of twelve unique records retention schedules applicable to different types of local government, along with a schedule for records common to all. Over time, the schedules were updated to reflect changes in law and practice and to simplify and consolidate record series. However, because all twelve schedules were contained within a single rule, reviewing and updating them became inefficient, as amendments could not be proposed until prior amendments became effective. For this reason, §7.125 has been repealed, and each schedule will be adopted as a separate administrative rule. This action improves the commission's ability to update and maintain the schedules and provides greater usability for local governments. The adoption of each individual schedule appears elsewhere in this same issue of the *Texas Register*.

SUMMARY OF COMMENTS. The commission received no comments regarding the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted under Government Code, §441.158, which requires the director and librarian, under the direction of the commission, to prepare and adopt records retention schedules for each type of local government, including a schedule for records common to all types of local government.

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 5, 2025.

TRD-202504430
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: December 25, 2025
Proposal publication date: August 22, 2025
For further information, please call: (512) 463-5460

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13 TAC §§7.126 - 7.137

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 13 TAC §§7.126 - 7.137 are not included in the print version of the Texas Register. The figures are available in the on-line version of the December 19, 2025, issue of the Texas Register.)

The Texas State Library and Archives Commission (commission) adopts new §§7.126 - 7.137, concerning Local Government Records Retention Schedules. The new rules are adopted with minor changes to the proposed text as published in the August 22, 2025, issue of the *Texas Register* (50 TexReg 5414). Specifically, the headers and effective dates on each section have been updated. The rules will be republished.

Section 441.158 of the Government Code requires the director and librarian, under the direction of the commission, to prepare records retention schedules for each type of local government, including a schedule for records common to all types of local government. The statute further requires the commission to adopt the schedules by rule. Each schedule must list the records of the applicable local government, state the retention period prescribed by law, rule, or regulation for records for which a period is prescribed, and prescribe retention periods for all other records, which periods have the same effect as law once the schedule is adopted.

The adoption of each local government records retention schedule as a separate administrative rule was determined necessary to update and improve the schedules so that each record series remains accurate, current, and supported by appropriate legal citations. Adoption in this format will also simplify the process of making updates and clarifying language in the future. Previ-

ously, all twelve schedules were contained within a single section of the Texas Administrative Code that, when printed, exceeded 475 pages. As a result of this format, amendments could not be proposed to a specific schedule until prior amendments to any of the schedules within the rule became effective, a process that made reviewing and updating individual schedules inefficient and cumbersome. By adopting each schedule separately, the commission ensures greater efficiency in reviewing and updating the schedules and improves the usability of its rules for local governments. In connection with this action, the commission adopts the repeal of §7.125, Records Retention Schedules, which previously contained all twelve schedules, and notice of that adoption appears in this same issue of the *Texas Register*.

SUMMARY OF PUBLIC COMMENT. The commission received no comments regarding the proposed new rules.

STATUTORY AUTHORITY. The new sections are adopted under Government Code §441.158, which requires the director and librarian, under the direction of the commission, to prepare records retention schedules for each type of local government, including a schedule for records common to all types of local government, and to adopt the schedules by rule.

§7.126. Local Schedule GR, Records Common to All Local Governments.

Local Schedule GR: Records Common to All Local Governments.
Figure: 13 TAC §7.126

§7.127. Local Schedule PW: Records of Public Works and Other Government Services.

Local Schedule PW: Records of Public Works and Other Government Services.
Figure: 13 TAC §7.127

§7.128. Local Schedule CC: Records of County Clerks.

Local Schedule CC: Records of County Clerks.
Figure: 13 TAC §7.128

§7.129. Local Schedule DC: Records of District Clerks.

Local Schedule DC: Records of District Clerks.
Figure: 13 TAC §7.129

§7.130. Local Schedule PS: Records of Public Safety Agencies.

Local Schedule PS: Records of Public Safety Agencies.
Figure: 13 TAC §7.130

§7.131. Local Schedule SD: Records of Public School Districts.

Local Schedule SD: Records of Public School Districts.
Figure: 13 TAC §7.131

§7.132. Local Schedule JC: Records of Public Junior Colleges.

Local Schedule JC: Records of Public Junior Colleges.
Figure: 13 TAC §7.132

§7.133. Local Schedule LC: Records of Justice and Municipal Courts.

Local Schedule LC: Records of Justice and Municipal Courts.
Figure: 13 TAC §7.133

§7.134. Local Schedule TX: Records of Property Taxation.

Local Schedule TX: Records of Property Taxation.
Figure: 13 TAC §7.134

§7.135. Local Schedule EL: Records of Elections and Voter Registration.

Local Schedule EL: Records of Elections and Voter Registration.
Figure: 13 TAC §7.135

§7.136. Local Schedule HR: Records of Public Health Agencies.

Local Schedule HR: Records of Public Health Agencies.
Figure: 13 TAC §7.136

§7.137. Local Schedule UT: Records of Utility Services.

Local Schedule UT: Records of Utility Services.
Figure: 13 TAC §7.137

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 5, 2025.

TRD-202504429
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: December 25, 2025
Proposal publication date: August 22, 2025
For further information, please call: (512) 463-5460

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING TRUANCY

19 TAC §129.1047

The Texas Education Agency (TEA) adopts an amendment to §129.1047, concerning truancy sanctions. The amendment is adopted without changes to the proposed text as published in the September 26, 2025 issue of the *Texas Register* (50 TexReg 6281) and will not be republished. The adopted amendment aligns the rule with statute and the current agency investigative process.

REASONED JUSTIFICATION: Section 129.1047 establishes criteria for sanctions regarding truancy.

The adopted amendment removes former §129.1047(b) and (c) to align with current program practices.

Section 129.1047(d) was re-lettered as new subsection (b), and language was added to specify that sanctions related to truancy prevention measures are subject to a school district's due process rights under Texas Education Code (TEC), Chapter 39, Subchapter A. In addition, a reference to TEC, §39.102(a), was updated to §39A.002.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 26, 2025, and ended October 27, 2025. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §25.0915, which establishes truancy prevention measures.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §25.0915.

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 8, 2025.

TRD-202504472
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 28, 2025
Proposal publication date: September 26, 2025
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 117. END STAGE RENAL DISEASE FACILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 117 in Texas Administrative Code (TAC) Title 25, which consists of §§117.1, 117.2, 117.11 - 117.19, 117.31 - 117.33, 117.41 - 117.49, 117.61 - 117.65, and 117.81 - 117.86.

The repeals are adopted without changes to the proposed text as published in the June 6, 2025, issue of the *Texas Register* (50 TexReg 3362) and will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption of these repeals removes them from 25 TAC Chapter 117, End Stage Renal Disease Facilities, Subchapters A - F, to replace them with similar and updated new rules in 26 TAC Chapter 507, Subchapters A - F, End Stage Renal Disease Facilities. The adoption of the new rules is published elsewhere in this issue of the *Texas Register*. 25 TAC Chapter 117, Subchapters G and H, were administratively transferred to 26 TAC 507, Subchapters Y and Z.

COMMENTS

The 31-day comment period ended July 7, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeals.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §117.1, §117.2

STATUTORY AUTHORITY

The repealed rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease 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 3, 2025.

TRD-202504421
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: December 23, 2025
Proposal publication date: June 6, 2025
For further information, please call: (512) 834-4591

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SUBCHAPTER B. APPLICATION AND ISSUANCE OF A LICENSE

25 TAC §§117.11 - 117.19

STATUTORY AUTHORITY

The repealed rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease 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 3, 2025.

TRD-202504422
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: December 23, 2025
Proposal publication date: June 6, 2025
For further information, please call: (512) 834-4591

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SUBCHAPTER C. MINIMUM STANDARDS FOR EQUIPMENT, WATER TREATMENT AND REUSE, AND SANITARY AND HYGIENIC CONDITIONS

25 TAC §§117.31 - 117.33

STATUTORY AUTHORITY

The repealed rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health

and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease 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.

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TRD-202504423
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: December 23, 2025
Proposal publication date: June 6, 2025
For further information, please call: (512) 834-4591

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SUBCHAPTER D. MINIMUM STANDARDS FOR PATIENT CARE AND TREATMENT

25 TAC §§117.41 - 117.49

STATUTORY AUTHORITY

The repealed rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease 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.

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TRD-202504424
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: December 23, 2025
Proposal publication date: June 6, 2025
For further information, please call: (512) 834-4591

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SUBCHAPTER E. DIALYSIS TECHNICIANS

25 TAC §§117.61 - 117.65

STATUTORY AUTHORITY

The repealed rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease 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.

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Karen Ray
Chief Counsel
Department of State Health Services
Effective date: December 23, 2025
Proposal publication date: June 6, 2025
For further information, please call: (512) 834-4591

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SUBCHAPTER F. CORRECTIVE ACTION PLAN AND ENFORCEMENT

25 TAC §§117.81 - 117.86

STATUTORY AUTHORITY

The repealed rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease 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 3, 2025.

TRD-202504426
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: December 23, 2025
Proposal publication date: June 6, 2025
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 507. END STAGE RENAL DISEASE FACILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §§507.1, 507.2, 507.11 - 507.24, 507.30 - 507.38, 507.41 - 507.49, 507.51 - 507.60, 507.71 - 507.75, and 507.81 - 507.93, concerning End Stage Renal Disease Facilities.

New §§507.2; 507.11 - 507.17; 507.21 and 507.31; 507.33 - 507.36; 507.38, 507.41, 507.42, 507.48, and 507.49; 507.51 - 507.57; 507.59, 507.60, 507.72, 507.73, and 507.75; 507.82; and 507.90 are adopted with changes to the proposed text as published in the June 6, 2025, issue of the *Texas Register* (50 TexReg 3367). These rules will be republished.

New §§507.1; 507.18 - 507.20; 507.22 - 507.24; 507.30, 507.32, and 507.37; 507.43 - 507.47; 507.58, 507.71, and 507.74; 507.81, 507.83 - 507.89 and 507.91 - 507.93 are adopted without changes to the proposed text as published in the June 6, 2025, issue of the *Texas Register* (50 TexReg 3367). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comprehensively update the end stage renal disease (ESRD) facility rules to align with Texas Health and Safety Code Chapter 251. The new sections ensure patient safety while reducing unnecessary administrative burdens and allowing ESRDs more flexibility in the delivery of care. The new sections ensure alignment with current facility licensing, inspection, and investigation procedures; and reflect current technologies. The new sections also provide updated definitions and improve rule organization and readability.

The new sections require ESRD facilities to comply with the most current applicable guidelines and standards, for example, those from the Centers for Medicare & Medicaid Services (CMS), Centers for Disease Control and Prevention, U.S. Food and Drug Administration, and Association for the Advancement of Medical Instrumentation, to ensure patient safety.

The new sections improve consistency across HHSC Health Care Regulation (HCR) rulesets and correct outdated language, references, and citations. The new sections reflect the transition of regulatory jurisdiction from the Texas Department of State Health Services (DSHS) to HHSC and replace the ESRD facility rules in Title 25 of the Texas Administrative Code (25 TAC).

HHSC's adoption of the repeal of 25 TAC Chapter 117, End Stage Renal Disease Facilities, is published elsewhere in this issue of the *Texas Register*.

COMMENTS

The 31-day comment period ended July 7, 2025.

During this period, HHSC received comments regarding the proposed rules from 20 commenters. HHSC received comments from American Renal Associates LLC D/B/A Innovative Renal Care (IRC/ARA), DaVita, Inc., ESRD Network 14 Medical Review Board, Fresenius Medical Care North America, Texas Medical Association, Texas Nurses Association, U.S. Renal Care (USRC), and eleven individuals. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Innovative Renal Care/American Renal Associates (IRC/ARA) thanked HHSC for modernizing ESRD regulations and collaborating on rulemaking. IRC/ARA also urged HHSC to allow implementation flexibility for rural and underserved communities and align regulations with national standards. Additionally, IRC/ARA stated clear, practical guidance is essential to safe and high-quality dialysis care.

Response: HHSC acknowledges this comment and revises the rules to allow flexibility for facilities and more alignment with certain CMS standards. Revisions include clarifying staffing ratios and removing the additional nurse requirement, extending the amount of time a facility may remain open without providing services, and providing flexibility for patient training and routine provider visits with patients.

Comment: DaVita stated that HHSC used the terms "days," "business days," and "calendar days" inconsistently throughout the proposed rules in 26 TAC Chapter 507 and requested that HHSC use a single standard.

Response: HHSC declines to revise the rules further based on this comment because it is necessary to use business days in some instances, such as when HHSC or facilities send correspondence via U.S. Postal Service and in timelines for facilities to correct deficiencies.

Comment: USRC and Fresenius commented that the last two sentences in the definition of "direct care staff" in §507.2(26) expand the definition and are unnecessary. Fresenius also commented that they are not part of the definition.

Response: HHSC revises the definition of "direct care staff" in §507.2(26) to remove the sentence, "This does not include the Charge Nurse as shown in §507.60 of this chapter (relating to Staffing Table)." HHSC revises §507.48(j) and Figure: 26 TAC §507.60, as explained later in this adoption preamble, to clarify that a charge nurse may be considered part of direct care staff when there are seven or fewer patients. HHSC keeps the sentence, "These staff members fulfill the patient to staff ratio requirement."

Comment: An individual requested an update to the definition to "ESRD Network" to remove "not-for-profit" as several ESRD Networks are now owned by for profit corporations.

Response: HHSC agrees with the comment and revises the ESRD Network definition in §507.2(31) to remove the term "not-for-profit."

Comment: DaVita requested HHSC clarify the definition in §507.2(48) of "licensed vocational nurse (LVN)," specifically, the requirement for an LVN to meet "the competency requirements specified for dialysis technicians." The commenter added that the definition does not properly differentiate the LVN role from the dialysis technician role and is also inconsistent with §507.48(o), which only requires LVNs to meet the requirements for a dialysis technician when they are acting in the capacity of a dialysis technician.

Response: HHSC agrees with the comment and revises §507.2(48) by creating a separate sentence after the licensure requirement for an LVN. The separate sentence clarifies that an LVN may act in the capacity of a dialysis technician after meeting the competency requirements specified in §507.48(o) of this chapter.

Comment: DaVita objected to the definition of "single patient device" in §507.2(69) which requires devices to be prescribed to a patient for individual use, citing the CMS ESRD Conditions for Coverage (CfCs), which do not include this requirement. DaVita stated the definition limited care settings such as on-site home hemodialysis in skilled nursing facilities as DaVita believes multi-

patient reuse of dialysis machines is safe and clinically appropriate.

Response: HHSC declines to revise the definition in §507.2(69) in response to the comment because home dialysis service is currently defined in this chapter as dialysis performed at home by an end stage renal disease patient or the patient's caregiver and does not include on-site home hemodialysis in skilled nursing facilities. It would be an infection risk for home dialysis patients to share a dialysis machine. As multiple stakeholders requested clarification about dialysis services in skilled nursing facilities, HHSC is currently assessing regulatory authority for multi-patient reuse of dialysis machines in skilled nursing facilities.

Comment: The ESRD Network 14 Medical Review Board requested that the definition of "single patient device" in §507.2(69) be revised to reference the need to assign a patient a single device in the traditional home setting, where it is appropriate. This commenter added that the dialysis machine is not an alternate method of providing dialysis nor prescribed to a patient, but simply a need to assign the machine to a home patient in their home.

Response: HHSC agrees with the commenter and revises the definition of single patient device in §507.2(69) to "A dialysis machine, as designated by the FDA, assigned to a patient for individual use at home."

Comment: An individual requested that HHSC update the "social worker" definition to remove the "grandfather" clause for certain social workers with two years of work experience as a social worker, one year of experience having been in a dialysis facility or transplantation program before September 1, 1976, and a consultive relationship with a social worker with a master's degree from an accredited graduate school of social work.

Response: HHSC declines to revise the definition of "social worker" in §507.2(70) as suggested because that definition aligns with the definition in CMS CfCs for ESRDs in the Code of Federal Regulations (CFR), Title 42, HHSC intends to provide facilities with the same flexibility provided by the CFR as there may be individuals that still qualify under the definition.

Comment: Fresenius Kidney Care and USRC thanked HHSC for changing the experience required for a supervising nurse in the definition of "supervising nurse" from 18 to 12 months as an RN and from 12 to 6 months in dialysis within the last 24 months.

Response: HHSC acknowledges this comment relating to the definition of "supervising nurse" proposed in §507.2(73)(A)(i) and (A)(ii).

Comment: DaVita appreciates the proposed definition of "supervising nurse" in §507.2(73) to allow for a supervising nurse to have twelve months of experience as an RN, consistent with the CMS CfCs. However, DaVita objects to the requirement that the additional six months of experience in dialysis be obtained in the last 24 months. DaVita requested that HHSC revise this part of the definition by removing "obtained within the last 24 months," to further align the requirement with the CMS CfCs that do not require the 6 months of experience in dialysis to be obtained within the last 24 months. DaVita believes this requirement would create staffing limitations and difficulties for clinics

Response: Currently, 25 TAC §117.2(71)(A), proposed for repeal, requires 12 months of experience in dialysis within the last 24 months. Proposed §507.2(73)(A)(ii), reduced the experience in dialysis to six months, but maintains the requirement for the experience to be within the last 24 months. HHSC declines to revise §507.2(73)(A)(ii) as requested because reducing the supervising nurse's experience in dialysis any further presents a risk to patient health and safety.

Comment: DaVita and ESRD Network 14 Medical Review Board requested that HHSC update the definition of "Training (Patient)" to allow for training in small groups. DaVita also recommended that group training always take place in person and that individual needs are identified and addressed. ESRD Network 14 Medical Review Board stated that group training is efficient, can create a healthy shared learning environment, and that a hybrid model that includes group and individual training is ideal.

Response: HHSC agrees with the comment and revises §507.53 to add a new subsection (c) to allow patient training to be provided individually or in a small group setting, require a facility to offer patients the choice of an individual or small group training setting based on the patient's preference and individual needs, and require patient training to take place in person. HHSC revises §507.53 after new subsection (c) to renumber subsections (c)- (h) as (d) - (i). HHSC also revises the definition of "Training (Patient)" in §507.2 to add patient training must "meet the requirements in §507.53 of this chapter (relating to Home Dialysis Service)" to replace "take place in person;" and to add "home dialysis" in front of "treatment modality" to clarify the definition applies to home dialysis.

Comment: ESRD Network 14 Medical Review Board expressed full agreement with proposed §507.11(a) that all dialysis services providers must be licensed, regardless of affiliation or modality, and that home dialysis services must be under the purview of a licensed ESRD facility.

Response: HHSC acknowledges the comment.

Comment: DaVita requests that HHSC change §507.11(b), which requires a facility to obtain a license before admitting patients, to add "except as required for initial inspection under §507.12(f)."

Response: HHSC disagrees with the comment and declines to revise §507.11(b) as requested because there are no exceptions to obtaining a license before admitting patients. The subsection the commenter referred to as §507.12(f) is now §507.12(h), which requires the facility to admit and provide services to at least one patient before an HHSC inspection, but not before licensure.

Comment: DaVita and ESRD Network 14 Medical Review Board requested that HHSC amend §507.11(h)(1) to require a home and community support services agency (HCSSA) with a home dialysis designation to be Medicare certified as an ESRD dialysis facility. DaVita also suggested requiring a HCSSA to have five or fewer dialysis patients if the agency is not Medicare certified.

ESRD Network 14 Medical Review Board noted that Texas is the only state that allows providers to provide dialysis services without certification and that the exempted providers cannot process 2728 ESRD Medical Evidence Reports, which interferes with a patient's ability to receive a kidney transplant. Additionally, they stated the exemption puts patient safety, federal program integrity, and the state's monitoring ability at risk.

Response: HHSC declines to revise §507.11(h)(1) in response to this comment because the rule aligns with Texas Health and Safety Code §251.012(1), which exempts a HCCSA, licensed under Texas Health and Safety Code Chapter 142 with a home dialysis designation, from being licensed as an ESRD facility under 26 TAC Chapter 507.

Comment: An individual asked if §507.11(h)(1) means that entities providing only home staff assisted dialysis are required to be licensed solely under Texas Health and Safety Code Chapter 142, or if this interpretation is misleading because of the requirement under Texas Health and Safety Code Chapter 142 to have an agreement with an ESRD licensed facility.

Response: In accordance with Texas Health and Safety Code §251.012(1), §507.11(h)(1) exempts a home and community support services agency (HCSSA) licensed under Texas Health and Safety Code Chapter 142 with a home dialysis designation from required licensure under 26 TAC Chapter 507. Therefore, HHSC disagrees that §507.11(h)(1) is misleading because a HCSSA must be licensed under Texas Health and Safety Code Chapter 142 and there is not a requirement under that chapter for a HCSSA with the dialysis designation to have an agreement with an ESRD licensed facility to provide home staff-assisted dialysis. HHSC declines to revise the rules in response to this comment.

Comment: DaVita requested HHSC amend §507.11(h)(5) to only exempt a physician's office from licensure if the office is used primarily as an ESRD facility and either has five or fewer dialysis patients or is Medicare certified as an ESRD dialysis facility.

Response: HHSC declines to revise §507.11(h)(5) in response to this comment because the rule is consistent with Texas Health and Safety Code §251.012(5).

Comment: Fresenius Kidney Care and USRC requested HHSC revise the rule in §507.12(a)(1)(B) to allow for dialysis technicians to be in the process of completing training program requirements.

Response: HHSC declines to revise §507.12(a)(1)(B) because the rule is consistent with Texas Health and Safety Code §251.013(c).

Comment: USRC requested that HHSC revise §507.12(e) to allow facilities to prove active process towards completion to avoid the application withdrawal at six months.

Response: HHSC declines to revise §507.12(e) because the rule allows adequate time to communicate with HHSC and complete the process.

Comment: U.S. Renal Care, Inc. suggested HHSC revise §507.13(f)(2) to allow a facility making an ongoing attempt to obtain required documents for a license renewal application to avoid the requirement to cease operation 30 days after license expiration. USRC stated that document availability may be outside of the facility's control.

Response: HHSC declines to revise §507.13(f)(2) as suggested because the rules allow adequate time to communicate with HHSC to complete the process.

Comment: DaVita expressed concern that 10 business days may not be enough time to respond to information requests resulting from a renewal application, and notes that 10 business days is inconsistent with most of the regulations in Chapter 507, which uses calendar days to measure deadlines. DaVita requested that HHSC revise §507.13(h) to allow 20 business days to correct a deficiency in the renewal application.

Response: HHSC agrees and revises §507.13(h) to change "10 business days" to "15 business days" for the timeline in which a facility must correct a deficiency in the renewal application after being notified.

Comment: DaVita requested that HHSC remove §507.14(a)(4) and allow the facility to continue to operate as a change in ownership is being processed. DaVita stated the rule could lead to gaps in patient care if the change in ownership application is not required to be submitted until five days after the change, and HHSC may take up to 45 days or more to process the application and issue a new license.

Response: HHSC agrees with the comment and revises §507.14(a) by removing paragraph (4), then renumbering paragraphs (5) - (8) as paragraphs (4) - (7).

Comment: DaVita suggested HHSC remove the requirement proposed in §507.14(a)(5) because the language in §507.14(e) is already permissive and states that HHSC "may" inspect the facility.

Response: HHSC agrees with the comment and removes §507.14(a)(5), renumbered as §507.14(a)(4), because §507.14(e), renumbered as §507.14(d), already states HHSC "may" inspect the facility.

Comment: DaVita requested that HHSC revise §507.16(a) to keep the requirement for notifying HHSC of certain architectural projects at 30 days in advance rather than the proposed 90 days in advance. DaVita stated this change would allow for a licensee to react to changing circumstances.

Response: HHSC agrees with the comment and revises §507.16(a) to revert the notification requirement from at least 90 calendar days to at least 30 calendar days before the activities listed in the rule.

Comment: DaVita asserts that certain activities listed in proposed in §507.16(a), such as "submission of an initial application," or "minor alterations, renovations, remodeling, equipment and finish upgrades," should not be subject to the notice required in this rule because the activities are not subject to HHSC approval and do not affect patient care.

Response: HHSC declines to revise the list of activities in §507.16(a) based on this comment. HHSC requires notification before a facility begins the activities listed in §507.16(a)(1) - (7) because even small changes might have unintended consequences for patient health and safety. The notification allows HHSC to inform facilities when proposed changes could impact the facility's compliance.

Comment: DaVita requested HHSC remove §507.16(a)(6) because it is unclear and may be duplicative of (a)(7), which also includes a change of services or changes in treatment modality. The commenter also noted the term "invasive procedural service" is not defined and is inconsistent with the type of care given at a dialysis facility.

Response: HHSC agrees with the comment and revises §507.16(a)(6) to remove "or changing an invasive procedural service" because it does not apply to ESRD facilities. HHSC declines to remove §507.16(a)(6) entirely as it is not duplicative of (a)(7). Retrofitting, in §507.16(a)(6), may have a greater architectural scope than simply changing treatment modality or station designation. Service changes, in §507.16(a)(7), may encompass more than a retrofit; it may include changes to treatment modality or station designations.

Comment: DaVita requested HHSC update §507.17(3) to align with CMS practice which considers any closure less than 90 days as temporary and make a case-by-case determination based on facts and circumstances for any closure greater than 90 days

to determine whether a particular closure is temporary or permanent. DaVita believes 60 days is overly restrictive and can create hurdles to patient access.

Response: HHSC agrees with the comment and revises §507.17(3) by changing 60 calendar days to 90 calendar days. For consistency, HHSC revises §507.17 to change the number of days without offering services before HHSC may close a license from 60 calendar days to 90 calendar days; and revises §507.17(4) and (6) to change 60 calendar days to 90 calendar days related to inactive status and reactivating the license, respectively.

Comment: Fresenius, DaVita, and ESRD Network 14 Medical Review Board requested that HHSC revise §507.21(a) to allow a facility to request an exception described in the rule that may be temporary or permanent. DaVita suggested that HHSC strike "temporary" in §507.21(c) to allow facilities to submit permanent exceptions when appropriate.

Response: HHSC agrees with the comment and revises §507.21(a) to allow a facility, in a new paragraph (1), to request a temporary exception related to alternative concepts, methods, procedures, or techniques, or for conducting pilot projects or research; and to allow a facility, in a new paragraph (2), to request a permanent exception related to United States Food and Drug Administration-approved equipment. Because of the revisions in §507.21(a)(1) and (2) to allow temporary and permanent exceptions, HHSC also revises §507.21(c) to require a facility to request an exception by submitting a form to HHSC; removes proposed paragraph (1) that would have required submitting a written request to HHSC, and then renumbers proposed paragraphs (2) - (6) as paragraphs (1) - (5). In renumbered paragraphs (1) - (5), HHSC made necessary editorial changes at the beginning of each paragraph; and, in renumbered paragraph (5), added that the form submitted shall include the duration of the exception, "if the facility submits a request for a temporary exception." HHSC revises §507.21 to remove proposed subsection (d) that would have contained the process to request an exception, then renumbers proposed subsections (e) - (h) as subsections (d) - (g). HHSC revises renumbered subsection (e) to clarify that the timeframe in the rule begins "after the date HHSC receives the request" instead of "after receipt;" to change "an exception" to "a temporary or permanent" exception;" and to clarify "that HHSC" notifies the facility an exception has been granted. HHSC also revises renumbered subsection (f) by replacing "after receiving" with "the date the facility receives" to clarify the timeframe to implement an exception.

Comment: DaVita suggested that HHSC strike "temporary" in §507.21(c) to allow facilities to submit permanent exceptions when appropriate.

Response: HHSC revises §507.21(c) to remove "temporary" because facilities may apply for rule exceptions as provided by §507.21.

Comment: DaVita objected to limiting temporary exceptions in an emergency to a maximum of 120 days with a single renewal period of an additional 120 days in §507.22(c). The commenter requested that HHSC revise the rule to allow temporary exceptions to remain in effect until the emergency or disaster declaration is officially lifted. DaVita stated the limited time period and requiring renewal thereafter may create an administrative burden during extended emergency and disaster situations when resources need to be focused on direct patient care.

Response: HHSC declines to revise §507.22(c), because HHSC must reassess temporary exceptions to determine whether the conditions requiring the temporary exceptions still exist. HHSC notes there are sections in the chapter, including §507.23, §507.24, §507.58 and §507.59 that allow flexibility during an emergency or disaster.

Comment: An individual stated the references to technical standards in §507.30 that facilities must comply with should be revised to reflect updates to those standards that are expected to be endorsed by the respective national standard-setting organizations, which should be complete prior to the adoption of these rules.

Response: HHSC declines to revise §507.30 in response to this comment because HHSC cannot refer to technical standards that have not yet been approved.

Comment: USRC stated that in §507.31(a)(1) it may not be possible to repair a machine immediately and suggested using the term "urgent" instead.

Response: HHSC agrees with the comment but does not revise §507.31(a)(1) as suggested. Instead, HHSC revises §507.31(a)(1) to require staff to "immediately" report malfunctioning equipment and remove the requirement for "immediate repair." This revision better aligns with the requirement in §507.31(a)(2) to remove malfunctioning equipment until the facility can correct the malfunction.

Comment: An individual and DaVita pointed out that §117.31(c), proposed for repeal, requires a facility to have at least one dialysis machine available on site as backup for every ten dialysis machines in use. The individual requested that HHSC revise proposed §507.31(c) to require at least one backup dialysis machine to be available. DaVita requested that HHSC maintain the current rule, including that machines not in use during a patient shift may count as backup, consistent with HHSC draft rules at 26 TAC Chapter 520, Requirements for Design, Construction, and Fire Safety in Health Care Facilities posted for informal comment in April 2025. Fresenius and USRC thanked HHSC for removing the requirement to have one backup dialysis machine for every 10 patients.

Response: HHSC revises §507.31(c) to reinstate the requirement for at least one available back up dialysis machine for every 10 machines in use; that one of these backup machines shall be completely operational during hours of treatment; and that machines not in use during a patient shift may be counted as backup except at the time of an initial or an expansion survey. This revision meets operational requirements to avoid disruptions to patient services and ensures patients can receive dialysis on schedule even in cases of dialysis machine malfunction. Since HHSC reinstated the requirement for back up dialysis machines in §507.31(c), HHSC removes the requirement for a facility to have a policy requiring an emergency plan for when a patient cannot complete dialysis due to machine malfunction and to communicate the plan to each patient at admission. The rule requiring at least one backup dialysis machine to be available was not in the proposed ESRD rule because it was intended to be addressed in HHSC draft rules for 26 TAC Chapter 520, Requirements for Design, Construction, and Fire Safety in Health Care Facilities posted for informal comment in April 2025. Chapter 520 is still in development and has not been finalized.

Comment: DaVita expressed support for proposed §507.31(f), but stated it is inconsistent with HHSC draft rules at 26 TAC Chapter 520, Requirements for Design, Construction, and Fire

Safety in Health Care Facilities posted for informal comment in April 2025. DaVita requested the requirement remain as written in §507.31(f).

Response: HHSC acknowledges the comment related to proposed §507.31(f), renumbered as §507.31(g), requiring a facility to have emergency equipment and supplies immediately accessible in the treatment area and may revise the draft rules in 26 TAC Chapter 520 for consistency with §507.31(f), renumbered as §507.31(g), as Chapter 520 is still in development and has not been finalized.

Comment: An individual commented that updates to the standards listed in §507.30 that are expected to be endorsed by national standard-setting organizations do not specify a recommended flow velocity in the distribution system and suggested deleting the requirement in §507.33(3)(A).

Response: HHSC agrees and revises §507.33(3) by removing the requirement proposed in subparagraph (A), for indirect feed systems to have a minimum of three feet per second of water flow in the distribution loop. Because of this revision, HHSC renumbered subparagraphs (B) - (D) as (A) - (C), and in renumbered subparagraph (A), made revisions so that the water flow rate for direct and indirect feed systems shall comply with the standards listed in §507.30.

Comment: An individual recommended that HHSC revise §507.33(8)(D)(iii) to specify "removal of total chlorine" instead of "removal of chloramine" since chloramine cannot be directly measured. The commenter also suggested that HHSC revise §507.33(8)(D)(iv), (vii), and (viii) to use "total chlorine" or "chlorine/chloramine" rather than "chlorine or chloramine."

Response: HHSC agrees with the comment and revises §507.33(8)(D)(iii) as recommended. For consistency, HHSC also revises §507.33(8)(D)(ii), (iv), (vii), and (ix) to use "total chlorine" instead of "chlorine or chloramine."

Comment: An individual commented that §507.33(8)(D)(iv) reads as a requirement for the facility to test at opening, and then again before the first shift, and asked whether this is the intent.

Response: The intent of §507.33(8)(D)(iv) does include testing at the beginning of each treatment day and before patients initiate treatment. To clarify this intent, HHSC revises 507.33(8)(D)(iv) by adding a comma after "treatment day" and changing "before patients initiating treatment" to "before patients initiate treatment."

Comment: DaVita requested that HHSC remove the requirement in §507.33(8)(D)(v) for staff to manually test the automated chlorine monitoring system. DaVita stated the requirement would be burdensome for staff and that the chlorine monitoring systems do not require verification of water quality per manufacturer instructions.

Response: HHSC declines to revise §507.33(8)(D)(v) as requested because manual testing of an automated chlorine monitoring system ensures the internal monitoring system is correctly calibrated and performing correctly.

Comment: An individual, referencing §507.33(19)(A), commented that the current practice recommended by the International Organization for Standardization (ISO) 23500 Standards for routine microbiological testing is monthly testing except for home programs and integrated dialysis systems where quarterly testing is allowed.

Response: HHSC agrees with the comment and revises §507.33(19)(A) to require testing at least quarterly or more frequently, as needed or required by the technical standards outlined in §507.30. HHSC also revises §507.33(19)(A) by using a separate sentence for the requirement that routine microbiological testing must ensure the water and dialysate bacteria and endotoxin levels are within the limits described in the standards listed in §507.30.

Comment: An individual, referencing proposed §507.33(19)(C), commented that the current technical standards do not allow internal testing and that laboratories should not use a calibrated loop either. The commenter suggested that HHSC revise the rule to use "A calibrated loop shall not be used in microbiological testing of water or dialysate samples."

Response: HHSC agrees with the comment and revises proposed §507.33(19)(C) to remove the requirements for internal testing, including the requirement that colonies shall be counted using a magnifying device. HHSC also revises §507.33(19)(C) to remove, "A facility shall not use a calibrated loop in microbiological testing of water samples." These changes are made for consistency with current technical standards.

Comment: An individual, referencing §507.33(19)(D), commented that it was a good idea to spell out the maximum levels for the total viable microbial count and endotoxin concentration. The commenter suggested that HHSC also include the action levels. The commenter also pointed out that the endotoxin levels, maximum and action level, are different for dialysate.

Response: HHSC declines to revise proposed §507.33(19)(D) as requested because the rule requires the action level for the total viable microbial count in the product water to be consistent with the standards listed in §507.30.

Comment: An individual commented on the monthly frequency of water disinfection proposed in §507.33(21) because heat disinfection is usually done at least each day of use. The commenter suggested that HHSC avoid defining a heat disinfection frequency, and rather include how the facility should monitor effectiveness of heat disinfection.

Response: HHSC declines to revise §507.33(21) as suggested. Instead, HHSC revises §507.33(21) to add that facilities may conduct hot water disinfection more frequently as needed or required by the technical standards in §507.30.

Comment: DaVita recommended HHSC revise §507.34(b) to follow the standard set by the CMS CfCs for dialysate testing when the concentrate manufacturer changes.

Response: HHSC declines to revise §507.34(b) in response to this comment because the CfCs do not contemplate concentrate manufacturer changes and because mixing families of concentrates can be detrimental to patient health and safety due to chemical incompatibilities and variations in chemical composition that can lead to severe and potentially fatal patient outcomes.

Comment: DaVita commented that with ever-improving technology and machine capabilities, verification of dialysate conductivity is no longer required and, in some cases, no longer able to be tested. DaVita recommends for HHSC to add in §507.34(c) that verification of dialysate conductivity is only required when specified in the manufacturer's directions for use. DaVita stated that linking the requirement to manufacturer instructions will have the effect of not excluding newer machines where dialysate conductivity is no longer required.

Response: HHSC declines to revise §507.34(c) and instead revises §507.34(d) to clarify that for machines with internal independent testing, staff must verify and document that the machine conducted internal testing before each patient treatment.

Comment: Fresenius Kidney Care and US Renal Care thanked HHSC for acknowledging machines with internal independent testing for conductivity and pH in §507.34(d).

Response: HHSC acknowledges these comments.

Comment: IRC/ARA expressed appreciation of the intent behind proposed §507.34(d) and the emphasis on maintaining high standards to ensure the quality of dialysate solution being provided, but noted that the six-month testing requirement in §507.34(d) may present operational challenges because it may be more stringent than equipment manufacturer requirements. The comment from IRC/ARA asked for clarification of the following: (1) if the proposed rule considers equipment from manufacturers that might require service intervals longer than yearly; (2) if the proposed rule would require modifications to a manufacturer's recommended services for an equipment model where independent conductivity/pH testing is not applicable; and (3) on the meaning in the proposed rule of "shall test," for an equipment model for which the six month Preventative Maintenance recommendation is to only "check" the conductivity display against an external meter.

Response: HHSC revises §507.34(d) to clarify that for machines with internal independent testing, staff must verify and document that the machine conducted internal testing before each patient treatment. The requirement to test calibration every six months is to ensure patient health and safety.

Comment: An individual suggested that HHSC revise §507.34(e) to replace the term "water" with "dialysate." The individual also suggested including the bacteriological maximum and action levels in this rule.

Response: HHSC agrees with the comment and revises §507.34(e) to replace the term "water" with "dialysate" as suggested. However, HHSC declines to revise §507.34(e) to include the bacteriological maximum and action levels because the rule already requires the bacteriological levels to meet the technical standards listed in §507.30.

Comment: An individual requested that HHSC move the rule proposed in §507.35(c) to §507.31, because transducer protectors are not devices related to hemodialyzer reuse, and the requirement is more closely related to the topic of "Equipment," the title of §507.31. The individual also stated that the quarterly inspection of equipment with internal transducer protectors in §507.35(c) is an added burden and that many of the machines now require only annual maintenance.

Response: HHSC agrees and revises proposed §507.35(c) to remove the requirement for a facility to "quarterly inspect equipment with internal transducer protectors to ensure the equipment is not contaminated," and replace it in a new subsection (d) in §507.31, where HHSC also changes the frequency of inspections from "quarterly" to "annually;" and adds "If the transducer protector is wetted or fluid or blood is visible, a facility must follow instructions as described in §507.36 of this chapter (relating to Infection Control). In addition, HHSC revises proposed §507.35(c) to remove the requirement for facility staff to "replace a transducer protector when wetted during a dialysis treatment and use a transducer protector for only one treatment," and replace it in a new subsection (d) in §507.36, where HHSC also adds "If fluid or blood is visible on the side of the transducer protector that faces the machine, the machine must be opened by qualified personnel after the dialysis treatment to allow the internal transducer to be inspected for contamination, including inspection for possible blood contamination of the internal pressure tubing set and pressure sensing port." Because HHSC removes the requirements proposed in §507.35(c), HHSC renumbers subsections (d) - (j) as subsections (c) - (i). HHSC added subsection (d) to clarify infection control standards if the transducer protector is contaminated to ensure patient health and safety.

Comment: An individual suggested that HHSC move the rule in §507.35(k) to §507.42 on patient rights because §507.35(k) relates to obtaining written informed consent for dialysis services.

Response: HHSC agrees with the comment and revises §507.35 to remove subsection (k) and add this requirement for informed consent in §507.42 as a new subsection (c). Because of this change in §507.35, HHSC renumbers subsection (l) as subsection (j).

Comment: An individual requested that HHSC add a requirement in §507.36 for signage designating clean and contaminated areas in the company's official language, as well as additional languages based on the preferred languages of facility employees.

Response: HHSC declines to revise §507.36 as requested because the rule already requires facilities to clearly designate clean and contaminated areas.

Comment: An individual requested that HHSC revise §507.36(a)(2)(B) to specify the number of sinks as one hands-free operable sink per dialysis station.

Response: HHSC declines to revise §507.36(a)(2)(B) as requested because the requirement to have one hands-free operable sink per dialysis station would be too burdensome and cost prohibitive for facilities.

Comment: DaVita recommended that HHSC remove the term "hands-free" in proposed §507.36(a)(2)(B) because many older facilities have standard sinks and having to install handsfree sinks would be financially burdensome to facilities and could be disruptive to patient care.

Response: HHSC declines to remove "hands-free" in proposed §507.36(a)(2)(B) as recommended. Currently 25 TAC §117.33(a)(1)(C)(ii), proposed for repeal, requires a sufficient number of sinks with hands-free operable controls. Therefore, sinks for handwashing with hands-free controls should not introduce a new financial burden. However, HHSC revises proposed §507.36(a)(2)(B) to remove the requirements to have enough sinks with hands-free operable controls and provisions for hand drying. HHSC revises §507.36(a)(2) to add a new subparagraph (C) as follows "Enough sinks, with water and soap shall be available to facilitate handwashing. Sink faucets shall have hands-free operable controls to activate the water flow, which may include a single-lever, wrist blade lever, electronic sensor faucet, or an elbow or wrist action faucet. Provisions for hand drying shall be included at each handwashing sink." Because HHSC added a new subparagraph (C) in §507.36(a)(2), HHSC also renumbered subparagraphs (C) - (O) as subparagraphs (D) - (P).

Comment: One individual, U.S. Renal Care, Inc., ESRD Network 14 Medical Review Board, DaVita, IRC/ARA, and Fresenius Kidney Care suggested removing the limit in proposed

§507.36(a)(2)(C) to the number of times alcohol-based hand rub can be used unless hands are visibly soiled.

Response: HHSC revises proposed §507.36(a)(2)(C), renumbered as §507.36(a)(2)(D), by removing how many times staff may use a waterless antiseptic hand rub before using soap and water and replacing it with a requirement for staff to wash with soap and water when hands are visibly soiled.

Comment: DaVita stated that the requirement for sinks to be installed in locations permitting ease of access and proper use is of concern because of how older facilities were designed and built and that updating the location and arrangement of sinks would be financially burdensome for facilities to comply with and could disrupt patient care. DaVita requested that HHSC revise §507.36(a)(3) to clarify that facilities should comply to the extent possible for the layout and design of the facility.

Response: HHSC declines to revise §507.36(a)(3) as recommended because this requirement is currently in 25 TAC §117.33(a)(1)(D), proposed for repeal, and therefore, should not introduce a new financial burden and because sinks must be accessible and working properly for the health and safety of staff and patients.

Comment: U.S. Renal Care, Inc. commented that "three calendar days" proposed in §507.38(a)(5)(I)(iii), for the facility to obtain the results of the patient's Hepatitis B surface antigen (HBsAg) status, can be affected by the holiday schedules. USRC suggested that HHSC change "three calendar days" to "four calendar days" for maximum opportunity at compliance.

Response: HHSC declines to revise §507.38(a)(5)(I)(iii) as suggested because this requirement is currently in 25 TAC §117.(d)(2)(ix)(III), proposed for repeal. Because dialysis treatment may begin within three calendar days, it is crucial for patient health and safety for the facility to obtain a patient's HBsAg status within that time frame to determine if certain precautions are required prior to the patient beginning dialysis treatment.

Comment: An individual recommended that HHSC revise proposed §507.38(c)(1) to include the following "the COVID-19 vaccine shall be offered in accordance with the CDC's current immunization schedules and public health guidance, including any recommended booster doses."

Response: HHSC declines to revise §507.38 in response to this comment. HHSC will not add COVID-19 vaccination requirements to this rule because §507.38 is not intended to address all diseases. Facilities are free to require additional vaccination requirements if they wish to do so.

Comment: Texas Medical Association requested that HHSC update §507.41(g) to expressly state that advanced practice registered nurses (APRNs), physician assistants (PAs), licensed master social workers, and registered dietitians must demonstrate and sustain their necessary skills and licensures.

Response: HHSC agrees with the comment and revises §507.41(g) to add APRNs, PAs, licensed master social workers, and registered dietitians to the list of staff who must demonstrate and sustain the necessary skills and licensures.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC revise §507.45(i) to align with CMS guidance and allow an ESRD to skip contacting the ESRD Network before considering involuntary discharge of a disruptive patient due to a "severe and immediate threat to the health and safety of others." The commenters requested HHSC include this as a reason a clinic may not be able to contact their ESRD Network for assistance prior to considering an involuntary discharge of a disruptive patient.

Response: HHSC declines to revise §507.45(i) as requested because the ESRD Network should be notified immediately for an involuntary discharge due to a severe or immediate threat to the health and safety of others. The requirement to provide this notice to the ESRD Network prior to considering an involuntary discharge of a disruptive patient ensures patients are treated fairly.

Comment: DaVita requested HHSC clarify whether the reporting requirements in §507.46(b)(3)(A) may be met by reporting through EMResource, a Department of State Health Services system for tracking available hospital and emergency medical services resources and other emergency response data. DaVita explained that reporting facility closures or reductions in hours to the multiple entities listed, and on various platforms, would be burdensome to clinics and not practical to comply with during an emergency.

Response: HHSC declines to revise §507.46(b)(3)(A) as requested because EMResource does not have the capability to share information with ESRD reporting systems at this time.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC revise §507.47(c) to allow a sponsoring physician to countersign orders within 30 calendar days instead of within 15 calendar days.

Response: HHSC declines to revise §507.47(c) in response to this comment. It can be crucial to a dialysis patient's health and safety to have orders authenticated or countersigned by the sponsoring physician to check for accuracy because high-risk patients may require frequent monitoring and updating of orders. HHSC believes that in an ESRD facility "within 15 calendar days" provides enough time to comply with this rule.

Comment: DaVita voiced concern that the language in §507.47(j) regarding the types of anesthetics that can be administered by qualified dialysis technicians is too broad because lidocaine (subcutaneous or topical) is only one type of anesthetic, with most topicals not being lidocaine, or a combination of lidocaine and other anesthetics. DaVita suggested HHSC revise §507.47(j) by replacing the listed types of lidocaine with "lidocaine and other anesthetics (prior to cannulation)" and replacing heparin with "heparin and other anticoagulants."

Response: HHSC declines to revise §507.47(j) as suggested because the rule states that licensed nurses, PAs, or physicians must administer all medications except intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, and oxygen, which may be administered by qualified dialysis technicians. Using the term "other" as a category for anesthetics other than lidocaine and for anticoagulants other than heparin is too broad of a category for dialysis technicians to administer.

Comment: An individual requested HHSC revise §507.48 to decrease the ratio of dialysis technicians and nurses to patients to at least 1:2 at all times. The individual notes that this would improve proper hand hygiene, decrease patient infection risk, ensure small centers are not overextended, and allow for better patient care.

Response: HHSC declines to revise §507.48 based on this comment because the rule, as written, is sufficient protection for patient health and safety.

Comment: U.S. Renal Care and Fresenius Kidney Care thanked HHSC for adding §507.48(c) regarding the required presence of a registered nurse in the facility and situations when patients may enter the facility when a registered nurse is not present.

Response: HHSC acknowledges the comments.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested that HHSC revise §507.48(d)(3) to remove "pre" from the dialysis evaluation because "pre-dialysis" indicates before the start of treatment and not within the first hour of initiation of treatment.

Response: HHSC agrees with the comment and revises §507.48(d)(3) to replace "pre-dialysis" with "dialysis." HHSC also replaced the term "evaluation" in §507.48(d)(3) with "assessment" because the subject matter in subsection (d) relates to conducting assessments.

Comment: DaVita requested that HHSC revise §507.48(d)(4) to replace "immediate" with "timely" because immediate post-dialysis assessments may not be feasible when there are abnormal findings or changes in condition. DaVita also stated that the term may cause confusion.

Response: HHSC declines to remove the term "immediate" in §507.48(d)(4) because an immediate assessment is essential for patient safety, if an abnormal finding or change of condition is identified pre-dialysis, intradialytic, or post-dialysis. However, HHSC revises §507.48(d)(4) to replace the term "immediate post-dialysis assessments" with "immediate assessments" to provide clarity and alleviate confusion.

Comment: Fresenius Kidney Care, US Renal Care, Inc., ESRD Network 14 Medical Review Board, DaVita, and IRC/ARA requested HHSC revise §507.48(j)(2) to match the staffing ratio chart in §507.60. Fresenius Kidney Care also noted that staffing flexibility helps with the nursing shortage.

Response: HHSC revises §507.48(j)(2), renumbered §507.48(j)(3), to remove the requirement for two licensed nurses for the treatment of 8-12 patients, matching Figure: 26 TAC §507.60. Additional updates in §507.48 and Figure: 26 TAC §507.60 clarify staffing requirements and ratios to help with staffing flexibilities due to nursing shortages which in part, include that the direct care staff requirement can be fulfilled by a patient care technician (PCT), registered nurse (RN), or licensed vocational nurse (LVN) as applicable.

Comment: DaVita requested HHSC revise §507.48(l) to require a facility to educate a patient on the importance of leaving their access sites uncovered only when staff observe their access site is covered, when appropriate, or as needed. DaVita stated providing and documenting the education for every treatment is burdensome.

Response: HHSC declines to revise §507.48(l) because this education is important for patient health and safety.

Comment: DaVita requested HHSC revise §507.49(d) to remove the allowance for a dietitian's designee to conduct a nutrition reassessment, aligning with CMS requirements. DaVita noted that it is unclear who would be able to complete a nutrition assessment.

Response: HHSC agrees and revises §507.49(d) to remove the allowance for a dietitian's designee to conduct a nutrition reassessment.

Comment: DaVita, ESRD Network 14 Medical Review Board, US Renal Care, Inc., IRC/ARA, and Fresenius requested HHSC keep the current ratio for dietitians in rule §507.49(e)(1) at one full-time dietitian per 125 patients because lowering the dietitian ratio to one dietitian for every 100 patients would create staffing issues particularly in rural areas.

Response: HHSC agrees and revises §507.49(e)(1) to change the maximum caseload for a full-time equivalent dietitian from 100 to 125 patients. To avoid a staffing issue, HHSC revises proposed §507.49(e)(2) to remove the requirement for a facility to have a second full time equivalent dietitian if the first dietitian's caseload is over 100, and added in §507.49(e)(1) that a facility shall employ or contract a second dietitian for a patient caseload over 125 patients. In addition, HHSC revises proposed §507.49(e)(2) to require the governing body to ensure the facility assigns personnel to assist dietitians with ancillary tasks when the patient load, including all modalities, exceeds 100 patients per facility.

Comment: DaVita appreciated HHSC for changing the requirement in proposed §507.51(c) related to documenting the first encounter with a new patient to align with CMS requirements.

Response: HHSC acknowledges the comment.

Comment: Fresenius Kidney Care and US Renal Care requested HHSC revise §507.52(b)(3) to state that more than two visits a month may be conducted by a physician and additional visits may be conducted via telemedicine. Nine individual commenters request the rule in §507.52(b)(3) be updated to one visit per month, with the option of visits being via telemedicine; and for HHSC to revise the rule in to align with federal guidelines of requiring monthly in person visits. One individual commenter suggested unstable patients should be seen more often in person and by telemedicine. Another individual commenter suggested that visit frequency be tailored to a patient's needs.

Response: In response to these comments, HHSC revises §507.52(b)(3) by removing "with visits separated by at least 10 calendar days," and adding after the requirement for a physician to see the patient at least twice a month, "The physician shall conduct the first visit in person. The second visit is required unless the patient is stable, as justified in the patient record by the physician. If the second visit is necessary, it shall be separated from the first visit by at least 10 calendar days and may be conducted in person or using telemedicine. Additional visits conducted in the same month by a physician may be conducted using telemedicine." These revisions allow the frequency of visits, after the first physician visit, to be based on a patient's needs. These revisions also give a physician the option to conduct visits, other than the first visit, using telemedicine.

Comment: One commenter suggests the rule in §507.52(b)(3) be updated to monthly check-ins complemented by weekly updates from nursing staff.

Response: HHSC declines to revise the rule in §507.52(b)(3) based on the comment because the rule, as written, is sufficient protection for patient health and safety.

Comment: DaVita requested HHSC revise §507.52(b)(4) to allow the use of telemedicine for home dialysis patients as permitted by federal regulations. ESRD Network 14 Medical Review Board requested HHSC revise §507.52(b)(4) to allow an APRN or a PA to use telemedicine for home dialysis patients. ESRD Network 14 Medical Review Board stated this change would help address transportation and geographical challenges.

Response: HHSC revises §507.52(b)(4)(A) to require a physician to see a patient in person at least once every three months if a home dialysis patient is seen by an APRN or a PA no less than once a month. HHSC also revises §507.52(b)(4)(B) to replace "The provider" with "The physician;" to add "shall conduct physician visits in person" in front of "in the dialysis facility, at the physician's office, or in the patient's home;" and to add "A physician may conduct additional visits in the same month using telemedicine." HHSC revises §507.52(b)(4) by adding a new subparagraph (C) to add "An APRN or a PA may conduct visits using telemedicine." Because of adding a new subparagraph (C), HHSC revises proposed §507.52(b)(4)(C) to renumber it as §507.52(b)(4)(D).

Comment: DaVita requested HHSC revise §507.52(c)(6)(A) by replacing "jointly developed by" with "reviewed and approved by."

Response: HHSC declines to revise the rule in response to this comment because §507.52(c)(6)(A) contains "reviewed and approved by."

Comment: Fresenius Kidney Care and U.S. Renal Care Inc. requested HHSC revise §507.52(e) to incorporate dieticians and social work students.

Response: HHSC declines to revise §507.52(e) in response to this comment because the rule is specific to clinical students providing medical services to patients.

Comment: ESRD Network 14 Medical Review Board and DaVita requested HHSC revise §507.52(e)(1) to clarify that the instructor does not need to be on the premises because a qualified dialysis nurse may provide appropriate guidance and supervision.

Response: HHSC revises §507.52(e)(1) to clarify the instructor must be "on the premises" and provide "direct supervision to the student." Direct supervision as defined by §507.2(74)(B) requires the supervisor, in this case the instructor, to be in the facility but not necessarily immediately present where the task or activity is being performed. Additionally, HHSC revises §507.52(e)(2)(B) to change "direct supervision" to "immediate supervision" because an RN on staff at the facility must be immediately present if a student administers medications.

Comment: Fresenius Kidney Care and U.S. Renal Care, Inc. requested HHSC revise §507.53(b) to remove the requirement for a separate room for home dialysis services to align with CMS, increase access in rural areas, and allow for group training with patient consent.

Response: HHSC declines to revise 507.53(b) as requested because a separate room is necessary for patient privacy and for training based on patient's preference and individual needs as stated in 507.53(c). However, HHSC revises §507.53(b) to note that home dialysis services are defined in §507.2 of this chapter (relating to Definitions) to add clarity to the rule.

Comment: Fresenius Kidney Care ESRD Network 14 Medical Review Board, DaVita, and US Renal Care, Inc. requested HHSC revise proposed §507.53(c) to allow an exception for single use machines to be assigned to multiple home dialysis patients when patients are in a skilled nursing facility or transitional care unit.

Response: HHSC declines to revise proposed §507.53(c), renumbered as §507.53(d), which requires the facility to assign each individual home dialysis patient, regardless of modality, one machine for the patient's exclusive use in the home, and prohibits the facility from assigning multiple home dialysis patients to the same machine. Home dialysis service is currently defined in this chapter as dialysis performed at home by an end stage renal disease patient or the patient's caregiver. It would be an infection risk for home dialysis patients to share a dialysis machine.

Comment: An individual asked if §507.53(c) applied to long-term care settings.

Response: HHSC acknowledges the comment, however, "home dialysis service" is defined in §507.2 as dialysis performed at home by an end stage renal disease patient or the patient's caregiver. 26 TAC Chapter 507 does not address long-term care settings.

Comment: DaVita requested HHSC clarify the meaning of "or portion thereof" in §507.53(d). DaVita also requested HHSC revise §507.53(d) to increase nurse staffing flexibility by allowing an licensed vocational nurse or patient care technician to provide support and serve as a bridge to a second registered nurse when there are between 21 and 25 patients.

Response: HHSC revises §507.53(d), renumbered as §507.53(e), to clarify the meaning by removing "or portion thereof" and replacing it with "for every group of." HHSC revises renumbered §507.53(e) to increase the ratio of 20 patients to 25 patients for one full-time equivalent registered nurse and to add that "For 21 - 25 patients, the facility shall assign a licensed vocational nurse or a dialysis technician to assist the registered nurse."

Comment: DaVita is seeking clarification on the requirement in §507.53(e)(3), specifically, what evidence or documentation (check list, competency evaluation, etc.) will be required to show that competency was reassessed.

Response: HHSC revises §507.53(e)(3), renumbered as §507.53(f)(3), to remove "reassess" and replace it with "document" to show the nurse's competency to provide home dialysis three months after passing the initial competency exam. The facility is not limited to any particular type of documentation to show competency.

Comment: DaVita requested HHSC revise §507.53(g) to align with CMS and allow a home visit at the initiation of home therapy, instead of before beginning training.

Response: HHSC declines to revise §507.53(g), renumbered as §507.53(h), in response to this comment because identifying whether the patient's home is appropriate for home dialysis before beginning training avoids wasting patient time and resources.

Comment: DaVita and ESRD Network 14 Medical Review Board requested HHSC revise §507.53(g) to allow an exception for urgent starts and allow the home visit to be conducted via audio-visual means to prevent central venous catheter placement.

Response: HHSC declines to revise §507.53(g), renumbered as §507.53(h), in response to this comment because the facility must complete a home visit even in case of urgent start peritoneal dialysis to ensure patient health and safety.

Comment: DaVita requested HHSC revise §507.53(h) to clarify that a facility team should make a reasonable attempt to retrieve self-monitoring data because retrieving complete self-monitoring data may not always be possible due patient compliance issues.

Response: HHSC agrees and revises §507.53 by adding in a new subsection (j), "If a facility is unable to obtain a patient's self-monitoring data after an appropriate number of attempts, the physician shall refer the case to the medical director for a determination about a potential modality change for the patient." The revision is needed so that when a facility cannot obtain the patient's self-monitoring data after an appropriate number of attempts, the physician may refer the case to the medical director to determine whether a modality change is appropriate for the patient. Because of this revision in §507.53, HHSC also renumbered subsections (i) - (s) as (k) - (u).

Comment: U.S. Renal Care, Inc. and Fresenius requested HHSC revise proposed §507.53(j)(1) to exempt initial monitoring home visits when urgent peritoneal dialysis begins in the hospital.

Response: HHSC declines to revise proposed §507.53(j)(1), renumbered as subsection (l)(1), in response to this comment. The facility must complete this initial monitoring home visit to ensure patient health and safety even when urgent peritoneal dialysis begins in the hospital.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC clarify whether proposed §507.53(j)(3)(A) allows for two visits within three months to be conducted via telemedicine when an APRN or a PA sees a patient monthly when medically appropriate and the patient consents. DaVita and ESRD Network 14 Medical Review Board requested HHSC revise proposed §507.53(j)(3)(A) to allow for two visits within three months to be conducted via telemedicine when an APRN or a PA sees a patient monthly.

Response: HHSC revises proposed §507.53(j)(3), renumbered as subsection (l)(3), by adding "in accordance with §507.52(b)(4) of this subchapter (relating to Medical Services)." This change is made because the requirement in renumbered subsection (l)(3), for a patient to be seen by a physician, an APRN, or a PA, is the same as in the revisions HHSC made in §507.52(b)(4). HHSC also removes proposed subparagraphs (A) and (B) in renumbered subsection (l)(3) because the reference added makes them unnecessary to include. In addition, HHSC made editorial changes to refer to "a physician" instead of "prescribing physician" and to refer to "the patient" as "a home dialysis patient" to use consistent terminology.

Comment: An individual requested HHSC revise proposed §507.53(k)(3) to remove the reference to chloramines testing.

Response: HHSC revises proposed §507.53(k)(3), renumbered as subsection (m)(3) to remove the reference to chloramine testing and only refer to total chlorine testing.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC revise proposed §507.53(p) to allow the patient or caregiver to culture and measure home patient hemodialysis machines with facility oversight.

Response: HHSC revises proposed §507.53(p), renumbered as subsection (r), to allow the patient or the patient's caregiver with facility oversight to do the testing.

Comment: An individual requested HHSC revise proposed §507.53(p) to require quarterly culture and endotoxin testing to align the rule with CMS.

Response: HHSC revises 507.53(p), renumbered as subsection (r), to require testing at least quarterly or more frequently as needed or required by the standards listed in §507.30 of this subchapter.

Comment: An individual requested HHSC revise §507.53(s)(1)(C) to remove the reference to chloramines testing and require that testing results align with the technical standards.

Response: HHSC agrees with the comment and revises §507.53(s)(1)(C), renumbered as subsection (u)(1)(C), to remove the reference to chloramine testing and only refer to total chlorine testing; and to add a reference to the technical standards in §507.30.

Comment: DaVita requested HHSC revise §507.53(s)(1)(C) to allow a caregiver to document water testing results.

Response: HHSC agrees with the comment and revises §507.53(s)(1)(C), renumbered as subsection (u)(1)(C), to allow the patient's caregiver to document the total chlorine level by adding "or the patient's caregiver."

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC revise §507.53(s)(1)(D) to allow the patient or caregiver to obtain the microbiological quality of the dialysate with facility oversight.

Response: HHSC agrees with the comment and revises §507.53(s)(1)(D), renumbered as subsection (u)(1)(D), to allow the patient or the patient's caregiver with facility oversite to obtain the microbiological quality of the dialysate.

Comment: One individual, U.S. Renal Care, Inc., Fresenius Kidney Care, ESRD Network 14 Medical Review Board, and DaVita requested HHSC revise §507.54(a)(2) to reduce the patient care technician certification period from 24 months to 18 months to align with CMS. IRC/ARA asked HHSC to provide rationale for extending the patient care technician certification period to 24 months, which exceeds CMS's 18-month requirement.

Response: HHSC agrees with the comment and revises §507.54(a)(2) to change the requirement for all dialysis technicians to receive certification within 18 months rather than the proposed 24 months, which aligns with CMS requirements.

Comment: DaVita objected to §507.54(b), which requires a facility administrator to have at least one year of experience in a healthcare facility because it makes hiring more difficult and facilities already have qualified medical directors and supervising nurses.

Response: HHSC agrees with the comment and removes subsection §507.54(b), which was burdensome for facilities. Because of this change, HHSC also renumbered subsections (c) - (g) as (b) - (f).

Comment: An individual requested HHSC add a rule to §507.54(c) to require at least five hours of annual ESRD-specific continuing education for physicians, APRNs, and PAs.

Response: HHSC declines to revise §507.54(c), renumbered as subsection (b), because the licensing boards for these professions already specify minimum requirements for continuing education to ensure patient health and safety, and a facility may provide and require additional staff trainings as needed.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care thanked HHSC for the rule proposed in §507.54(d)(2)(A), which allows a newly licensed registered nurse's last six months of clinical experience to run concurrently with six months of dialysis experience.

Response: HHSC acknowledges these comments related to proposed §507.54(d)(2)(A), renumbered as §507.54(c)(2)(A).

Comment: DaVita appreciated HHSC aligning proposed §507.54(d)(4) with §507.52(e)(1) but requested HHSC revise §507.54(d)(4) to use the term "self-care training" for clarity and consistency and require a registered nurse to have at least three months experience with the self-care training modality rather than six months.

Response: HHSC declines to revise proposed §507.54(d)(4), renumbered as subsection (c)(4), related to the experience of a registered nurse because the rule as proposed requires the registered nurse to have "three months experience in the specific modality," not six months. HHSC agrees to use the term "self-care training" and revises renumbered subsection (d)(4) and (5) to use "self-care training" to replace "training" as needed. HHSC revises renumbered subsection (c)(4) to clarify that the patient self-care training a facility provides by a qualified registered nurse is "either in-center or at home." In addition, HHSC revises renumbered subsection (c)(4) to remove the requirement for supervision by the qualified registered nurse when other facility staff assist in the training and add this requirement in renumbered subsection (c)(5) for the qualified registered nurse to supervise the self-care training when other facility staff assist in the self-care training in-center. These revisions to use consistent terminology are necessary to promote the clarity of these rules.

Comment: DaVita recommended a change to proposed §507.54(d)(4), to allow a qualified charge nurse with preceptor experience (one year experience in hemodialysis obtained within the last 24 months) to provide self-care training in-center.

Response: HHSC declines to revise §507.54(d)(4), renumbered as subsection (c)(4), because having three months experience in the specific modality ensures patient health and safety. The rule allows for other qualified facility staff to assist under the supervision of a qualified registered nurse.

Comment: U.S. Renal Care, Inc. asked whether the nursing peer review committee required under §507.54(d)(6) can be on a regional or national level. Fresenius Kidney Care asked HHSC to clarify Texas Occupations Code Chapter 303 with regard to other health care facilities and asked if dialysis facilities are only required to establish a nursing peer review committee if they have more than 8 nurses.

Response: Section 507.54(d)(6), renumbered subsection (c)(6), requires a facility to establish a nursing peer review committee to conduct nursing peer review, as required by Texas Occupations Code Chapter 303. HHSC does not provide interpretation or clarification on this statute. HHSC declines to revise the rule in response to these comments.

Comment: An individual requested HHSC revise proposed §507.54(f)(2) to remove the reference to a transplantation program before September 1, 1976.

Response: HHSC declines to revise §507.54(f)(2), renumbered subsection (e)(2), in response to this comment because it aligns with the CMS CfCs.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care asked why HHSC added §507.54(g)(2) requiring written physician standing orders authorizing delegation of biomedical technical staff responsibilities.

Response: HHSC revises §507.54(g)(2), renumbered as subsection (f)(2), to remove this requirement in paragraph (2). Upon further review, HHSC determined that this requirement is not necessary to comply with physician delegation requirements as set out elsewhere in statute, which the original requirement sought to address. Because HHSC removes paragraph (2) from renumbered subsection (f), HHSC renumbers paragraphs (3) - (7) as paragraphs (2) - (6) and updates references to the renumbered paragraphs where needed.

Comment: Fresenius Kidney Care requested HHSC clarify whether the word "or" in §507.54(g)(3)(A)(ii)(III) means only one item from the list is needed as minimum education or training for technical staff. DaVita requested HHSC revise §507.54(g)(3)(A)(ii) to allow technical staff to meet "one or more" of the listed requirements and notes it would be difficult to hire and retain staff that meet all the requirements.

Response: The use of "or" in §507.54(g)(3)(A)(ii), renumbered as subsection (f)(2)(A)(ii), means any single item in renumbered subsection (2)(A)(ii)(I) - (IV) can satisfy this training or experience requirement for technical staff. Also, renumbered subsection (f)(2)(A)(ii) does not limit the number of the listed requirements a technician can obtain. Therefore, HHSC revises renumbered subsection (f)(2)(A)(ii) to add "in one or more of the following" as requested to make it clear that staff do not need to meet all of the training or experience requirements listed in the rule. HHSC also revises renumbered subsection (f)(2)(A)(ii) to remove "including at least," because it is not necessary to use this phrase in the rule.

Comment: DaVita requested HHSC clarify §507.55(a)(8)(C) and state what evidence or documentation will be required to show the facility explained consent, rights, and responsibilities to the patient.

Response: HHSC revises §507.55(a)(8)(C) to add "when a patient requires an accommodation," to clarify this is when a clinical record must include details on how staff explained consent forms for treatment to the patient.

Comment: An individual noted that the list of reportable incidents in §507.56(a) does not include death of a patient and hospital transfers and suggested that if hospital transfers were reportable before an incident in Lufkin in 2012 related to multiple patient deaths, patient lives may have been saved.

Response: HHSC notes the ESRD rules at the time of the Lufkin incident required facilities to report hospital transfers. HHSC revises §507.56(a) to add the following reportable incidents back into the rule: new paragraph (1) death of a dialysis patient that occurs in the facility; new paragraph (2) death of a dialysis patient that occurs within 24 hours after the last dialysis treatment; and new paragraph (3) emergent hospital transfers from the dialysis facility. Because of adding new paragraphs (1) - (3), HHSC renumbered the paragraphs proposed as paragraphs (1) - (4) as paragraphs (4) - (7). To correct formatting errors, HHSC replaces a period at the end of renumbered paragraph (4) to replace it with a semicolon and also removes "and" between renumbered paragraphs (6) and (7) to replace it with "or." The reason to use "or" is that it means any one of these incidents in §507.56(a) can be met for the rule to apply and for the required action to be taken.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC update the HHSC Complaint and Incident Intake online portal to remove the fields for perpetrator and social security number.

Response: HHSC acknowledges the comment and notes such an update does not require any changes to the proposed rules.

Comment: DaVita requested HHSC engage with stakeholders to review the incident report form before requiring facilities to use it.

Response: HHSC acknowledges the comment.

Comment: DaVita requested HHSC clarify whether "self-care" in §507.57(a) applies to all modalities.

Response: HHSC revises §507.57(a) to clarify the rule applies to in-center self-care modality.

Comment: Fresenius Kidney Care requested HHSC revise §507.59(c) to allow telemedicine for the required monthly physician visit during a public health disaster.

Response: HHSC declines to revise §507.59(c) as requested. Upon review of the "notwithstanding" clause in §507.59(c), and because of the revisions HHSC is making in §507.52(b)(3), described previously in this section of the preamble, HHSC changes the reference in the "notwithstanding" clause from "§507.52" to "§507.52(b)(3)." This change helps facilities locate the exceptions to §507.52(b)(3) that may be applied during a public health disaster, for example, the requirement for a physician on the facility's medical staff to see the patient at least twice a month.

Comment: Fresenius Kidney Care requested for HHSC to clarify whether §507.59(f) includes annual home visits.

Response: Proposed §507.59(f) relates to conducting a home dialysis patient visit required by §507.53 using telemedicine medical services during a public health disaster. HHSC is making additional revisions to §507.59, including removing proposed subsection (f).

Comment: Texas Nurses Association commented that they support §507.71 through §507.75 and that these rules are sufficient to ensure dialysis technicians have adequate knowledge to ensure patient safety when initiating or discontinuing dialysis via central venous catheter (CVC) or manipulating the CVC.

Response: HHSC acknowledges the comment.

Comment: An individual expressed support for §507.72 through §507.75 which allow dialysis technicians to access CVCs because it allows nurses to have more capacity to focus on their nursing duties, perform better patient care, and results in no difference in infection rates.

Response: HHSC acknowledges the comment.

Comment: An individual thanked HHSC for allowing certified clinical hemodialysis technicians to assist with catheter care and improving nurse to patient staffing ratios.

Response: HHSC acknowledges the comment.

Comment: The Texas Medical Association recommended that HHSC maintain the requirements in §507.71(d) and §507.71(e) regarding delegation and supervision of dialysis technicians when initiating or discontinuing dialysis via CVC or manipulating a CVC, as well as required certification, training, and competency to promote patient safety.

Response: HHSC acknowledges the comment.

Comment: Fresenius Kidney Care and U.S. Renal Care, Inc. request HHSC revise §507.71(e)(1) to allow dialysis technicians to initiate or discontinue dialysis via CVC or manipulate a CVC prior to being nationally certified if they are under direct supervision.

Response: HHSC declines to revise §507.71(e)(1) as requested because it is crucial for patient health and safety that a dialysis technician is certified before being allowed to initiate or discontinue dialysis via a CVC or manipulating a CVC.

Comment: DaVita requested that HHSC make the references to "lidocaine" and "heparin" in §507.72(c)(2) and §507.73(e) consistent with the references in §507.47(j).

Response: HHSC agrees that the references to these medications in §507.72(c)(2) and §507.73(e), for the training and competency evaluation for a dialysis technician or trainee to administer "lidocaine" and "heparin," need to be consistent with the references used in §507.47(j). In addition, the reference to "normal saline" in §507.72(c)(2) and §507.73(e) needs to be consistent with §507.47(j). Therefore, HHSC revises §507.72(c)(2) and §507.73(e) to use "intravenous" normal saline, "intravenous" heparin, "subcutaneous" lidocaine, and "topical" lidocaine.

Comment: An individual asked if required training content on potential complications included prevention of air embolism and requested HHSC revise §507.72(c)(3) to require training content to include prevention of air embolism because air embolisms can result in patient death.

Response: HHSC declines to revise §507.72(c)(3) because the rule already includes "materials used and prevention of complications" and the training content must include prevention of air embolism. Facilities are responsible for ensuring staff are adequately trained within the parameters provided in §507.72(c)(3).

Comment: DaVita suggested HHSC revise §507.73(e) to make terminology for "lidocaine" and "heparin" consistent with §507.47(j) and §507.72(c)(2).

Response: HHSC agrees that the references to "heparin" and "lidocaine" in §507.72(c)(2) related to the training for dialysis technicians should be consistent with the requirements in §507.47(j) for dialysis technicians to administer these medications as part of a routine hemodialysis treatment. Therefore, HHSC revises §507.72(c)(2) to refer to " intravenous heparin, "subcutaneous lidocaine," and "topical lidocaine" instead of "heparin" and "lidocaine." HHSC declines to use the term "other" because this category is broad and may include drugs that HHSC does not approve for this use. HHSC may amend the rules in the future to add any new anesthetics that become standard for this use.

Comment: DaVita expressed appreciation to HHSC for modifying the requirements in §507.75 to allow for dialysis technicians to perform CVC care to patients under the supervision of a registered nurse.

Response: HHSC acknowledges the comment.

Comment: DaVita disagreed with the inclusion of "listen to" in the list of prohibited activities in §507.81(a)(1) because in many instances it is necessary and appropriate to have a facility representative present during an HHSC interview with staff or patients.

Response: HHSC declines to revise §507.81(a)(1) based on this comment because the rule allows a facility to inform HHSC and record or listen to an HHSC internal discussion if it obtains approval.

Comment: DaVita disagreed with §507.81(d), which states that section does not prohibit staff, patients, or others being interviewed from recording an interview with HHSC. DaVita stated

that recording the interview should at least be subject to permission from the facility representative.

Response: HHSC declines to revise §507.81(d) based on this comment because under the state law regarding one-party consent, HHSC cannot prevent a party to the conversation from recording an interview.

Comment: An individual requested that resources should be allocated by HHSC to randomly check facilities for compliance. The individual requested that HHSC edit §507.82 to require ESRDs to comply with these random checks.

Response: HHSC declines to revise §507.82(b) because the rule already requires compliance with any inspection as stated in §507.82(e) and HHSC has authority to conduct inspections at its discretion.

Comment: DaVita disagreed with the addition of video surveillance in §507.82(e) to the items HHSC may examine upon a facility inspection as such broad access by HHSC may lead to privacy concerns and impact the facility's ability to comply with federal patient privacy laws.

Response: HHSC declines to revise the rule because it is necessary to verify a facility's compliance with applicable laws and rules and because Texas Health and Safety Code §251.051(a) authorizes HHSC to conduct an inspection to verify a facility's compliance.

Comment: DaVita opposed the elimination of the appeal process for challenging deficiencies identified during inspection in §507.82(e), previously §117.18(c)(4)(C)(vi)(I), which is proposed for repeal. They also opposed the removal of the language that a "signature does not indicate the administrators or designees agreement with deficiencies stated on the form."

Response: HHSC declines to revise §507.82(e), previously §117.18(c)(4)(C)(vi)(I), based on this comment because the rule in §507.82(j), requires the HHSC representative to hold an exit conference with the facility representative at an inspection's or investigation's conclusion and inform the facility representative of any preliminary inspection or investigation findings, which is consistent with current practice.

Comment: DaVita disagreed with the requirement in §507.82(f) that members of the governing body or personnel be required to submit a written statement to HHSC and recommend it be limited to topics that are not already addressed through the governing body minutes and related documentation.

Response: HHSC declines to revise §507.82(f) based on this comment because it is important for HHSC staff to have the opportunity to talk to and request statements from relevant individuals, including, at times, members of a facility's governing body. HHSC notes this subsection does not require a written statement and only allows HHSC the opportunity to request one.

Comment: DaVita requested clarification in §507.83 on which accreditation organizations are allowed to do complaint investigations. DaVita asked HHSC to add which accreditation organizations may conduct complaint investigations.

Response: HHSC declines to revise §507.83 as requested because the rule accurately states HHSC investigates complaints directed to HHSC against a facility. Any complaints investigated by accreditation organizations are outside the scope of the rules in 26 TAC Chapter 507.

Comment: One commenter thanked HHSC for adding "within the past two years" to the requirement in §507.87(c)(5)(A).

Response: HHSC acknowledges this comment.

Comment: DaVita requests HHSC clarify §507.90 to outline specifically which employees the rule applies to, which types of actions are grounds for revocation, and an option for avoiding a penalty if the facility takes appropriate action against the employee.

Response: HHSC declines to revise §507.90 because the rule, as written, applies to the facility or any of its employees and outlines the actions that may be grounds for revocation. HHSC declines to add an option for avoiding a penalty because the facility may show compliance as part of due process in any action under the Administrative Procedure Act.

HHSC revises §507.2(1) to spell out what "ESRD" means when used in the definition of "action level."

HHSC revises §507.2(9) to replace federal holiday with national holiday and add "listed in Texas Government Code §662.003" to define business day.

HHSC revises the definition in §507.2(22) of "dialysate supply system" to remove "for the characteristics listed above" and replace it with "devices" as used in this definition" in front of the list of devices this term includes. The revisions change "system" to "dialysate supply system" to clarify the name of this device and changes the punctuation between the list of devices to improve readability and understanding.

HHSC revises §507.11(a) to differentiate between the "home dialysis services" provided under 26 TAC Chapter 507 by an ESRD facility and the home dialysis services provided by a HCSSA under 26 TAC Chapter 558.

HHSC revises §507.12(a)(4) to remove subparagraph (B) because it is not necessary for the application process for the applicant to attend an additional prelicensure conference when there is a change in the supervising nurse before the facility opens. HHSC further revises §507.12(a)(4) to remove "(A)" to update the formatting of the rule because of removing subparagraph (B). HHSC revises §507.12(e) to clarify that the application HHSC receives is the "license" application.

HHSC revises §507.13(h) to change that HHSC may "consider the renewal application as withdrawn" to may "deny the license" if the facility does not correct a deficiency in the renewal application within the timeframe specified in the rule. Because of this change, HHSC also revises §507.13(h) to change that any license fee paid is nonrefundable because the renewal application is withdrawn if HHSC denies the license. Changes to the rule clarify the current process HHSC follows.

HHSC changed the processing time for change of ownership applications in §507.14(a)(3) from five to ten calendar days to align with other facility change of ownership rules.

HHSC removed §507.14(c) because it is redundant with §507.14(a)(6), renumbered as (a)(5). Due to this change, HHSC renumbered subsections (d) and (e) as subsections (c) and (d).

HHSC revises §507.14(e), renumbered as §507.14(d), to align with §507.12(h) by replacing "during the initial licensing period" with "Within the first two years of licensure."

HHSC revises §507.15(c) to change "revised license" to "new license" because HHSC issues a new license after approval of a relocation.

HHSC revises §507.16(a)(4) to refer to "an ESRD license" to replace "a different license."

HHSC revises §507.17 to add a new paragraph (7) to describe the current facility requirements and process followed, if the facility does not resume patient services within 10 calendar days after the date the facility's license is placed on inactive status.

HHSC revises §507.21 to remove subsection (d) because it is redundant with §507.21(c) on how to submit a request for an exception. The remaining sections (e) - (h) were renumbered (d) - (g).

HSC revises §507.30 by removing "all applicable technical standards, including those listed below" and replacing it with "the following technical standards" that ESRD facilities must comply with.

HHSC revises §507.33(8)(D)(ii) to change "in the event of free chlorine or chloramine breaking through the first bed" to "in the event of total chlorine (the sum of free chlorine and chloramine) breaking through the first bed." This change to use "total chlorine" is consistent with the revisions HHSC is making in §507.33(8)(D)(iii), (iv), (vii), and (ix).

HHSC revises §507.33(8)(D)(v) to clarify that an automated chlorine monitoring system will provide "the equivalent frequencies of testing as required in clause (iv) of this subparagraph" instead of "the equivalent frequencies of monitoring as defined above."

HHSC revises §507.33(19)(D) to replace "units/millimeter" with "units/milliliter" to correct the meaning of the acronym "ml" in (CFU/ml).

HHSC revises §507.34(l)(4) and (l)(5)(C) to remove "are above the action level" and replace this with "comply with §507.30 of this subchapter," the Technical Standards section in 26 TAC Chapter 507.

HHSC revises §507.36(a)(2)(C) to remove "warm" from the water requirement for hand washing as it is no longer required.

HHSC adds §507.36(g) due to health and safety to replace a transducer protecter when wet and check for contamination if fluid or blood is visible.

HHSC revises §507.38(a)(4)(A) to change "must maintain" to "shall maintain" to use "shall" as construed by Texas Government Code §311.016.

HHSC revises §507.42 by adding subsection (d) prohibiting discrimination based on a patient's disability and requiring compliance with Texas Health and Safety Code Chapter 161, Subchapter S (relating to Allocation of Kidneys and Other Organs Available for Transplant) as found in 25 TAC §117.49, proposed for repeal.

HHSC revises §507.51(e)(1) by adding "The caseload is cumulative across all modalities and facilities where the dietitian is employed." This change clarifies the caseload requirement.

HHSC revises §507.51(e)(2) to remove "The maximum patient load is 125 patient per full time equivalent qualified social worker with assigned personnel assistance, including all modalities" because it was duplicative of the rule in §507.51(e)(1).

HHSC revises §507.53(b)(1) to remove "warm" from the water requirement for hand washing as it is no longer required.

HHSC revises §507.53(j)(3), renumbered as §507.53(l)(3), to add a reference to the revisions HHSC is making in §507.52(b)(4), related to medical services for home dialysis patients. HHSC also revises renumbered §507.53(l)(3) to remove subparagraphs (A) and (B). These changes avoid repeating the same rules in both sections.

HHSC revises §507.53(p), renumbered as §507.53(r), to remove "as they may not require disinfection, culture, and measurement for colony forming units and endotoxins." This change removes redundant manufacturing recommendation topics.

HHSC revises §507.54(d)(4), renumbered as §507.54(c)(4), to replace "family" with "caregiver" to use consistent terminology. HHSC also revises renumbered §507.54(c)(4) to remove "When other personnel assist in the training, the qualified registered nurse shall supervise the training," to move this requirement to §507.54(c)(5) for organizational purposes.

HHSC revises §507.54(d)(5), renumbered as §507.54(c)(5), to replace "personnel" with "facility staff" to use consistent terminology.

HHSC revises §507.59(d) for consistency with §507.59(c) by adding a "notwithstanding" clause that references the revisions HHSC is making in §507.52(b)(4) for home dialysis patients to be seen by a physician, an APRN, or a PA in the absence of a public health disaster. HHSC revises §507.59(d) to add "The visit by a physician, an APRN, or a PA may be conducted using telemedicine medical services." HHSC revises §507.59(d) to remove paragraphs (1) - (3) proposed in §507.59(d) because these are the same requirements in §507.52(b)(4) that apply in the absence of a public health disaster. HHSC revises §507.59(e) to change the reference in the "notwithstanding" clause from "§507.53" to "§507.53(l)(1)" for a registered nurse to conduct an initial monitoring visit of a patient's home adaptation before the home dialysis patient begins training. This change helps facilities locate the exceptions to §507.53(l)(1) that may be applied during a public health disaster. HHSC also revises §507.59 to remove subsection (f) because this exception during a public health disaster is covered by the revisions in §507.59(d).

HHSC revises §507.72(c)(1) - (c)(3) to refer to "the facility's training curricula" for consistency and clarification.

HHSC revises §507.73(e)(2) and (4) to remove "or other prescribed anticoagulants" and "other anesthetics," respectively, because the list of these medications in subsection (e) that dialysis technician trainees will be cannulating dialysis access and administering are limited to intravenous heparin, subcutaneous lidocaine, and topical lidocaine.

HHSC revises §507.73(f)(6) to remove "or other prescribed anticoagulants" because the anticoagulant dialysis technician trainees will be initiating or discontinuing is limited to intravenous heparin.

HHSC revises §507.73(g) and §507.75(4) for consistency with the revisions HHSC is making in §507.72(c)(2) and §507.73(e) to use intravenous normal saline, intravenous heparin, subcutaneous lidocaine, and topical lidocaine. HHSC also revises §507.73(g) and §507.75(4) to remove "or other anesthetics" because this broad category of anesthetics cannot be used in these rules.

HHSC revises §507.90(d)(2)(G)(ii) to remove the reference to Texas Penal Code Title 5 because Title 5 is already listed in §507.90(d)(2)(F). HHSC also revises §507.90(d)(2)(G) to renumber clauses (iii) - (vii) as clauses (ii) - (vi).

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §507.1, §507.2

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.2. Definitions.

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

(1) Action level--The point at which end stage renal disease (ESRD) facility staff shall take steps to interrupt the trend towards unacceptable levels.

(2) Administrator--An individual responsible for implementation and proper application of policies, programs, and services established for the ESRD facility.

(3) Advanced practice registered nurse (APRN)--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse in Texas. The term includes a nurse practitioner and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

(4) Adverse event--An event that results in unintended harm to the patient because of an act of commission or omission by the ESRD facility or ESRD facility staff rather than by the patient's underlying disease or condition or those events affecting patient's family members, visitors, or staff.

(5) Applicant--The person who seeks an ESRD facility license from the Texas Health and Human Services Commission (HHSC) and is legally responsible for the ESRD facility's operation, whether by lease or ownership.

(6) Architectural inspection--An inspection HHSC conducts to ensure compliance with all applicable federal and state regulations relating to the ESRD facility physical plant and to verify project construction aligns with submitted contract construction documents.

(7) Audio-only telecommunication--An interactive, two-way audio communication that uses only sound and that meets the privacy requirements of the federal Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication.

(8) Biofilm--A coating on surfaces consisting of microcolonies of bacteria embedded in a protective extracellular matrix. The matrix, a slimy material secreted by the cells, protects the bacteria from antibiotics and disinfectants.

(9) Business day--Any weekday from Monday through Friday that is not a state or national holiday listed in Texas Government Code §662.003.

(10) Calendar day--All days, including weekends and holidays.

(11) Caregiver--A person trained, qualified, and competent in using a device for the selected modality prescribed to the patient.

(12) Charge nurse--A practicing licensed registered nurse in accordance with applicable provisions of law who is responsible for making daily staff assignments based on patient needs, providing immediate supervision and support of patient care, monitoring patients for changes in condition, and communicating with the physician, dietitian, and social worker regarding patient needs.

(13) Closed system--A dialysis system for hemodialysis or peritoneal dialysis, that uses sterile manufactured bagged dialysate or dialysate solution.

(14) CMS--Centers for Medicare and Medicaid Services.

(15) Competency--Demonstrated ability to carry out specified tasks or activities with reasonable skill and safety that adheres to the prevailing standard of practice.

(16) Conditions for Coverage (CfCs)--The minimum health and safety rules that all Medicare and Medicaid participating ESRD facilities must meet. The basic health and safety requirements that an ESRD facility must meet to receive payment from the Medicare program.

(17) Conventional dialysis system--The ESRD facility's water treatment components and single pass dialysis machines.

(18) Core staff members--The ESRD facility's medical director, supervising nurse, dietitian, social worker, administrator, and approved biomedical representative.

(19) Corrective action plan--An alternative to enforcement action, as outlined in Texas Health and Safety Code §251.061 (relating to Corrective Action Plan).

(20) Delegation--Transfer of the authority to perform a selected task or activity in a selected situation to a qualified and properly trained individual.

(21) Dialysate--An aqueous fluid made from water and concentrate, containing electrolytes and usually dextrose that exchanges solutes with blood during hemodialysis that is delivered to the dialyzer by the dialysate supply system. This term does not include peritoneal dialysis fluid.

(22) Dialysate supply system--Devices that prepare dialysate on line from water and concentrates, or store and distribute premixed dialysate; circulate the dialysate through the dialyzer; monitor the dialysate for temperature, conductivity, pressure, flow, and blood leaks; and prevent dialysis during disinfection or cleaning modes. The term "devices" as used in this definition includes reservoirs; conduits; proportioning devices for the dialysate; monitors and associated alarms; and controls assembled as a dialysate supply system. The dialysate supply system is often an integral part of single patient dialysis machines.

(23) Dialysis--A process to remove dissolved substances from a patient's body by diffusion, osmosis, and convection (ultrafiltration) from one fluid compartment to another across a semipermeable membrane.

(24) Dialysis technician--An individual who is not a registered nurse or physician and provides dialysis care under the supervision of a registered nurse or physician. This individual may also be known as a Patient Care Technician (PCT) or Certified Clinical Hemodialysis Technician (CCHT).

(25) Dietitian--An individual who:

(A) is currently licensed by the Texas Department of Licensing and Regulation under the laws of this state as a licensed dietitian;

(B) is a registered dietitian; and

(C) has one year of experience in clinical dietetics after becoming a registered dietitian.

(26) Direct care staff--Staff who provide hands-on dialysis care to specifically assigned patients during their dialysis treatment (e.g., registered nurse, licensed vocational nurse, patient care technician). These staff members fulfill the patient to staff ratio requirement.

(27) Education--Presenting and teaching informative materials, including to licensed ESRD facility's patients, about treatment modalities, options, and overall health literacy. An ESRD facility may conduct education individually or in a group setting.

(28) Empty bed contact time (EBCT)--A measure of how much contact occurs between particles, such as activated carbon, and water as the water flows through a bed of the particles. EBCT = (7.48 x V)/Q where V is the volume of particles in the bed (feet), Q is the flow rate of the water through the bed (gallon/minute), and 7.48 is the conversion factor for gallons to feet.

(29) End stage renal disease--The stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life (also known as chronic kidney disease stage V).

(30) End stage renal disease (ESRD) facility--A facility that provides dialysis treatment or dialysis training and support to individuals with end stage renal disease.

(31) ESRD Network--An organization consisting of all Medicare-approved ESRD facilities in the designated geographic area specified by CMS. The network is operated by a corporation that functions under a federal government contract. The network organization is the administrative governing body to the network and acts as a liaison to the Federal government. The network helps ensure quality of care and coordinated delivery of end stage renal disease services.

(32) Endotoxin--Lipopolysaccharides consisting of a polysaccharide chain covalently bound to lipid A and the major component of the outer cell wall of gram-negative bacteria.

(33) Endotoxin-retentive filter--Membrane filter specifically proven to remove bacteria and endotoxins.

(34) Executive commissioner--The executive commissioner of the Texas Health and Human Services Commission.

(35) Facility--A contiguous, identifiable location HHSC approved for use as a licensed ESRD facility that is either a freestanding building or a single, distinct, contiguous space in a multi-tenant building.

(36) Full-time--The time period established by an ESRD facility as a full working week, as defined and specified in the facility's policies and procedures.

(37) Full-time equivalent--Work time equivalent to 2,080 hours per 12 consecutive months.

(38) Governing body--The governing authority of a licensed ESRD facility responsible for organization, management, control, operation, and appointment of medical staff. The governing body includes the medical director and representatives of the ESRD facility's owner. The governing body has the overall legal responsibility for the ESRD facility's governance and operation.

(39) Health care facility--Any type of facility or home and community support services agency licensed to provide health care in any state or certified for Medicare (Title XVIII) or Medicaid (Title XIX) participation in any state.

(40) Home dialysis service--Dialysis performed at home by an end stage renal disease patient or caregiver who has completed an appropriate course of training, as described in §507.53 of this chapter (relating to Home Dialysis Service).

(41) Hospital--A entity licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals), or when exempt from licensure, certified by the United States Department of Health and Human Services as in compliance with conditions of participation for hospitals in Title XVIII, Social Security Act (42 United States Code §1395 et seq.).

(42) In-center dialysis--Dialysis provided within the ESRD facility's licensed patient care area.

(43) Inspection--A survey conducted by a representative of HHSC to determine whether an applicant or licensee is in compliance with this chapter and Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities).

(44) Integrated hemodialysis system--A preconfigured hemodialysis system, as designated by the United States Food and Drug Administration (FDA), in which dialysis-quality water and concentrate is prepared and used at the patient's station in the approved and licensed dialysis unit. In licensed facilities that use this modality of delivery of dialysis services, the conventional water distribution system may not be necessary, as each unit contains its own water purification system, produces dialysate, and makes individualized adjustments as needed.

(45) Interdisciplinary team (IDT)--A group composed of the primary dialysis physician, registered nurse, dietitian, and social worker who are responsible for planning care for the patient.

(46) Intermediate-level disinfection--A surface treatment using chemical germicides or disinfectants that are capable of inactivating various classes of microorganisms including viruses (primarily medium to large viruses and lipid-containing viruses), fungi, and actively growing bacteria (including tubercle bacteria) when such chemical germicides or disinfectants are used in accordance with the manufacturer's directions for use or per established guidelines. Intermediate-level disinfection is generally not effective in inactivating or eliminating bacterial endospores. Examples of intermediate-level disinfectants include bleach, 70 - 90 percent ethanol or isopropanol, and certain phenolic or iodophor preparations.

(47) Licensed nurse--A registered nurse or licensed vocational nurse.

(48) Licensed vocational nurse (LVN)--An individual who is currently licensed under Texas Occupations Code Chapter 301 (relating to Nurses) by the Texas Board of Nursing as a licensed vocational nurse, or who holds a valid vocational nursing license with multi-state licensure privilege from another compact state. An LVN may act in the capacity of a dialysis technician after meeting the competency requirements specified in §507.48(o) of this chapter (relating to Nursing Services).

(49) Medical director--A physician who:

(A) is board certified in internal medicine by the American Board of Internal Medicine or in pediatrics by the American Board of Pediatrics; has completed a board-approved training program in nephrology; and has at least 12 months of experience providing care to patients receiving dialysis; or

(B) is board certified in nephrology or pediatric nephrology and has at least 12 months of experience providing care to patients receiving dialysis.

(50) Medical review board--A review board appointed by the ESRD Network that has a contract with CMS.

(51) Modality--A particular treatment option and settings for a patient with end stage renal disease, for example, in-center hemodialysis, home hemodialysis, home peritoneal dialysis, self-care dialysis, nocturnal dialysis, or transplantation.

(52) Owner--The legal or governmental entity that holds or will hold a license issued under this chapter and Texas Health and Safety Code Chapter 251.

(53) Patient--An individual receiving dialysis treatment or training from an ESRD facility.

(54) Patient plan of care--Documentation of the interactive process by which the interdisciplinary team and the patient and family members or guardian develop and implement a plan, based on the assessments performed by the interdisciplinary team members, to assist the end stage renal disease patient in managing the disease and its complications.

(55) Pediatric patient--An individual under 18 years of age.

(56) Person--An individual, corporation, or other legal entity.

(57) Physician--An individual who is licensed by the Texas Medical Board to practice medicine under Texas Occupations Code, Subtitle B, Title 3.

(58) Physician assistant--An individual licensed as a physician assistant by the Texas Physician Assistant Board.

(59) Plan of Correction (POC)--A written plan developed by the ESRD facility that lists specific actions the ESRD facility will take to correct specific deficiencies of state licensing regulations.

(60) Prelicensure conference--A meeting between HHSC staff and the administrator or licensed professional listed on the license application to review licensure standards and provide consultation before HHSC issues a license. The prelicensure conference is not an architectural review feasibility conference.

(61) Product water--Water produced by a water treatment system or by an individual component of a system.

(62) Progress note--A physical or electronic record of an event dated and signed by facility staff, which summarizes facts about the patient's care and the patient's response during a given time period.

(63) Pyrogen--A fever producing substance. Pyrogens are most often lipopolysaccharides of gram-negative bacterial origin.

(64) Quality assessment and performance improvement (QAPI)--An ongoing program that measures, analyzes, and tracks quality indicators related to improving health outcomes. The program implements improvement plans and evaluates the implementation until resolution is achieved.

(65) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a registered nurse, or who holds a valid registered nursing license with multi-state licensure privilege from another compact state.

(66) Second-chance patient--A patient voluntarily or involuntarily discharged from a facility, or pending involuntary discharge due to behavioral or compliance issues, chosen by the ESRD Network to participate in the second chance program set forth by the ESRD Network who agrees to receive treatment at another licensed ESRD facility. The patient will have specific behavioral expectations compliance expectations, or both, that shall be achieved and maintained to successfully participate in the second chance program and remain a patient at the accepting facility.

(67) Self-care patient--An in-center patient who performs all or part of their dialysis treatment, including, at a minimum, set up and tear down of machinery, holding their own site at termination of treatment, and taking and recording their own vital signs.

(68) Self-care service--A service where patients participate in their self-care with supervision by a qualified registered nurse as approved and delegated by the medical director.

(69) Single patient device--A dialysis machine, as designated by the FDA, assigned to a patient for individual use at home.

(70) Social worker--An individual who:

(A) is currently licensed by the Texas Behavioral Health Executive Council as a social worker under Texas Occupations Code Chapter 505 (relating to Social Workers), and holds a master's degree from a graduate school of social work accredited by the Council on Social Work Education; or

(B) has at least two years of work experience as a social worker, one year of which was in a dialysis facility or transplantation program before September 1, 1976, and has established a consultative relationship with a social worker who has a master's degree from a graduate school of social work accredited by the Council on Social Work Education.

(71) Sorbent regeneration system--A system that regenerates dialysate by passing the dialysate through substances that restore the dialysate to a condition comparable to fresh dialysate.

(72) Station--An area in the ESRD facility in which a patient receives in-center hemodialysis treatment, or dialysis instruction, such as home hemodialysis training or home peritoneal dialysis training.

(73) Supervising nurse (Director of Nursing)--A registered nurse who has:

(A) clinical experience including:

(i) at least 12 months of clinical nursing experience as an RN, and

(ii) an additional 6 months of experience in dialysis obtained within the last 24 months, or

(B) at least 18 months experience as an RN and holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis.

(74) Supervision--Authoritative procedural guidance by a qualified individual for accomplishing a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(A) Immediate supervision--The supervisor is observing the task or activity as it is performed.

(B) Direct supervision--The supervisor is at the licensed ESRD facility site but not necessarily immediately physically present where the task or activity is being performed.

(C) Indirect supervision--The supervisor is not at the licensed ESRD facility site but is accessible by two-way communication, able to respond to an inquiry when made, and readily available for consultation.

(75) Technical supervisor--The supervisor of the ESRD facility's mechanical, reuse, and water treatment systems.

(76) Telehealth or telehealth service--A health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology, in accordance with Texas Occupations Code Chapter 111 (relating to Telemedicine, Teledentistry, and Telehealth).

(77) Telemedicine or telemedicine medical service--A health care service delivered by a physician licensed in this state, or a health professional acting under the delegation and supervision of a physician licensed in this state, and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or information technology, in accordance with Texas Occupations Code Chapter 111.

(78) Training (Patient)--The process of developing, practicing, and maintaining specific skills of an individual patient related to the patient's home dialysis treatment modality, including self-care, home hemodialysis, peritoneal dialysis, and other modalities. Patient training must meet the requirements in §507.53 of this chapter.

(79) Training (Staff)--The process of teaching tasks through on-the-job experience or instruction from an individual who has the capacity through education or experience to perform the delegated task or activity.

(80) Transitional care--Services to transition a patient from a current modality to a self-care modality in-center or at home.

(81) Transitional services--In-center dialysis intended to transition a patient from a current modality to a self-care modality whether in-center or at home.

(82) Ultrafilter--A membrane filter with a pore size in the range of 0.001 to 0.05 micrometer. Performance is usually rated in terms of a nominal molecular weight cut off (MWCO), which is defined as the smallest molecular weight species for which the filter membrane has more than 90 percent rejection.

(83) Water distribution system--Storage tanks and piping used to distribute the product water from the purification cascade to or from its point of use, including individual hemodialysis machines, dialyzer reprocessing equipment, and dialysate concentrate preparation systems.

(84) Water treatment system--A collection of water purification devices and associated piping, pumps, valves, gauges, and other related components that together produce purified water for hemodialysis applications and deliver it to the point of use.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591

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SUBCHAPTER B. LICENSING REQUIREMENTS

26 TAC §§507.11 - 507.24

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.11. General Requirements for a License.

(a) All facilities that provide dialysis services, regardless of affiliation or modality, shall be licensed as an end stage renal disease (ESRD) facility. A patient of an ESRD facility receiving home dialysis services, as defined in §507.2 of this chapter (relating to Definitions), shall receive the services under the purview of a licensed ESRD facility.

(b) A facility shall obtain a license before admitting patients.

(c) A facility shall prominently and conspicuously display the license in a public area of the facility that is readily visible to patients, employees, and visitors.

(d) A facility shall not alter the ESRD facility license.

(e) An ESRD facility license is nontransferable. The facility shall comply with the provisions of §507.12 of this subchapter (relating to Application and Issuance of Initial License) in the event of a change in the ownership.

(f) The Texas Health and Human Services Commission (HHSC) issues an ESRD facility license for the facility site and person named in the application.

(g) An ESRD facility may share a building with other licensed health care facilities.

(1) The ESRD facility shall be licensed separately from the other licensed facilities.

(2) No identifiable part of the building may be dually licensed by more than one person.

(h) The following facilities are not required to be licensed under this chapter:

(1) a home and community support services agency licensed under Texas Health and Safety Code Chapter 142 (relating to Home and Community Support Services), with a home dialysis designation;

(2) a hospital licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals) that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services due to a disaster declared by the governor or a federal disaster declared by the president of the United States occurring in this state or another state during the term of the disaster declaration;

(3) a hospital operated by, or on behalf of, the state as part of the managed health care provider network established under Texas

Government Code Chapter 501 (relating to Inmate Welfare) that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services while the individual is serving a term of confinement in a facility operated by, or under contract with, the Texas Department of Criminal Justice;

(4) an ESRD facility operated by, or on behalf of, the state as part of the managed health care provider network established under Texas Government Code Chapter 501 that provides dialysis only to individuals receiving those services while serving a term of confinement in a facility operated by, or under contract with, the Texas Department of Criminal Justice; or

(5) the office of a physician unless the office is used primarily as an ESRD facility.

§507.12. Application and Issuance of Initial License.

(a) An applicant shall comply with this subsection before receiving an initial license.

(1) The applicant shall submit an accurate and complete application form to the Texas Health and Human Services Commission (HHSC) in accordance with HHSC instructions, including evidence that:

(A) the facility has at least one qualified physician on staff; and

(B) each dialysis technician on staff completed the training program requirements as required by §507.72 of this chapter (relating to Training Curricula and Instructors).

(2) The applicant shall submit the appropriate license fee, as required in §507.20 of this subchapter (relating to Fees).

(3) The applicant for a new or existing facility that is increasing the number of in-center dialysis treatment stations shall have an isolation room, as specified in the current CMS Conditions for Coverage or shall provide a CMS waiver.

(4) The applicant shall attend a prelicensure conference conducted by HHSC to review facility staff qualifications and licensure rules, and to receive consultation before the on-site licensure inspection. HHSC may waive the prelicensure conference requirement at its discretion.

(5) The applicant shall submit a copy of a fire safety inspection that:

(A) indicates approval by an individual certified by the Texas Commission on Fire Protection; and

(B) is dated no earlier than 12 months before the facility licensure date.

(6) The facility physical plant shall meet the requirements set forth in Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements) before HHSC issues an end stage renal disease (ESRD) facility license for a newly constructed ESRD facility or an ESRD facility converted from a non-ESRD facility building.

(7) The applicant shall submit to HHSC, in accordance with HHSC instructions, a complete chemical analysis of the product water and reports to verify that bacteriological and endotoxin levels of product water and dialysate are compliant with §507.33 of this chapter (relating to Water Treatment) and §507.34 of this chapter (relating to Dialysate). The facility shall keep the reports on file at the facility and make the reports available to HHSC staff during an on-site inspection or when requested by HHSC.

(b) When HHSC determines the applicant has complied with subsection (a) of this section, HHSC issues the license to the applicant.

(1) The license is effective on the issue date.

(2) The license expires on the last day of the month two years after the issue date.

(c) HHSC will not process an application until HHSC receives the fee required in subsection (a)(2) of this section.

(d) An applicant may withdraw their application by notifying HHSC in accordance with HHSC instructions.

(e) If the applicant does not complete all requirements of subsection (a) of this section within six months after the date HHSC receives the license application and appropriate fee, HHSC will consider the application withdrawn. The applicant must reapply for an initial license in accordance with this section.

(f) Any fee paid for a withdrawn application is nonrefundable, as indicated by §507.20(a) of this subchapter.

(g) Denial of a license is governed by §507.90 of this chapter (relating to Enforcement).

(h) Within the first two years of licensure, HHSC inspects the facility to determine the facility's compliance with the provisions of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter.

(1) HHSC may conduct this inspection at the same time as the inspection to determine compliance with Code of Federal Regulations Title 42, Part 494 (relating to Conditions for Coverage for End-Stage Renal Disease Facilities).

(2) After the facility admits and provides services to at least one patient, the facility shall request an on-site inspection in accordance with HHSC instructions. An HHSC representative will conduct the inspection while patients are in the facility being dialyzed.

(3) At the time of inspection, the facility shall provide services to at least one patient in each modality the facility requested in their application. An HHSC representative may interview patients at the time of the inspection, either in the patient's home or at the facility. An HHSC representative may interview peritoneal and home hemodialysis patients trained or retrained at the facility as part of the inspection.

§507.13. License Renewal.

(a) The Texas Health and Human Services Commission (HHSC) sends written notice of license expiration to a facility at least 90 calendar days before the expiration date of a license. If the facility does not receive the notice, it is the facility's duty to notify HHSC and request a renewal notice.

(b) HHSC renews the license of a facility that meets the minimum requirements for a license.

(c) The facility shall submit to HHSC before the license expiration date:

(1) a complete and accurate renewal application form;

(2) a copy of two fire safety inspections indicating approval by an individual certified by the Texas Commission on Fire Protection, which includes:

(A) one approved within the 12 months before the submission date or the license expiration date, whichever is earlier, and

(B) one approved within the last 13 - 24 months before the submission date or the license expiration date, whichever is earlier; and

(3) the license renewal fee.

(d) HHSC may conduct an inspection before issuing a renewal license in accordance with §507.82 of this chapter (relating to Inspections).

(e) A renewal license is valid for two years from the previous expiration date.

(f) A facility must submit a complete renewal application, including all required documents and the fee, at least 30 days before the license expiration date.

(1) If the facility does not submit the completed renewal application, required documents, and license renewal fee until after the license expiration date, the facility must pay a late fee of half of the renewal fee based on the facility's number of stations, as listed in §507.20(c) of this subchapter (Relating to Fees).

(2) If the facility does not submit the completed renewal application, required documents, license renewal fee, and late fee within 30 days after the expiration date, HHSC notifies the facility to immediately cease operation.

(A) If HHSC notifies a facility to immediately cease operation, the facility must apply for and receive an initial license under §507.12 of this subchapter (relating to Application and Issuance of Initial License) to resume services.

(B) If HHSC requires the facility to apply for an initial license, the facility shall not provide services until HHSC issues the initial license.

(3) HHSC issues a renewal license only after the facility submits the renewal application, required documents, license renewal fee and any applicable late fee.

(g) If the facility does not wish to provide services after the license expiration date, the facility must close in accordance with §507.18 of this subchapter (relating to Closure).

(h) After the license expiration date, if the facility does not correct a deficiency in the renewal application within 15 business days after being notified, HHSC may assess a late fee as described in subsection (f)(1) of this section or deny the license. If HHSC denies the license, any license fee paid is nonrefundable, as indicated by §507.20(a) of this subchapter.

(i) Denial of a license is governed by §507.90 of this chapter (relating to Enforcement).

§507.14. Change of Ownership.

(a) A change of ownership occurs when there is a change in the person legally responsible for the facility's operation, whether by lease or ownership.

(1) If a corporate licensee amends its articles of incorporation to revise its name and the tax identification number does not change, this subsection does not apply, except for the following notification requirement. The corporation shall notify the Texas Health and Human Services Commission (HHSC) within 10 calendar days after the effective date of the name change.

(2) The sale of stock of a corporate licensee does not cause this subsection to apply.

(3) The new owner shall submit a license application, documents, and fee in accordance with §507.12 of this subchapter (relating to Application and Issuance of Initial License) to HHSC before the date of the change of ownership or within 10 calendar days after the change of ownership date.

(4) HHSC may waive the inspection required by subsection (d) of this section.

(5) When HHSC determines the new owner complied with provisions of §507.12 of this subchapter, HHSC issues a license, which is effective on the date of the change of ownership.

(6) The license expiration date shall be in accordance with §507.12(b)(2) of this subchapter.

(7) The previous owner's license shall be void on the effective date of the new owner's license, and the facility shall return the voided license to HHSC.

(b) The facility shall comply with §507.12(a)(7) of this subchapter.

(c) Applications under this section are subject to §507.12(d) and (e) of this subchapter.

(d) Within the first two years of licensure, HHSC may inspect the facility to determine the facility's compliance with the provisions of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter in accordance with §507.12(h) of this subchapter.

§507.15. Relocation.

(a) A facility planning to relocate shall notify the Texas Health and Human Services Commission (HHSC) in accordance with HHSC instructions at least 90 calendar days before the planned relocation. Relocations shall be within the state of Texas.

(1) The facility shall submit a license application in accordance with §507.12 of this subchapter (relating to Application and Issuance of Initial License) to HHSC before relocation.

(2) HHSC may waive the inspection required by §507.12 of this subchapter.

(3) The license is effective on the issue date.

(4) The license expires on the last day of the month two years after the issue date.

(5) The previous facility license is void once the relocation is effective and after the facility ceases all services at the previous location. The facility must return the voided license to HHSC.

(b) The facility shall comply with §507.12(a)(7) of this subchapter.

(c) When HHSC determines the facility complied with this section, HHSC issues a new license to the applicant, when applicable.

(d) Applications under this subsection are subject to §507.12(d) and (e) of this subchapter.

(e) Within the first two years of licensure after relocation, HHSC may inspect the facility to determine the facility's compliance with the provisions of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter in accordance with §507.12(h) of this subchapter.

§507.16. Change in Status.

(a) A facility shall notify the Texas Health and Human Services Commission (HHSC) in writing in accordance with HHSC instructions at least 30 calendar days before:

(1) any construction;

(2) addition, alteration, renovation, or remodeling;

(3) equipment and finish upgrade;

(4) conversion of a licensed or previously licensed facility to an ESRD license designation;

(5) demolition;

(6) retrofitting a function, such as changing end stage renal disease treatment modality or training station designations; or

(7) change of services, including change in treatment modality, station type, and station number.

(b) A facility shall notify HHSC in writing and in accordance with HHSC instructions within 10 calendar days following:

(1) a change in the facility name, mailing address, facility administrator email address, telephone number, or fax number;

(2) a change of administrator; or

(3) the facility ceasing operation.

(c) A facility shall request and receive HHSC written approval in accordance with HHSC instructions before changes in services or the number of stations.

(1) The facility shall request HHSC approval at least 90 calendar days before the planned change and must receive HHSC approval before implementing the changes.

(2) The change shall comply with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(3) For an additional service or increase in stations, HHSC may require the facility to provide evidence of appropriate staffing, policies and procedures, or any other documentation it determines is necessary to evaluate the request.

(4) For an increase in stations, the facility shall also submit written evidence that the water treatment system is of sufficient size to accommodate the increase and maintain a safe water supply.

(5) HHSC may conduct an on-site inspection before acting on the requested changes.

(6) The facility shall comply with §507.12(a)(7) of this subchapter (relating to Application and Issuance of Initial License).

(7) HHSC sends the facility written notice of HHSC approval or denial of the requested change.

(8) All existing facilities increasing the number of in-center dialysis treatment stations shall have an isolation room, as specified in the current CMS Conditions for Coverage, or shall provide a waiver. Refer to isolation room requirements in Subchapter Z of this chapter.

§507.17. Inactive Status.

A facility that stops offering services under its license shall first ensure the safety of the facility's patients, staff, and visitors, then inform the Texas Health and Human Services Commission (HHSC) and request inactive status within five calendar days of ceasing operations, in accordance with HHSC instructions. HHSC may close a license if the facility does not offer services for more than 90 calendar days unless the facility sends a written request to place the license on inactive status.

(1) To be eligible for inactive status, a facility must be in good standing with no pending legal action or investigation.

(2) The facility is responsible for any license renewal requirements or fees, and for proper maintenance of patient records, while the license is inactive.

(3) A license may not remain inactive for more than 90 calendar days without an approved extension from HHSC.

(4) A facility that does not reactivate its license within 90 calendar days after it stopped offering services may request a single 90-day renewal period of the inactive status from HHSC through a written request in accordance with HHSC instructions.

(5) A facility may request HHSC to place the license on inactive status once during each two-year licensing period.

(6) If the facility does not reactivate its license or request a renewal for inactive status by the 90th calendar day after the facility stopped offering services, HHSC may consider the facility closed and the license invalid.

(7) If the facility does not resume patient services within 10 calendar days after the date the facility's license is placed on inactive status:

(A) the facility shall submit to HHSC an application for inspection and water culture testing results;

(B) the facility's water culture testing results submitted to HHSC with the application shall meet the requirements of §507.33 of this chapter (relating to Water Treatment); and

(C) the facility shall not resume providing patient services until after HHSC inspects the facility.

§507.21. Exceptions to These Rules.

(a) An end stage renal disease (ESRD) facility may request the following types of exceptions from a requirement in this chapter.

(1) An ESRD facility may request a temporary exception related to alternative concepts, methods, procedures, or techniques, or for conducting pilot projects or research.

(2) An ESRD facility may request a permanent exception related to United States Food and Drug Administration-approved equipment.

(b) Exceptions related to operating a facility during an emergency or disaster situation are governed by §507.22 of this subchapter (relating to Exceptions During Emergency or Disaster Situations).

(c) To request an exception to a requirement in this chapter, a facility shall submit a form to the Texas Health and Human Services Commission (HHSC) that includes:

(1) the specific rule for which the facility requests an exception;

(2) a detailed description of the specific circumstances the facility administration believe justify the exception;

(3) a detailed description of what alternatives the facility considered, if any, and why the facility did not select any of the identified alternatives, including compliance with the rule;

(4) a detailed description of how the proposed exception is desirable to maintain or improve the health and safety of the patients, will not jeopardize patient health and safety, and will maintain patient access to care; and

(5) the proposed duration of the exception, if the facility submits a request for a temporary exception.

(d) HHSC may conduct an inspection and may consult with the medical review board before approving an exception.

(e) HHSC responds to an exception request within 90 calendar days after the date HHSC receives the request. On finding that the facility satisfied the conditions of this section, HHSC may grant a tem-

porary or permanent exception and shall specify the exception duration when notifying the facility that HHSC granted the exception.

(f) The facility may implement an exception only after the date the facility receives written approval from HHSC.

(g) Granting of an exception is public information, is subject to disclosure, and may be posted on the HHSC website.

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

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS FOR EQUIPMENT, WATER TREATMENT AND REUSE, AND SANITARY AND HYGIENIC CONDITIONS

26 TAC §§507.30 - 507.38

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.31. Equipment.

(a) All equipment used by a facility, including backup equipment, shall be approved by the United States Food and Drug Administration (FDA), operated in accordance with the manufacturer's direction for use, and maintained free of defects that could be a potential hazard to patients, staff, or visitors. Qualified staff or contract personnel shall perform maintenance and repair of all equipment.

(1) Staff shall be able to identify malfunctioning equipment and immediately report such equipment to the appropriate staff for repair.

(2) Staff shall clearly and immediately label medical equipment that malfunctions and promptly remove the equipment from service until the facility ensures identification and correction of the malfunction.

(3) A facility shall maintain a record of all maintenance and repairs.

(4) After the facility ensures necessary repair or alteration to any equipment or system, the facility shall thoroughly test the equipment or system for proper operation and disinfect the equipment or system before returning the equipment or system to service.

(5) A facility shall comply with the Federal Food, Drug, and Cosmetic Act, 21 United States Code (USC) §360i(b) (relating to Records and Reports on Devices), concerning reporting when a medical device, as defined in 21 USC §321(h) (relating to Definitions; Generally), has or may have caused or contributed to the injury or death of a patient of the facility.

(6) A facility shall document completion of the requirements listed in paragraphs (1) - (5) of this subsection on the facility's equipment or system repair log (electronic or paper).

(b) A facility shall develop, implement, and enforce a written preventive maintenance program to ensure patient care related equipment used in the facility, or provided by the facility for use by a patient in the patient's home, receives electrical safety inspections, when appropriate, and maintenance at least annually, or more frequently in accordance with the manufacturer's direction for use. Facility staff or contract personnel may provide the preventive maintenance.

(c) At least one complete dialysis machine shall be available on site as backup for every 10 machines in use. At least one of these backup machines shall be completely operational during hours of treatment. Machines not in use during a patient shift may be counted as backup except at the time of an initial or an expansion survey.

(d) A facility shall annually inspect equipment with internal transducer protectors to ensure the equipment is not contaminated. If the transducer protector is wetted or fluid or blood is visible, the facility must follow instructions as described in §507.36 of this subchapter (relating to Infection Control).

(e) If a facility treats pediatric patients, the facility shall use equipment and supplies, to include blood pressure cuffs, dialyzers, and blood tubing, appropriate for this special population.

(f) All equipment and appliances shall be properly grounded in accordance with the National Fire Protection Association (NFPA 99), Standard for Health Care Facilities, §4.3.2.2.2, 2002 Edition.

(g) A facility shall have emergency equipment and supplies immediately accessible in the treatment area.

(1) At a minimum, the emergency equipment and supplies shall include:

(A) oxygen;

(B) ventilatory assistance equipment, to include airways, manual breathing bag, and mask;

(C) suction equipment;

(D) supplies specified by the medical director; and

(E) automated external defibrillator.

(2) If a facility treats pediatric patients, the facility shall have the appropriate type and size emergency equipment and supplies listed in paragraph (1) of this subsection for this special population.

(3) A facility shall establish, implement, and enforce a policy for periodic testing and maintenance of the emergency equipment. Staff shall properly maintain and test the emergency equipment and supplies and document the testing and maintenance.

§507.33. Water Treatment.

The requirements in this section apply to water used for hemodialysis, including preparation of concentrates from powder at a dialysis facility and dialysate, and reprocessing dialyzers for multiple use.

(1) The design for the water treatment system in a facility shall be based on considerations of the source water for the facility and designed by a water quality professional with education, training, or experience in dialysis system design.

(2) When a facility does not use a public water system supply, the facility shall test the source water monthly in the same manner as a public water system, as required by the Texas Commission on Environmental Quality (TCEQ) under Texas Administrative Code, Title 30, Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(3) The physical space in which the water treatment system is located shall be adequate to allow for maintenance, testing, and repair of equipment. If facility staff mixes concentrates in the same area, the physical space shall also be adequate to house and allow for maintenance, testing, and repair of the mixing equipment and for performing the mixing procedure. When a facility uses a water distribution system, the system shall be configured as a continuous recirculation loop. To minimize biofilm formation, there shall always be flow in a piping system, except during the backwash cycle of the carbon tanks for direct feed systems.

(A) For direct and indirect feed systems, the water flow rate shall comply with the standards listed in §507.30 of this subchapter (relating to Technical Standards).

(B) This section shall not apply to facilities providing only home training and services utilizing single patient devices. Devices used in the facility for training and support services shall be compliant with the United States Food and Drug Administration (FDA) and Underwriters' Laboratories (UL) requirements.

(C) The water treatment and distribution system shall include appropriate pressure gauges, flow meters, sample ports, and other ancillary equipment necessary to allow monitoring of the performance of individual system components and the system as a whole, as determined by the facility medical director.

(4) The water treatment system components shall be arranged and maintained so that bacterial and chemical contaminant levels in the product water do not exceed the standards for hemodialysis water quality described by the standards listed in §507.30 of this subchapter.

(A) Direct feed systems shall include a means of verifiably preventing retrograde flow of water into the distribution loop from the feed side of the reverse osmosis unit.

(B) Dead-end piping (risers with no flow, branches with no fixture) shall not be installed. In any renovation work, dead-end piping shall be removed.

(5) The facility shall develop written policies and procedures for operating the water treatment system, receiving approval from the medical director, and implementing and enforcing the approved policies and procedures. The facility shall develop written parameters for operating each water treatment system component and ensuring the operator is trained and knowledgeable on these parameters. Each major water system component shall be labeled in a manner that identifies the device, describing its function, how performance is verified, and actions to take in the event performance is not within an acceptable range. The facility's policies and procedures for the bypass valves for the carbon tanks, and any other bypass valves considered to be critical by the medical director, shall have a means to minimize the likelihood the device will be inadvertently bypassed during the normal operation of the system.

(6) The materials of any components of water treatment systems (including piping, storage, filters, and distribution systems) that contact the product water shall not interact chemically or physically to adversely affect the product water purity or quality. Such components shall be fabricated from unreactive materials (e.g., plastics) or appropriate stainless steel. The use of materials that are known to cause toxicity in hemodialysis, such as copper, brass, galvanized material, or aluminum, is prohibited at any point beyond the water treatment component used to remove contaminating metal ions (e.g., reverse osmosis system or deionizer).

(7) Chemicals infused into the water such as iodine, acid, flocculants, and complexing agents shall be shown to be nondialyzable or shall be adequately removed from product water. Systems shall be monitored in accordance with the manufacturer's direction for use, and specific test procedures to verify removal of additives shall be provided and documented. Chemical injection systems shall include a means of regulating the metering pump to control the addition of a chemical. This control system shall be designed to tightly control addition of the chemical. This control system shall ensure the chemical is added only when the water is flowing through the pre-treatment cascade and in fixed proportion to the water flow. If an automated control system is used to inject the chemical, there shall be an independent monitor of the controlling parameter.

(8) Each water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of two carbon tanks in series. If the source water is from a private supply that does not use chlorine or chloramine, the water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of one carbon tank.

(A) Reverse osmosis systems, if used, shall meet the standards set forth by the CMS Conditions for Coverage.

(B) Single patient devices used in a dialysis facility shall meet the appropriate standards set forth in the CMS Conditions for Coverage to provide dialysis-quality water. Once the designated patient no longer needs the single patient device, the facility may process, disinfect, and prepare the device for another designated patient's use, per manufacturer's directions for use.

(C) A facility shall meet the following requirements for deionization systems.

(i) Deionization systems, if used, shall be monitored continuously to produce water of one megohm-centimeter or greater specific resistivity (or conductivity of 1.0 microsiemens/centimeter or less) at 25 degrees Celsius. The system shall have an audible and visual alarm which activates in the facility to include the patient care area when the product water resistivity falls below this level, and the product water stream shall be prevented from reaching any point of use.

(ii) A facility shall not dialyze patients on deionized water with a resistivity less than 1.0 megohm-centimeter measured at the output of the final deionizer.

(iii) Deionization tanks, if used, shall be a minimum of two mixed beds in series and shall be used with resistivity monitors including audible and visual alarms placed pre and post the final deionization tank in the system and audible in the patient care area.

(iv) Feed water for deionization systems shall be pretreated with activated carbon adsorption, or a comparable alternative, to prevent nitrosamine formation.

(v) If a deionization system is the last process in a water treatment system, it shall be followed by an ultrafilter or other bacteria and endotoxin reducing device.

(vi) Facilities shall ensure all devices that are regenerated or reconstituted off site, such as deionizers, shall be disinfected at the time of regeneration or reconstitution, so contaminated water is not reintroduced into the system after regeneration or reconstitution.

(D) A facility shall meet the following requirements for carbon tanks.

(i) The carbon tanks shall contain granular activated carbon, with a minimum iodine number of 900 or equivalent, as indicated by the medical device manufacturer. The facility shall not use previously used carbon.

(ii) A minimum of two carbon adsorption beds shall be installed in series with a sample port following the first bed. A sample port shall also be installed following the second bed for use in the event of total chlorine (the sum of free chlorine and chloramine) breaking through the first bed.

(iii) The total empty bed contact time (EBCT) shall be at least 10 minutes, with the final tank providing at least five minutes EBCT at the maximum flow rate through the bed. Carbon adsorption systems used to prepare water for home dialysis or for portable dialysis systems are exempt from the requirement for the second carbon and a 10-minute EBCT, if removal of total chlorine to below 0.1 milligram/liter (mg/L) is verified before each treatment.

(iv) Water from the sample ports following the first carbon bed shall be tested for total chlorine levels at the beginning of each treatment day, before patients initiate treatment, before reprocessing of dialyzers, and again before the beginning of each patient shift. If there are no set patient shifts, testing shall be performed every four hours until all activities that require use of dialysis-quality water are completed.

(v) If used, an automated chlorine monitoring system will provide, at minimum, the equivalent frequencies of testing as required in clause (iv) of this subparagraph and used in accordance with the manufacturer's direction for use. Facility staff shall manually test the automated chlorine monitoring system before the first patient treatment every morning to verify that the device is functioning within manufacturer's specifications to ensure water quality. If a breakdown in the system occurs at any time before or during the treatment day, the facility shall return to manually testing the system every four hours during the treatment day and maintain the appropriate records for manual monitoring.

(vi) Carbon beds are sometimes arranged as series-connected pairs of beds so that they need not be overly large. The beds within each pair are of equal size and water flows through them are parallel. In this situation, each pair of beds shall have a minimum empty bed contact time of five minutes at the maximum flow rate through the bed. When series connected pairs of beds are used, the piping shall be designed to minimize differences in the resistance to flow from inlet and outlet between each parallel series of beds, to ensure an equal volume of water flows through all beds.

(vii) All samples for total chlorine testing shall be drawn when the water treatment system has been operating for at least 15 minutes.

(viii) A facility may use tests for total chlorine, which include both free and combined forms of chlorine, as a single analysis with the maximum allowable concentration of 0.1 mg/L. Test results of greater than 0.5 parts per million (ppm) for chlorine or 0.1 ppm for chloramine from the port between the initial tanks and final tanks shall require testing to be performed at the final exit and replacement of the initial tanks. A facility shall use testing equipment, supplies, and procedures in accordance with the manufacturer's directions for use.

(ix) In a system without a holding tank, if test results at the exit of the final tanks are greater than the parameters for total chlorine described in this subparagraph, dialysis treatment shall be immediately terminated to protect patients from exposure to chlorine or chloramines, and the medical director shall be notified. In systems with holding tanks, if the holding tank tests less than 0.1 mg/L for total chlorine, the reverse osmosis may be turned off and the product water in the holding tank may be used to finish treatments in process. The medical director shall be notified.

(x) If means other than granulated carbon is used to remove chlorine or chloramine, the facility governing body shall approve such use, in writing, after reviewing the intended method's safety for use in hemodialysis applications. If such methods include the use of additives, there shall be evidence the product water does not contain unsafe levels of these additives.

(9) Water softeners, if used, shall be tested at the end of the treatment day to verify their capacity to treat a sufficient volume of water to supply the facility for the entire treatment day and shall be fitted with a mechanism to prevent water containing the high concentrations of sodium chloride used during regeneration from entering the product water line during regeneration.

(10) If used, the faces of timers used to control any component of the water treatment or dialysate delivery system shall always be visible to the operator. The facility shall maintain written evidence that staff checked timers for operation and accuracy each day of operation.

(11) Filter housings, if used during disinfectant procedures, shall include a means to clear the lower portion of the housing of the disinfecting agents. Filter housings shall be opaque.

(12) Ultrafilters, or other bacterial reducing filters, if used, shall be fitted with pressure gauges on the inlet and outlet water lines to monitor the pressure drop across the membrane. Ultrafilters shall be included in routine disinfection procedures. Ultrafilters with a nominal molecular weight cut off (MWCO) of 20,000 or less are generally adequate for endotoxin removal.

(13) If used, storage tanks shall have a conical or bowl-shaped base and drain from the lowest point of the base. Storage tanks shall have a tight-fitting lid and be vented through a hydrophobic 0.2-micron air filter. A means shall be provided to effectively disinfect any storage tank installed in a water distribution system.

(14) Ultraviolet (UV) lights, if used, shall be monitored at the frequency in accordance with the manufacturer's direction for use and have an endotoxin-reducing filter located downstream of the device. Records shall be maintained for monitoring, as outlined by the manufacturer's directions for use. Monitoring of all water system components shall be maintained on water system logs (electronic or paper).

(15) Water treatment system piping shall be labeled to indicate the pipe contents and direction of flow.

(16) The water treatment system shall be continuously monitored during patient treatment and guarded by audible and visual alarms, which can be seen and heard in the dialysis treatment area should water quality drop below specific parameters. Quality monitor sensing cells shall be located at the last component of the water treatment system and at the beginning of the distribution system. No water treatment components that could affect the product water quality, as measured by this device, shall be located after the sensing cell.

(17) When deionization tanks do not follow a reverse osmosis system, the facility shall ensure the parameters for the rejection

rate of the membranes assure that the lowest rate accepted would provide product water with a level of chemical contaminants in compliance with the standards listed in §507.30 of this subchapter.

(18) A facility shall maintain water treatment system operation records for each treatment day. The logbook (electronic or paper) shall include each component's operating parameter and the action taken when a component is not within the facility's set parameters.

(19) Microbiological testing of product water shall be conducted.

(A) Routine microbiological testing shall be conducted on a quarterly, or more frequent basis as needed, or required by the standards listed in §507.30 of this subchapter. Routine microbiological testing shall ensure the water and dialysate bacteria and endotoxin levels are within the limits described in the standards listed in §507.30 of this subchapter. For a newly installed water distribution system, or when any repairs, modifications, or changes to the configuration have been made to an existing system, weekly testing shall be conducted for four weeks to verify that bacteria and endotoxin levels are consistently within the allowed limits. Changes to components that are designed to be replaced on a routine schedule such as filters, ultrafilters, and ultraviolet lamps do not require a period of more frequent testing.

(B) At a minimum, sample sites chosen for testing shall include the beginning of the distribution piping, product water in the reuse room at any site of concentrate mixing, and end of the distribution piping.

(C) Samples shall be collected before sanitizing or disinfecting the water treatment system and dialysis machines. Water testing results shall be routinely trended and reviewed by the medical director to determine if results seem questionable or if there is an opportunity for improvement. The medical director shall determine if there is a need for retesting.

(D) Product water used to prepare dialysate, concentrates from powder, or to reprocess dialyzers for multiple use shall contain a total viable microbial count of less than 100 colony forming units/milliliter (CFU/ml) and an endotoxin concentration of less than 0.25 endotoxin units (EU)/ml. The action level for the total viable microbial count in the product water shall be consistent with the standards listed in §507.30 of this subchapter.

(E) If the action levels described at subparagraph (D) of this paragraph are observed in the product water, the medical director shall be notified, and corrective measures shall be taken promptly to reduce the levels into an acceptable range.

(F) All bacteria and endotoxin results shall be recorded to identify trends that may indicate the need for corrective action.

(20) If ozone generators are used to disinfect any portion of the water or dialysate delivery system, the ozone generator shall be capable of delivering ozone at the concentration and for the exposure time specified and in accordance with the manufacturer's direction for use. Testing based on the manufacturer's direction shall be used to measure the ozone concentration each time disinfection is performed, to include testing for safe levels of residual ozone at the end of the disinfection cycle. Testing for ozone in the ambient air shall be conducted on a periodic basis as recommended by the manufacturer. The records of all testing shall be maintained in a log (electronic or paper). The frequency of disinfection shall be performed at least monthly.

(21) If used, hot water disinfection systems shall use water that meets the standards listed in §507.30 of this subchapter, which must be capable of delivering hot water at the temperature and for the exposure time specified and in accordance with the manufacturer's direction for use, and be monitored for temperature and time of exposure to hot water, as specified by the manufacturer. Water temperature shall be monitored at a point furthest from the water heater, where the lowest water temperature is likely to occur. The water temperature shall be measured each time a disinfection cycle is performed. A record that verifies successful completion of the heat disinfection shall be maintained. The frequency of disinfection shall be performed at least monthly or more frequently, as needed or required by the standards listed in §507.30 of this subchapter.

(22) After chemical disinfection, a mechanism shall be incorporated to ensure that the equipment and system are restored to a safe condition before using the equipment and product water being used for dialysis applications. The results of all absence testing shall be documented. The frequency of disinfection shall be performed at least monthly. A mechanism shall be incorporated in the distribution system to ensure disinfectant does not drain from pipes during the disinfection period.

(23) Users shall establish and implement a procedure for regular disinfection of the line between the outlet from the water distribution system and the back of the dialysis machine.

(24) Samples of product water used for dialysis shall be submitted for chemical analysis every six months, after a change of the reverse osmosis membranes, and demonstrate that the quality and level of chemical contaminants of the product water used to prepare dialysate, concentrates from powder, or to reprocess dialyzers for multiple use meets the standards listed in §507.30 of this subchapter.

(A) Samples for chemical analysis shall be collected at the most distal point in each water distribution loop. All other outlets from the distribution loops shall be inspected to ensure that the outlets are fabricated from compatible materials. Appropriate containers and pH adjustments shall be used to ensure accurate determinations. New facilities, or facilities that add or change the water distribution system configuration, shall draw samples at the most distal point for each water distribution loop and then every six months thereafter.

(B) Additional chemical analysis shall be submitted when any modification or change to the existing system configuration is made to the water treatment system, or if the percent rejection of a reverse osmosis system decreased 5.0 percent or more from the percent rejection measured at the time the water sample for the preceding chemical analysis was taken.

(25) Facility records shall include all test results and provide evidence the medical director has reviewed the water quality testing results and directed corrective action when indicated.

(26) Only individuals qualified by the education or experience described in §507.54 of this chapter (relating to Staff Qualifications) may operate, repair, or replace water treatment system components.

§507.34. Dialysate.

(a) The facility shall develop, implement, maintain, and evaluate quality assessment and performance improvement (QAPI) procedures to ensure ongoing conformance to policies and procedures regarding dialysate quality.

(b) Each facility shall set all hemodialysis machines to use only one family of concentrates. When new machines are put into service, the concentrate family changes, or the concentrate manufacturer changes, dialysate samples shall be taken from each machine and sent to a laboratory for verification of the dialysate electrolyte values.

(c) Before each patient treatment, facility staff shall verify the dialysate conductivity and pH of each machine with an independent method, following the manufacturer's guidance.

(d) For machines with internal independent conductivity and pH testing, the staff must verify and document that the machine conducted internal testing before each patient treatment. The facility shall test the machine's calibration every six months and maintain logs of the calibration testing.

(e) Bacteriological testing shall be conducted, and bacteriological levels shall meet the hemodialysis dialysate quality required by the standards listed in §507.30 of this subchapter (relating to Technical Standards).

(f) Only a qualified, licensed nurse may use an additive to increase concentrations of specific electrolytes in the acid concentrate. The nurse shall follow mixing procedures, as specified by the additive manufacturer. For additives prescribed for a specific patient, the nurse shall label the container holding the prescribed acid concentrate with the patient name, final concentration of the added electrolyte, date the prescribed concentrate was made, and the facility staff name who mixed the additive. Facility staff may use additives only:

(1) when other interventions were not effective;

(2) per physician order; and

(3) when the additive is reviewed by the governing body.

(g) A facility shall ensure all components used in concentrate preparation systems (including mixing and storage tanks, pumps, valves, and piping) are only made from materials (e.g., plastics or appropriate stainless steel) that do not interact chemically or physically with the concentrate to affect its purity, or with the germicides used to disinfect the equipment. The facility shall ensure components are not made of or use materials known to cause toxicity in hemodialysis such as copper, brass, galvanized material, and aluminum.

(h) Facility policies shall address means to protect stored dialysate components (acid concentrates, bicarbonate concentrates, or bulk storage of dialysate components) from tampering or degeneration due to exposure to extreme heat or cold.

(i) The facility shall develop, implement, and enforce procedures to:

(1) control the transfer of acid concentrates from the delivery container to the clearly labeled storage tank and prevent the inadvertent mixing of different concentrate formulations;

(2) form an integral system of the tank and associated plumbing to prevent contamination of the acid concentrate; and

(3) secure and clearly label the storage tank and inlet and outlet connections, if remote from the tank.

(j) Concentrate mixing systems shall include a purified water source, a suitable drain, and an acceptable electrical outlet, as specified by the manufacturer's recommendations, directions, or instructions.

(1) Mixing system operators shall use personal protective equipment as specified and in accordance with the manufacturer's direction for use during all mixing processes.

(2) Operators shall follow the manufacturer's directions for use of a concentrate mixing system, including instructions for mixing the powder with the correct amount of water, and determine and record the number of bags or weight of powder added.

(3) The facility shall use clear mixing tank labeling to indicate the fill and final volumes required to correctly dilute the powder.

(4) The facility shall monitor systems for preparing either bicarbonate or acid concentrate from powder according to the manufacturer's directions for use to ensure compliance with subsection (k)(1) of this section.

(5) Facility staff shall not use or transfer concentrates to holding tanks or distribution systems until staff complete all tests per the manufacturer's specifications and in accordance with the manufacturer's directions for use. Facility staff shall document the test results and include the facility staff signature who completed the tests.

(6) Where a facility designs its own system for mixing concentrates, the facility shall develop and validate procedures using an independent laboratory to ensure proper concentrate mixing, including establishing acceptable limits for proper concentration tests.

(k) The facility shall ensure the design of acid concentrate mixing tanks allow the inside of the tank to be rinsed when changing concentrate formulas.

(1) The facility shall ensure that the design and maintenance of acid mixing systems prevent rust and corrosion.

(2) Facility staff shall empty acid concentrate mixing tanks completely and rinse with dialysis-quality water before mixing another batch of concentrate to prevent cross-contamination between different batches.

(3) Facility staff shall disinfect acid concentrate mixing equipment, as specified by the equipment manufacturer or, in the case where no specifications are given, as defined by facility policy.

(4) The facility shall maintain records of disinfecting and rinsing disinfectants to safe residual levels.

(l) Bicarbonate concentrate mixing tanks shall have conical or bowl-shaped bottoms and shall drain from the lowest point of the base. The tank design shall allow disinfection and rinsing of all internal surfaces.

(1) Facility staff shall not pre-fill bicarbonate concentrate mixing tanks the night before use, and mixed solution shall not remain in mixing or holding tanks overnight.

(2) If disinfectant remains in the mixing tank overnight, facility staff shall completely drain this solution, rinse the tank and test for residual disinfectant before preparing the first batch of that day of bicarbonate concentrate.

(3) Facility staff shall empty the container and rinse with dialysis-quality water before mixing a new batch of bicarbonate solution, and staff shall not mix unused portions of bicarbonate concentrate with fresh concentrate.

(4) At a minimum, facility staff shall disinfect bicarbonate distribution systems weekly. Facility staff shall disinfect the bicarbonate distribution systems more frequently if required by the manufacturer's directions for use, or if dialysate culture results comply with §507.30 of this subchapter.

(5) If facility staff reuse jugs to deliver bicarbonate concentrate to individual hemodialysis machines, staff shall:

(A) empty jugs of concentrate, rinse jugs with dialysis-quality water, and invert jugs to drain at the end of each treatment day;

(B) rinse pick-up tubes with dialysis-quality water and allow tubes to air dry at the end of each treatment day;

(C) at a minimum, disinfect jugs and pick-up tubes weekly, and the facility QAPI committee shall consider more frequent

jug and pick-up tube disinfection if dialysate culture results comply with §507.30 of this subchapter; and

(D) following disinfection:

(i) drain jugs, rinse jugs using dialysis-quality water to ensure jugs are free of residual disinfectant, and invert jugs to dry;

(ii) rinse pick-up tubes using dialysis-quality water to ensure tubes are free of residual disinfectant, and allow the tubes to air dry; and

(iii) test jugs and pick-up tubes for residual disinfectant and document the test results.

(m) The facility shall label all mixing tanks, bulk storage tanks, dispensing tanks, and containers for single hemodialysis treatments to indicate the contents of the tank or container.

(1) Before batch preparation, facility staff shall affix a label to the mixing tank that includes the date of preparation, tank contents, and chemical composition or formulation of the concentrate being prepared. This labeling shall remain on the mixing tank until the tank has been emptied.

(2) A facility shall permanently label bulk storage and dispensing tanks to identify the chemical composition or formulation of their contents.

(3) A facility shall, at a minimum, sufficiently label single-machine containers to differentiate the contents from other concentrate formulations used in the facility and permit positive identification by users of container contents.

(n) A facility shall maintain permanent records of batches produced to include the concentrate formula produced, volume of the batch, lot numbers of powdered concentrate packages, manufacturer of the powdered concentrate, date and time of mixing, test results, person performing mixing, and expiration date, if applicable.

(o) If facility staff prepare acid and bicarbonate concentrates in the facility, the facility shall ensure completion of preventive maintenance in accordance with the manufacturer's direction for use. The facility shall maintain records indicating the date, time, facility staff performing the procedure, and results, if applicable.

§507.35. Reuse of Hemodialyzers and Related Devices.

(a) Reuse practice in a facility shall comply with the standards listed in §507.30 of this subchapter (relating to Technical Standards) and the CMS Conditions for Coverage.

(b) Facility staff shall review the dialyzer manufacturer's labeling to determine whether a specific dialyzer requires special considerations.

(c) Facility staff shall reuse arterial lines only when the arterial lines are labeled for reuse by the manufacturer, and the manufacturer-established protocols for the specific line are approved by the United States Food and Drug Administration.

(d) The water supply in the reuse room shall incorporate a check valve to prevent chemical agents used from inadvertently back flowing into the water distribution system.

(e) Ventilation systems in the reuse room shall meet the requirements of Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements) and be connected to an exhaust system to the outside that is separate from the building exhaust system, have an exhaust fan located at the discharge end of the system, and have an exhaust duct system of noncombustible corrosion-resistant material, as needed to meet the planned usage of the system. Exhaust outlets shall be above the roof-level and arranged to minimize recirculation of exhaust air into the building.

(f) A facility shall establish, implement, and enforce a policy for dialyzer reuse criteria (including any facility-set number of reuses allowed) that is included in patient education materials and posted in the waiting room and patient treatment areas. A dialyzer may be reused only if the dialyzer's original volume is measured and recorded before its first use, and the volume of that dialyzer is used as the basis for discard for that dialyzer.

(g) A facility shall consider and address the health and safety of patients sensitive to disinfectant solution residuals.

(h) A facility shall provide each patient with information regarding the reuse practices at the facility and the opportunity to have questions answered.

(i) A facility shall restrict the reprocessing room to authorized personnel during the reprocessing of dialyzers.

(j) If a facility participates in centralized reprocessing at a different location, in which dialyzers from multiple facilities are reprocessed at one site, the facility shall:

(1) ensure direct communication with the medical director at the centralized reprocessing center and the facility medical director;

(2) require the use of an automated reprocessing facility;

(3) maintain responsibility and accountability for the entire reuse process;

(4) adopt, implement, and enforce policies to ensure the transfer and transport of used and reprocessed dialyzers to and from the off-site location does not increase contamination of the dialyzers or the environment;

(5) ensure that each dialyzer is returned to the appropriate facility or patient home, and a system shall be established to verify that the correct dialyzers are being returned to each patient's home in the case of home patients who participate in a dialyzer reprocessing program; and

(6) provide Texas Health and Human Services Commission staff access to the off-site reprocessing site as part of a facility inspection.

§507.36. Infection Control.

(a) A facility shall follow Standard Precautions for all patient care activities in accordance with Code of Federal Regulations, Title 29 §1910.1030(d)(1) - (3) (relating to Bloodborne Pathogens) and Texas Health and Safety Code Chapter 85, Subchapter I (relating to Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers).

(1) The facility shall demonstrate that it follows standard infection control precautions by implementing the most current Recommended Infection Control Practices for Hemodialysis Units developed by the Centers for Disease Control and Prevention, to prevent and control cross-contamination and the spread of infectious agents.

(2) The facility and facility staff shall take infection control precautions for all patients.

(A) Facility staff shall wear disposable gloves when caring for a patient or touching the patient's equipment or bloodlines at the dialysis station.

(B) Facility staff shall remove gloves and clean hands between each patient contact, and after touching blood, body fluids, secretions, excretions, and contaminated items or station.

(C) Enough sinks, with water and soap shall be available to facilitate handwashing. Sink faucets shall have hands-free operable controls to activate the water flow, which may include a single-lever, wrist blade lever, electronic sensor faucet, or an elbow or wrist action faucet. Provisions for hand drying shall be included at each handwashing sink.

(D) If hands are not visibly soiled, staff may substitute use of a waterless antiseptic hand rub for handwashing. Staff shall wash with soap and water when hands are visibly soiled.

(E) Facility staff shall wear gowns, eye protection, and, where applicable, masks to protect themselves and prevent soiling clothing when performing procedures during which spurting or spattering of blood might occur (e.g., during initiation and termination of dialysis, cleaning dialyzers, and centrifuging blood). If visibly soiled, gowns shall be changed and discarded immediately.

(F) Facility staff shall not eat, drink, or smoke in the dialysis treatment area or laboratory.

(G) For an item taken to the dialysis station, facility staff shall:

(i) dispose of the item;

(ii) dedicate the item for use only on a single patient; or

(iii) clean and disinfect the item before taking the item to a common clean area or using the item on another patient.

(H) Facility staff shall dedicate non-disposable items that cannot be cleaned and disinfected (e.g., adhesive tape, cloth covered blood pressure cuffs) for use on only a single patient.

(I) Facility staff shall use unused medications or supplies (syringes, alcohol swabs, etc.) taken to the patient's station for only that patient and not return the medications or supplies to a common clean area or use the medications or supplies on other patients.

(J) A facility shall clearly designate clean areas for preparing, handling, and storing medications and unused supplies and equipment. Facility staff shall not handle or store medications or clean supplies in the same or an immediately adjacent area where facility staff handle used supplies, equipment, or blood samples.

(K) A facility shall clearly designate contaminated areas where staff handle used supplies, equipment, or blood samples.

(L) When facility staff use multiple dose medication vials (including vials containing diluents), staff shall prepare individual patient doses in a clean, centralized area away from dialysis stations and deliver the medication separately to each patient.

(M) Facility staff shall not carry multiple dose medication vials from station to station.

(N) Facility staff shall not use common medication carts to deliver medications to patients. If facility staff use trays to deliver medications to individual patients, staff shall clean and disinfect the trays after delivering medications to each patient.

(O) If facility staff use a common supply cart to store clean supplies in the patient treatment area, this cart shall remain in a designated area at a sufficient distance from patient stations to avoid contamination with blood. Staff shall not move such carts between stations to distribute supplies.

(P) Facility staff shall not carry medication vials, syringes, alcohol swabs, or supplies in their pockets.

(3) The facility shall ensure the location and arrangement of handwashing sinks permit ease of access and proper use.

(4) Facility staff shall explain the potential risks associated with blood and blood products to patients and family members and provide the indicated personal protective equipment to a patient or family member, if the patient or family member assists in procedures that could result in contact with blood or body fluids. Facility staff shall encourage patients to clean their access sites before each treatment and their hands following their treatment.

(b) A facility shall designate a staff member to monitor and coordinate infection control activities.

(c) A facility shall develop, maintain, and enforce a system to identify and track infections to allow identification of trends or patterns. This activity shall be reviewed as a part of the facility's quality assessment and performance improvement (QAPI) program described in §507.43 of this chapter (relating to Quality Assessment and Performance Improvement). The record shall include trends, corrective actions, and improvement actions taken.

(d) Facility staff shall replace a transducer protector when wetted during a dialysis treatment and use a transducer protector for only one treatment. If fluid or blood is visible on the side of the transducer protector that faces the machine, the machine must be opened by qualified personnel after the dialysis treatment to allow the internal transducer to be inspected for contamination, including inspection for possible blood contamination of the internal pressure tubing set and pressure sensing port.

§507.38. Disease Prevention.

(a) The facility shall take the following measures for Hepatitis B prevention.

(1) The facility shall offer Hepatitis B vaccination to all previously unvaccinated, susceptible new staff members in accordance with Code of Federal Regulations, Title 29 §1910.1030(f)(1) - (2) (relating to Bloodborne Pathogens). Staff vaccination records shall be maintained in each staff member's health record.

(2) With an order from the patient's nephrologist, facility staff shall make the Hepatitis B vaccine available to a patient who is susceptible to Hepatitis B, provided that the patient has coverage or is willing to pay for the vaccination.

(3) The facility shall ensure the most recent Centers for Disease Control and Preventions (CDC) Hepatitis B Vaccine Information Statement is available to patients.

(4) The facility shall ensure serologic screening of patients.

(A) The facility must record the Hepatitis B virus (HBV) serological status to include Hepatitis B surface antigen (HbsAg), total anti-Hepatitis B core antibody (anti-HBc), and antibody to Hepatitis B surface antigen (anti-HBs) of all patients before admission to the hemodialysis unit. The facility shall maintain the anti-HBc results obtained previously or on admission in the clinical record and repeated only if clinically indicated.

(B) A patient returning to a facility after extended hospitalization or absence of 30 calendar days or longer shall have been screened for HbsAg within one month before or at the time of admission to the facility or have a known anti-HBs status of at least 10 milli-international units per milliliter no more than 12 months before admission. The facility shall document how this screening requirement is met.

(C) Repeated serologic screening shall be based on the patient's antigen or antibody status.

(i) Monthly screening for HbsAg is required for patients whose previous test results are negative for anti-HBs.

(ii) Screening of HbsAg-positive or anti-HBs-positive patients may be performed on a less frequent basis but shall be performed at least annually.

(5) The facility shall follow appropriate isolation procedures for an HBsAg-positive patient.

(A) An end stage renal disease (ESRD) facility licensed before February 9, 2009, shall comply with §507.16(c)(8) of this chapter (relating to Change in Status). An ESRD facility licensed after February 9, 2009, shall treat patients positive for HBsAg in a separate treatment room that complies with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(B) Separate dedicated supplies and equipment, including blood glucose monitors, shall be used to provide care to the Hepatitis B positive patients. All supplies used in the isolation area or room, such as clamps, blood pressure cuffs, testing reagents, etc., shall be labeled "isolation" and not routinely removed from the isolation area or room.

(C) Refillable concentrate containers shall be surface disinfected at the completion of each treatment. Refillable acid concentrate containers shall be kept in the isolation area or room and refilled at the door. Refillable bicarbonate concentrate containers shall be removed for cleaning and disinfection. In the disinfection area, containers labeled "isolation" containers and pick-up tubes shall be segregated in a dedicated, designated area away from all other containers and pick-up tubes.

(D) Separate gowns shall be used in the isolation area or room and removed before leaving the isolation area or room. Anyone entering the isolation area or room during the patient's treatment shall wear a protective gown. Gowns used in the isolation area or room shall be discarded at the end of each treatment day. If visibly soiled, gowns shall be changed and discarded immediately.

(E) Dedicated cleaning supplies (such as a mop and bucket) for cleaning the isolation area or room and blood spills shall be used and labeled "isolation."

(F) A patient who tests positive for HBsAg shall be dialyzed on equipment reserved and maintained for an HBsAg-positive patient's use only.

(G) When a direct patient care staff member is assigned to both HBsAg-negative and HBsAg-positive patients, the HBsAg-negative patients assigned to this grouping shall be Hepatitis B antibody positive. Hepatitis B antibody positive patients are to be seated at the treatment stations nearest the isolation station and assigned to the same staff member who is caring for the HBsAg-positive patient.

(H) If an HBsAg-positive patient is discharged, the equipment that had been reserved for that patient shall be given intermediate-level disinfection before use for a patient testing negative for HBsAg.

(I) In the case of patients new to dialysis or a patient returning to a facility after extended hospitalization or absence of 30 calendar days or longer, if these patients are admitted for treatment before results of HBsAg or anti-HBs testing are known, these patients shall undergo treatment as if the HBsAg test results were potentially positive, except that they shall not be treated in the HBsAg isolation room, area, or machine.

(i) The facility shall treat potentially HBsAg-positive patients in a location in the treatment area that is outside of traffic patterns and shall not reuse the dialyzer until the HBsAg test results are known.

(ii) The dialysis machine used by the HBsAg-positive patient shall be given intermediate-level disinfection before its use by another patient.

(iii) The facility shall obtain the patient's HBsAg status results within three calendar days of admission.

(b) The facility shall take the following measures for tuberculosis prevention.

(1) The facility direct care staff shall be screened for tuberculosis upon employment before patient contact, or provide documentation of negative tuberculosis status, per current CDC recommendations.

(2) Subsequent screening of facility staff shall be performed after any potential exposure to laryngeal or pulmonary tuberculosis, per current CDC recommendations.

(3) Facility staff shall follow the facility's respiratory isolation procedures and precautions when providing treatment to patients with pulmonary tuberculosis.

(4) The facility shall screen patients for tuberculosis when indicated by the presence of risk factors for, or the signs and symptoms of tuberculosis. Screening shall be performed after potential exposure to active laryngeal or pulmonary tuberculosis, per current CDC recommendation.

(c) The facility shall adopt, implement, and enforce a policy for offering and providing pneumococcal and influenza vaccines. The policy shall:

(1) include provisions that the influenza vaccine shall be offered according to the CDC annual recommendations, and the pneumococcal vaccine shall be offered throughout the year;

(2) require the facility staff administering the vaccine to ask the patient if they are currently vaccinated against influenza or pneumococcal disease, assess potential contraindications, and then, if appropriate, administer the vaccine under approved facility protocols;

(3) address required vaccination documentation in the patient clinical record; and

(4) include that the Texas Health and Human Services Commission may waive vaccine administration requirements based on established vaccine shortages.

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

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SUBCHAPTER D. OPERATIONAL REQUIREMENTS FOR PATIENT CARE AND TREATMENT

26 TAC §§507.41 - 507.49, 507.51 - 507.60

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.41. Governing Body.

(a) The facility shall have an identified governing body responsible for the facility's organization, management, control, and operation, including appointing the facility's medical director as defined in §507.2 of this chapter (relating to Definitions).

(b) A facility may request in writing a waiver to appoint or retain as medical director a physician who does not meet one or more of the qualifications in §507.2(49)(B) of this chapter. The request shall explain why a physician meeting the board certification requirement is not available and include the physician's resume for the physician the facility seeks to appoint or retain. The facility shall make the request through the Texas Health and Human Services Commission (HHSC) Health Facility Licensing Unit, for transmission to the CMS. The facility may not appoint or retain as medical director a physician who does not meet one or more of the qualifications in §507.2(49)(B) of this chapter until the facility receives approval from CMS.

(c) The governing body shall develop, implement, and enforce policies and procedures for all services provided by the facility.

(d) The governing body shall adopt, implement, and enforce policies and procedures to ensure compliance with current laws, rules, and regulations pertaining to medical staff.

(e) The governing body shall implement and annually review current and effective administrative rules, regulations, and policies designed to protect patient health and safety.

(f) The governing body shall ensure there is a quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care. The governing body shall review and monitor QAPI activities at least biannually.

(g) The governing body shall ensure all facility staff, including advanced practice registered nurses (APRN), physician assistants (PAs), registered nurses, licensed vocational nurses, licensed master social workers, registered dietitians, patient care technicians, and other technical staff, are qualified to serve the complex needs of dialysis patients and deliver dialysis services. APRNs, PAs, registered nurses, licensed vocational nurses, licensed master social workers, registered dietitians, patient care technicians, and other technical staff shall demonstrate and sustain the skills and any professional licensures required to perform the specific duties of their positions.

(h) The governing body shall ensure adequate numbers of qualified personnel are present whenever patients are undergoing dialysis so that the patient to staff ratio is appropriate to the level of dialysis care given and meets the needs of patients, including meeting the minimum staffing requirements demonstrated in §507.60 of this chapter (relating to Staffing Table).

(i) The governing body shall review, approve, and implement the facility's training program for staff, patients, and caregivers.

(j) The governing body shall develop, implement, and enforce policies and procedures relating to the facility's emergency preparedness plan to meet the requirements of §507.46 of this subchapter (relating to Emergency Preparedness). The plan shall address the continuity of essential building systems including emergency power and water, or a contract with another licensed end stage renal disease (ESRD) facility to provide emergency contingency care to patients to meet the requirements of Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(k) The governing body shall ensure all equipment used by facility staff or patients is properly maintained in accordance with the manufacturer's directions.

(l) The governing body shall ensure the facility's physical environment protects the health and safety of patients, personnel, and the public. The licensed facility site and the facility's surrounding physical structure used by the patients (including stairwells, corridors, and passageways) shall meet the local building and fire safety codes and standards as they relate to design and space requirements for safe access and patient privacy.

(m) The governing body shall develop, implement, and enforce policies and procedures regarding disruptive patients or family members to ensure the health and safety of patients, personnel, and the public.

(n) The governing body shall ensure that all facility staff members have access to the most current version of all applicable laws, rules, and regulations.

§507.42. Patient Rights.

(a) Each facility shall adopt, implement, and enforce policies and procedures appropriate to the patient population served to ensure each patient is:

(1) treated with respect, dignity, and full recognition of the patient's individuality and personal needs;

(2) provided privacy and confidentiality for the patient and the patient's clinical record;

(3) provided a safe, sanitary, and comfortable treatment environment;

(4) provided information in a manner to facilitate understanding by the patient and the patient's legal representative, family member, or significant other, as applicable, including patient information materials available in the appropriate language;

(5) provided an interpreter, interpreter service, or visual and hearing assistance if written materials in the patient's primary language are not available or not appropriate for the patient's needs;

(6) informed by a physician of the patient's medical status;

(7) informed of and provided education regarding all treatment modalities and settings, including self-care and transplant, for the treatment of end stage renal disease upon initiating treatment and an annual basis thereafter;

(8) informed about and provided the opportunity to participate in all aspects of care, including plan of care meetings, the right to refuse treatment, and the medical consequences of such refusal;

(9) informed of all services available in the facility and all charges for services provided;

(10) informed about the facility's reuse of dialysis supplies, including hemodialyzers, and if printed materials such as brochures are used to describe a facility and its services the brochures shall contain a statement describing the methods and procedures used when such supplies are reused;

(11) assured of a reasonable response by the facility to the patient's requests and needs for treatment or service, within the facility's capacity, the facility's stated mission, and applicable law and regulation;

(12) provided hours of dialysis that are scheduled for patient convenience whenever feasible or possible, with consideration is given to the patient's work or school schedule;

(13) transferred or discharged only for medical reasons, for the patient's welfare or that of other patients or staff members, or for nonpayment of fees; and given 30 calendar days advance notice in the event of a transfer or discharge, except in cases where the patient presents an immediate risk to others;

(14) given an opportunity and assistance to improve problematic behavior before dismissal from the facility;

(15) protected from abuse, neglect, or exploitation;

(16) provided information regarding advance directives and allowed to formulate such directives to the extent permitted by law, including documents executed under Texas Health and Safety Code Chapter 166 (relating to Advance Directives);

(17) fully informed on how to file a complaint against the facility without fear of reprisal or denial of services, including a written statement provided at the time of admission informing patients of their rights to make a complaint directly to Texas Health and Human Services Commission (HHSC) Complaint and Incident Intake;

(18) fully informed of the rights listed in this section, the responsibilities established by the facility, and all rules and regulations governing patient conduct and responsibilities, including a written copy of the patient's rights and responsibilities provided upon admission to each patient or the patient's legally authorized representative; and

(19) fully informed of the patient plan of care process, including the necessary services outlined in the patient plan of care.

(b) A facility shall prominently and conspicuously post a legible and current copy of the patient rights and facility license certificate in one or more public areas of the facility, so that the posting is readily available and observable to all facility patients, staff, and visitors.

(c) A facility shall obtain written informed consent for dialysis services from the patient or the patient's legally authorized representative.

(d) A facility shall not discriminate based on a patient's disability and shall comply with Texas Health and Safety Code Chapter 161, Subchapter S (relating to Allocation of Kidneys and Other Organs Available for Transplant).

§507.48. Nursing Services.

(a) The facility shall provide nursing services to prevent or reduce complications, maximize the patient's functional status, and educate the end stage renal disease patient, patient's family, patient's caregiver, or significant other.

(b) The facility shall employ a full-time supervising nurse to supervise and manage the provision of safe patient care. A facility shall not use contract staff as a full-time supervising nurse.

(c) The facility shall ensure a registered nurse is in the facility when patients are present in the facility.

(1) The facility's governing body shall develop policies and procedures for allowing patients in the building when a registered nurse is not present and inclement weather or safety concerns exist. The policies and procedures shall require a review of any occurrence when patients are allowed in the building when a registered nurse is not present. Facility staff shall present the date of the incident, reasons, patients affected, and staff present to the facility's quality assessment and performance improvement (QAPI) committee and governing body for review and development of an appropriate plan.

(2) In inclement weather or due to safety concerns, when two or more basic cardiopulmonary life support-trained staff members are in the facility, patients may enter the facility lobby in accordance with the facility's policies and procedures.

(d) A registered nurse shall conduct:

(1) admission nursing assessments;

(2) assessments of a patient upon a change in the patient's status, extended or frequent hospitalizations, or at the patient's request;

(3) dialysis assessments on all patients within the first hour of treatment each time the patient receives treatment; and

(4) immediate assessments if an abnormal finding or change of condition is identified pre-dialysis, intradialytic, or post-dialysis.

(e) A registered nurse shall participate in the interdisciplinary team review of a patient's progress and recommend changes in treatment based on the patient's current needs and facilitate communication between the patient, patient's family, and the patient's significant other, as applicable, and other interdisciplinary members, to ensure the facility delivers the necessary care.

(f) A registered nurse shall provide oversight and direction to dialysis technicians and licensed vocational nurses.

(g) A registered nurse shall participate in the facility's QAPI activities.

(h) A registered nurse functioning in the charge role shall be present during all dialysis treatments.

(i) If the facility provides pediatric dialysis, a registered nurse with experience or training in pediatric dialysis shall be available to provide care for pediatric dialysis patients smaller than 35 kilograms in weight.

(j) The facility shall ensure sufficient direct care staff, as defined in §507.2(26) of this chapter (relating to Definitions), are on site to meet the needs of the patients, and at least one licensed nurse is available on site for every 12 patients or portion thereof, as demonstrated in §507.60 of this subchapter (relating to Staffing Table). The nurse can be either a registered nurse (RN) or licensed vocational nurse (LVN). A registered nurse functioning in the charge role shall be present during all dialysis treatments. Each direct care staff shall only be assigned a maximum of four patients.

(1) During treatment of seven or fewer patients, direct care staff shall consist of at least one registered nurse and one direct care staff, as demonstrated in §507.60 of this subchapter.

(2) For one to seven patients, the direct care staff may be assigned a maximum of four patients and the charge nurse may be assigned a maximum of three patients.

(3) During treatment of 8-12 patients, the registered nurse functioning as charge nurse shall not be assigned as direct care staff, as demonstrated in §507.60 of this subchapter.

(4) For pediatric dialysis patients, one registered nurse shall be provided on site for each patient weighing less than 10 kilograms and one registered nurse provided on site for every two patients weighing from 10 to 20 kilograms.

(k) A facility shall ensure patients are in view of staff during hemodialysis treatments, and staff shall observe the patient, their access site, and their bloodline connections during the dialysis treatment.

(l) The facility shall include documentation in the patient's record verifying the patient was educated during treatment, upon admission, and annually on the importance of leaving their access sites uncovered.

(m) A licensed nurse or dialysis technician shall collect and document objective and subjective data for each patient before and after treatment, according to facility policy and the staff member's level of training.

(1) The facility shall have written policies and procedures specific to the facility to guide nursing staff actions in the event a patient's condition deteriorates during treatment to identify parameters which would require a patient be referred to a nurse for evaluation.

(2) A registered nurse shall conduct a patient assessment when indicated by a question relating to a change in the patient's status or at the patient's request.

(n) A registered nurse shall conduct the initial patient assessment before the patient's first dialysis treatment by the facility.

(o) This chapter does not preclude a licensed vocational nurse (LVN) from practicing in accordance with the rules adopted by the Texas Board of Nursing. If the LVN is acting in the capacity of a dialysis technician, the facility shall determine that the LVN has passed a training and competency evaluation curriculum that meets the requirements in §507.72 of this chapter (relating to Training Curricula and Instructors) and §507.73 of this chapter (relating to Competency Evaluation).

(p) A dialysis technician providing direct patient care shall demonstrate knowledge and competency for the responsibilities specified in §507.72 and §507.73 of this chapter.

§507.49. Nutrition Services.

(a) A facility shall provide nutrition services to a patient and the patient's caregivers to maximize the patient's nutritional status.

(b) The dietitian shall be responsible for:

(1) conducting a nutrition assessment of a patient;

(2) participating in an interdisciplinary team review of a patient's progress;

(3) recommending therapeutic diets in consideration of cultural preferences and changes in treatment based on the patient's nutritional needs in consultation with the patient's physician;

(4) counseling a patient, a patient's family, and a patient's significant other, as applicable, on prescribed diets and monitoring adherence and response to diet therapy;

(5) referring a patient for assistance with nutrition resources such as financial assistance, community resources, or in-home assistance;

(6) participating in the facility's quality assessment and performance improvement (QAPI) activities; and

(7) providing ongoing monitoring of subjective and objective data to determine the need for timely intervention and follow-up, including weight changes, blood chemistries, adequacy of dialysis, and medication changes that affect nutrition status and potentially cause adverse nutrient interactions.

(c) The dietitian shall contact the patient to document and complete the patient's comprehensive nutrition assessment with an educational component no later than 30 calendar days or 13 treatments after the patient's admission to the facility, whichever occurs later.

(d) The dietitian shall conduct a nutrition reassessment no less than annually or upon a change in the patient's status, extended or frequent hospitalizations, a change in the patient's modality, or at the patient's request.

(e) Each facility shall employ or contract with a dietitian to provide clinical nutrition services for each patient.

(1) The maximum caseload for a full-time equivalent dietitian is 125 patients. The caseload is cumulative across all modalities and facilities where the dietitian is employed. A facility shall employ or contract a second dietitian for a patient caseload over 125 patients.

(2) The governing body shall ensure the facility assigns personnel to assist dietitians with ancillary tasks when the patient load, including all modalities, exceeds 100 patients per facility.

(f) The facility shall ensure nutrition services are available at the facility during scheduled patient treatment times. A patient may need an appointment to access nutritional services.

(g) A facility shall have written physician standing orders specific to that facility authorizing delegation of responsibilities for the facility dietitian, as determined by the medical director and the facility.

(1) The medical director shall review and approve the standing orders at least annually.

(2) The standing orders shall be consistent with the statutes and rules of the Texas Medical Board, Texas Board of Nursing, and Texas Department of Licensing and Regulation.

(h) When the facility uses a medication algorithm or protocol for managing renal bone disease, the nutritional care for each patient shall be individualized.

§507.51. Social Services.

(a) A facility shall provide social services to patients and their families that are directed at supporting and maximizing the patient's adjustment, social functioning, and rehabilitation.

(b) The social worker is responsible for:

(1) conducting psychosocial evaluations, which include health-related quality of life surveys;

(2) participating in the interdisciplinary team review of a patient's progress;

(3) providing an ongoing assessment and recommend changes in treatment based on the patient's current psychosocial needs;

(4) providing social work interventions including counseling, case work, and group work services to patients and their families experiencing special problems associated with end stage renal disease;

(5) identifying community social agencies and other community resources, and assisting patients and families to use them;

(6) participating in the facility's quality assessment and performance Improvement (QAPI) activities; and

(7) assisting patients to achieve optimum levels of productive activity and making rehabilitation referrals as appropriate.

(c) The facility shall ensure the social worker initially contacts the patient and documents the initial contact no later than 30 calendar days or 13 treatments from the patient's admission, whichever occurs later. Qualified facility staff shall complete comprehensive psychosocial assessment no later than 30 calendar days or 13 treatments from the patient's admission to the facility, whichever occurs later.

(d) Qualified facility staff shall conduct a governing-body-approved psychosocial and quality of life reassessment as needed, but no later than 90 calendar days after the initial assessment and at least annually thereafter, and when there is:

(1) a significant change to the patient's psychosocial needs;

(2) extended or frequent hospitalizations;

(3) any event that would interfere with the patient's ability to follow aspects of the plan of care;

(4) a change in the patient's modality; or

(5) at the patient's request.

(e) Each facility shall employ or contract with a social worker to meet the psychosocial needs of the patients.

(1) The facility shall ensure one full-time equivalent of qualified social worker time is available for up to 125 patients per facility, which is the maximum case load for all modalities available in the facility. The caseload is cumulative across all modalities and facilities where the social worker is employed. The facility shall employ or contract a second social worker for a patient caseload over 125.

(2) The governing body shall ensure the facility assigns personnel to assist social workers with ancillary tasks, such as assistance with financial services, transportation, and administrative and clerical duties, when the patient load, including all modalities, exceeds 100 patients per facility.

(f) The facility shall ensure social services are available at the facility during scheduled patient treatment times. A patient may need an appointment to access social services.

§507.52. Medical Services.

(a) The medical director shall meet the requirements set forth in the CMS Conditions for Coverage and is responsible for:

(1) developing facility treatment goals that are based on review of aggregate data assessed through quality assessment and performance improvement (QAPI) activities;

(2) ensuring adequate training of licensed nurses and dialysis technicians;

(3) adequate monitoring of patients and the dialysis process;

(4) developing, implementing, and enforcing all policies required by this chapter;

(5) ensuring the facility's attending physicians follow the facility's policies and procedures, and the physicians follow the facility's established treatment and clinical standards, including quality, safety, and infection control standards; and

(6) ensuring all facility care staff, including nurses, patient care technicians, social workers, dietitians, physicians, and other ancillary staff receive annual training in all modalities, including transplant.

(b) The facility shall meet the following requirements regarding medical staff responsibilities.

(1) Each patient shall be under the care of a licensed and qualified nephrologist on the medical staff, or a physician on the medical staff who has demonstrated experience treating dialysis patients for at least 18 months.

(2) Each pediatric dialysis patient shall be under the care of a pediatric nephrologist or under the care of an adult nephrologist with direct patient evaluation by a pediatric nephrologist as follows:

(A) for patients two years of age or younger, monthly (two of three evaluations may be conducted by phone);

(B) for patients 3-12 years of age, quarterly; and

(C) for patients 13-18 years of age, semiannually.

(3) For each patient receiving dialysis in the facility, a physician on the facility's medical staff shall see the patient at least twice a month. The physician shall conduct the first visit in person. The second visit is required unless the patient is stable, as justified in the patient record by the physician. If the second visit is necessary, it shall be separated from the first visit by at least 10 calendar days and may be conducted in person or using telemedicine. Additional visits conducted in the same month by a physician may be conducted using telemedicine.

(4) Home dialysis patients shall be seen by a physician, an advanced practice registered nurse (APRN), or a physician assistant (PA) no less than once a month.

(A) The physician shall see the patient in person at least once every three months.

(B) The physician shall conduct physician visits required by subparagraph (A) of this paragraph in person and may conduct the visit in the dialysis facility, at the physician's office, or in the patient's home. The physician may conduct additional visits in the same month using telemedicine.

(C) An APRN or a PA may conduct the visits required by this paragraph using telemedicine.

(D) The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month.

(5) The facility shall ensure a physician on the medical staff is on call and available 24 hours a day (in person or by telecommunication) to patients and staff.

(6) The physician shall verify and sign all orders for treatment. Facility staff shall update routine orders for treatment at least annually. Any changes in patient treatment shall be per physician's order.

(A) Orders for hemodialysis treatment shall include length of treatment, dialyzer, blood flow rate, dialysate composition, target weight, all medications administered during or needed for treatment, and specific infection control measures, as needed.

(B) Orders for peritoneal dialysis treatment shall include fill volumes, number of exchanges, dialysate concentrations, catheter care, medications, and specific infection control measures, as needed.

(c) If the facility uses APRNs or PAs:

(1) the facility shall ensure documented evidence of communication with the treating physician whenever the APRN or PA changes treatment orders;

(2) the APRN or (PA) shall not replace the physician in participating in patient care planning or in QAPI activities;

(3) the APRN or PA shall not replace the physician for the completion of assessments, as defined by the CMS Conditions for Coverage, or for the twice monthly evaluation of the in-center dialysis patient;

(4) the APRN or PA shall notify the treating physician of patient medical emergencies;

(5) the APRN or PA shall meet the requirements established by the Texas Board of Nursing (for an APRN) or the Texas Physician Assistant Board (for a PA); and

(6) the APRN or PA shall use mechanisms that provide authority for that care, which shall include protocols or other written authorization:

(A) reviewed and approved by the APRN or PA and the appropriate physician;

(B) signed by both the APRN or PA and the physician;

(C) reviewed and re-signed at least annually;

(D) maintained in the practice setting of the APRN or PA; and

(E) made available as necessary to the Texas Health and Human Services Commission (HHSC) to verify authority to provide medical aspects of care.

(d) The facility shall comply with Texas Health and Safety Code Chapter 166 (relating to Advance Directives) concerning out-of-hospital do-not-resuscitate orders.

(e) If the facility has a contract or agreement with an accredited school of health care for the school to use their facility for a portion of the students' clinical experience, those students may provide care under the following conditions.

(1) The facility may offer clinical experience to students, provided the instructor is present at the facility, provides direct supervision to the student, and assumes responsibility for all student activities occurring within the facility.

(2) A student may administer medications only if:

(A) on assignment as a student at their school of health care; and

(B) under the immediate supervision of a qualified registered nurse on staff at the facility.

(3) A facility shall not use a student to fulfill the requirement for administration of medications by licensed personnel.

(4) A facility shall not consider a student when determining staffing levels required by the facility.

(5) A student shall not mix concentrate or test water quality.

(6) A student shall not accept or transcribe physician orders.

(7) A student shall not conduct the assessments of new or unstable patients.

(8) A qualified registered nurse shall directly supervise the students to protect the students and facility patients.

§507.53. Home Dialysis Service.

(a) A facility that provides home dialysis training, and support shall ensure through its interdisciplinary team that home dialysis services are at least equivalent to those provided to in-facility patients and meet all applicable licensure rules.

(b) A facility shall provide a separate room for home dialysis services, as defined in §507.2 of this chapter (relating to Definitions).

(1) The room shall include a handwashing sink with water and soap available to facilitate handwashing. Sink faucets shall have a hands-free operation to activate the water flow, which may include a single-lever, wrist blade lever, electronic sensor faucet, or an elbow or wrist action faucet. Provisions for hand drying shall be included at each handwashing sink.

(2) The facility shall clearly designate clean areas for preparing, handling, and storing medications and unused supplies and equipment. Facility staff shall not handle or store medications or clean supplies in the same or an immediately adjacent area where facility staff handle used supplies, equipment, or blood samples.

(3) The facility shall have a designated area with a separate sink for disposal of blood or body fluids. The facility shall clearly designate contaminated areas where staff handle used supplies, equipment, or blood samples.

(c) Patients may receive Training (Patient), as defined in §507.2 of this chapter (relating to Definitions), individually or in a small group setting. A facility must offer patients a choice of an individual or small group training setting and ensure the facility meets each patient's preferences and individual needs. Patient training must take place in person.

(d) When a patient completes home dialysis training, the facility shall assign each individual home dialysis patient, regardless of modality, one machine for the patient's exclusive use in the home. A facility shall not assign multiple home dialysis patients to the same machine.

(e) For home dialysis patients, including all modalities, a facility shall maintain a staffing level of one full-time equivalent registered nurse for every group of 25 patients. For 21 - 25 patients, the facility shall assign a licensed vocational nurse or a dialysis technician to assist the registered nurse.

(f) A registered nurse shall conduct home dialysis training. Before permitting a registered nurse to provide home dialysis training to a patient and a patient's caregiver, the facility shall:

(1) verify the registered nurse has:

(A) at least 12 months clinical nursing experience; and

(B) a minimum of three months experience, occurring within the last 24 months, in the specific modality with the responsibility for training the patient and the patient's caregiver;

(2) evaluate and document the nurse's ability to independently provide home dialysis training;

(3) document the nurse's competency to provide home dialysis training three months after passing the initial competency exam; and

(4) ensure all competency evaluations administered under this subsection contain the facility staff's signature evaluating the nurse's competency to provide home dialysis training.

(g) A facility's medical director shall develop and approve the home dialysis training curriculum. The home dialysis training curriculum shall comply with the following requirements.

(1) Training for each home dialysis patient shall address the patient's specific needs in the nature and management of end stage renal disease in a manner that complies with all patient privacy and infection control requirements.

(2) Training shall include the full range of techniques associated with the treatment modality selected, including the effective use of dialysis supplies and equipment in achieving and delivering the physician's prescription.

(3) Training of the patient and caregiver, as applicable, shall include:

(A) effective and safe administration of erythropoiesis-stimulating agents (if prescribed) to achieve and maintain a target level hemoglobin, hematocrit, and blood pressure levels, or hematocrit, as written in the patient's plan of care;

(B) how to detect, report, and manage potential dialysis complications, including water treatment problems;

(C) availability of support resources and how to access and use resources;

(D) how to self-monitor health status and record and report health status information;

(E) how to handle medical and nonmedical emergencies;

(F) infection control precautions;

(G) proper waste storage and disposal procedures;

(H) how to order supplies on an ongoing basis;

(I) not using non-medical electrical equipment within six feet of the home hemodialysis machine; and

(J) notifying the facility of any change in machinery used in home dialysis.

(4) Staff shall include documentation in the clinical record that the patient, the caregiver, or both, received and demonstrated adequate comprehension of the training.

(h) The interdisciplinary team shall oversee training of a home dialysis patient and the designated caregiver before the initiation of home dialysis, and when the home dialysis caregiver or home dialysis modality changes.

(i) A home dialysis training facility shall retrieve and review complete self-monitoring data and other information from the home dialysis self-care patient, or their designated caregiver, at least every two months, and maintain this information in the patient's clinical record in the facility.

(j) If a facility is unable to obtain a patient's self-monitoring data after an appropriate number of attempts, the physician must refer the case to the medical director for a determination about a potential modality change for the patient.

(k) A home dialysis training facility shall furnish home dialysis support services, regardless of whether dialysis supplies may be provided by the dialysis facility or a durable medical equipment company.

(l) A home dialysis training facility shall provide services as follows.

(1) The facility shall complete an initial monitoring visit of the patient's home adaptation by facility personnel (including the registered nurse responsible for training the patient in the chosen modality and technical staff as appropriate) in accordance with the patient's plan of care, before the patient begins training for the selected home modality, and periodically thereafter.

(2) The facility must make a monitoring visit to the patient's home in case of:

(A) patient's change of address,

(B) change in the patient's primary caregiver,

(C) disaster that impacts the patient's home,

(D) major renovation, or

(E) any other event that may impact the patient's care.

(3) A physician, an advanced practice registered nurse, or a physician assistant shall see a home dialysis patient in accordance with §507.52(b)(4) of this subchapter (relating to Medical Services).

(4) The interdisciplinary team shall develop and periodically review an individualized and comprehensive plan of care for the patient. The plan of care shall specify the services necessary to address the patient's needs and meet the measurable and expected outcomes, which meet a hemodialysis Kt/Vurea (Kt/V) of at least 1.2 (three times a week), or standard Kt/V of 2.0 (four to six times a week), or a peritoneal dialysis weekly Kt/V of at least 1.7, or meet an alternative equivalent professionally-accepted clinical practice standard for adequacy of dialysis.

(5) The facility shall provide patient consultation with interdisciplinary team members as needed.

(m) A home dialysis training facility shall monitor the quality of water and dialysate used by a home hemodialysis patient, including an initial on-site evaluation and testing of the water and dialysate system, and any time facility staff repairs or exchanges the water treatment equipment.

(1) A home dialysis training facility shall annually analyze the product water used for dialysate preparation to ensure the water meets the standards listed in §507.30 of this chapter (relating to Technical Standards).

(2) A home dialysis training facility shall test the water and dialysate system in accordance with the manufacturer's direction for use.

(3) A home dialysis training facility shall test the water and dialysate system in accordance with the system's United States Food and Drug Administration (FDA) approved labeling, for integrated hemodialysis system designed, tested, and validated to meet the quality (including standards for chemical and total chlorine testing) water and dialysate required by standards listed in §507.30 of this chapter. The facility shall meet testing and other requirements of the standards listed in §507.30 of this chapter, when using an integrated water and dialysate system, which is designed and validated to meet the standards listed in §507.30 of this chapter.

(4) A home dialysis training facility shall perform bacteriological and endotoxin testing of water used for dialysate preparation and dialysate monthly and ensure the results are within the limits allowed by the standards listed in §507.30 of this chapter.

(n) The dialysis facility shall correct any water and dialysate quality problem for the home hemodialysis patient, and if necessary, arrange for backup dialysis until the facility corrects the problem if:

(1) an analysis of the water and dialysate quality indicates contamination; or

(2) the home hemodialysis patient demonstrates clinical symptoms associated with water and dialysate contamination.

(o) The dialysis facility shall be responsible for arranging the purchase, lease, or rental of medically necessary home dialysis supplies and equipment, and the delivery, installation, repair, and maintenance of these supplies and equipment (including supportive equipment), as prescribed by the attending physician. If the patient purchases, leases or rents dialysis equipment, the facility shall ensure the equipment's installation, repair, and maintenance in accordance with the manufacturer's directions for use.

(p) The dialysis facility shall identify a plan and arrange for emergency backup dialysis services when needed.

(q) The dialysis facility shall maintain a recordkeeping system that ensures continuity of care and patient privacy.

(r) The dialysis facility, or the patient or patient's caregiver with facility oversight, shall culture and measure the hemodialysis machines of home patients for colony forming units and endotoxins before disinfection, at least quarterly or more frequently, as needed, or required by the standards listed in §507.30 of this chapter. The facility shall follow the manufacturer's recommendations regarding the proper procedure for disinfection. For integrated hemodialysis system devices, facility staff shall follow the device's FDA labeling and manufacturer's recommendations.

(s) As applicable, the facility shall maintain maintenance records for all dialysis machines and dialysis equipment at the licensed facility site.

(t) If required, the electrical connection for the home hemodialysis machines shall be connected to a ground-fault circuit interrupter (GFCI) receptacle in accordance with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(u) The dialysis machine shall comply with the requirements of §507.33 of this chapter (relating to Water Treatment). The facility shall ensure that the water pressure in the patient's home meets the minimum requirement specified by the water treatment system's manufacturer.

(1) The facility shall meet the following requirements for an integrated hemodialysis system.

(A) The facility shall analyze the source water used for dialysate annually or if there is a change in the source water, to ensure the water quality meets the manufacturer's guidelines for source water purity.

(B) The facility shall obtain the product water chemical quality every six months before replacing the water purification disposable component, or when any modifications are made to the integrated hemodialysis system to ensure that the product water meets the current CMS guidelines.

(C) The facility shall provide a means for the patient or patient's caregiver to sample the product water to test for total chlorine levels immediately before using the dialysate. The total chlorine level shall comply with the standards listed in §507.30 of this chapter, and the results shall be documented by the patient or the patient's caregiver.

(D) If applicable, the facility, or the patient or patient's caregiver with facility oversight, shall obtain the microbiological quality of the dialysate at the end of a prepared dialysate bag, with the requirements at §507.33 of this chapter and §507.34 of this chapter (relating to Dialysate).

(2) If using a dialysis system that uses manufactured dialysate solution in its existing form, the facility shall use the system according to manufacturer's directions. The facility shall ensure patients receive necessary training and can demonstrate competencies to follow the manufacturer's directions for use.

(3) If using a peritoneal dialysis system that uses manufactured dialysis solution the facility shall use the system according to manufacturer's directions. The facility shall ensure that patients are trained and can demonstrate competencies to follow the manufacturer's directions for use.

(4) If using sorbent technology, the patient or facility staff shall test the sorbent regeneration dialysis system (machine) before each treatment with the manufacturer's self-test method, and the patient or facility staff shall document evidence of the self-test. The facility shall analyze the source water used for dialysate to ensure the water quality meets the manufacturer's guidelines for source water purity annually or if there is a change in the source water.

§507.54. Staff Qualifications.

(a) Facility staff (whether employees or contractors) shall meet the personnel qualifications and demonstrated competencies necessary to serve the needs of the patients. Facility staff shall demonstrate and sustain the skills needed to perform the specific duties of their positions.

(1) The facility shall develop and implement a written orientation program to familiarize all new employees (including office staff) with the facility, its policies, and their job responsibilities. The facility shall ensure that each new direct care staff member (whether employee or contractor) receives sufficient time to become familiar with the facility.

(A) The orientation program shall meet the following minimum time requirements.

(i) For individuals with previous dialysis experience, the orientation program shall be two weeks.

(ii) For new direct care staff members with no previous dialysis experience, the orientation program shall be two weeks plus additional time as determined by the facility.

(B) In facilities with similar policies and equipment, staff with dialysis experience oriented to one facility may be shared with another facility after a shorter orientation period. Each facility where a shared employee works shall keep documentation on file of the shared staff's current competency and tasks delegated by that facility's medical director to unlicensed technicians.

(C) A facility shall provide registered nurses with no previous dialysis experience an orientation program of a minimum of seven weeks. The seven-week orientation program shall contain content specific to end stage renal disease patient management and appropriate to the population served by the facility, including at least:

(i) fluid, electrolyte, and acid-base balance;

(ii) kidney disease and treatment;

(iii) dietary management of kidney disease;

(iv) principles of dialysis;

(v) dialysis technology;

(vi) venipuncture technique;

(vii) care of the dialysis patient;

(viii) psychological, social, financial, and physical complications of long-term dialysis;

(ix) prevention of hepatitis and other infectious diseases;

(x) risks and benefits of reuse (if reuse is practiced); and

(xi) all available treatment modalities, including the availability of kidney transplantation.

(2) A facility shall ensure each licensed nurse and dialysis technician demonstrates competency through written and skills testing after they complete the orientation program and annually thereafter. The facility shall maintain documented evidence of competency in writing in personnel files. Current certification by a nationally recognized board may substitute for the annual written test. The facility shall ensure all dialysis technicians receive certification from a national commercially available certification program within 18 months of being hired as a dialysis technician.

(b) A facility shall ensure medical staff meet the following requirements.

(1) Each physician on the medical staff shall have a current license to practice medicine in the state of Texas.

(2) If a facility uses an advanced practice registered nurse, that individual shall meet the requirements established by the Texas Board of Nursing in Texas Administrative Code, Title 22 (22 TAC), Chapter 221 (relating to Advanced Practice Nurses).

(3) If a facility uses a physician assistant, that individual shall meet the requirements established by the Texas Medical Board in 22 TAC Chapter 185 (relating to Physician Assistants).

(c) A facility shall ensure nursing staff meet the following requirements.

(1) Each individual licensed as a nurse shall have a current Texas license to practice nursing in accordance with the statutes and rules of the Texas Board of Nursing, or a current license from another state in the Nurse Licensure Compact (NLC).

(2) Each registered nurse assigned charge nurse responsibilities shall have at least 12 months of clinical experience and six months experience in hemodialysis after completing the facility's training program.

(A) For a newly licensed registered nurse, the last six months of clinical experience may run concurrently with the six months of dialysis experience.

(B) The hemodialysis experience shall be within the last 24 months.

(C) A registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the six months experience in dialysis obtained within the last 24 months.

(3) The facility shall document written physician standing orders, specific to the facility, in the patient's clinical record to guide nursing staff actions in the event a patient's condition deteriorates during treatment. The medical director shall review and approve these standing orders at least annually, consistent with the Texas Medical Board statutes and rules and the Texas Board of Nursing statutes, rules, and policy statements for registered nurses and licensed vocational nurses.

(4) If a facility provides patient self-care training, either in-center or at home, a registered nurse with at least 12 months clinical experience and three months experience in the specific modality, shall be responsible for providing self-care training to the patient or caregiver in that modality.

(5) When other facility staff assist in the self-care training in-center, the qualified registered nurse shall supervise the self-care training. When other facility staff assist in training a patient or the patient's caregiver in self-care training, the facility shall document in the employee's personnel record that the employee is qualified, as approved by the medical director, to assist in the self-care training.

(6) The facility shall establish a nursing peer review committee to conduct nursing peer review, as required by Texas Occupations Code Chapter 303 (relating to Nursing Peer Review).

(d) Each dietitian shall have a current Texas license, be a registered dietitian, and have a minimum of one year of professional work experience in clinical dietetics after becoming a registered dietitian.

(e) Each social worker shall:

(1) hold a current license as a social worker under Texas Occupations Code Chapter 505 (relating to Social Workers) and hold a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or

(2) have at least two years of work experience as a social worker, one year of which was in a dialysis facility or transplantation program before September 1, 1976, and have an established consultative relationship with a social worker who has a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education.

(f) A facility shall ensure biomedical technical staff meet the following requirements.

(1) The facility's biomedical technical staff may be one or more individuals (including nursing staff) employed by or under contract with the facility as long as the individual meets the minimum qualifications for each required level of responsibility, as described in this subsection.

(2) Only individuals qualified by training, education, or experience may operate, repair, or replace components of the systems used in providing dialysis treatment or reprocessing dialyzers.

(A) Technical staff shall have minimum education, training, and experience documented and maintained on file in the facility, which includes:

(i) a high school diploma or equivalent, except for technical staff employed by the facility for two or more years before April 11, 1999, who are exempt from this requirement; and

(ii) training or experience, in one or more of the following:

(I) completion of a college-based technical dialysis program;

(II) completion of the didactic training and education requirement for patient care technicians set out in §507.72(a) and (b) of this chapter (relating to Training Curricula and Instructors);

(III) current certification in technical aspects of dialysis by a nationally recognized testing organization; or

(IV) 12 months experience in dialysis within the last two years.

(B) Any staff member assigned responsibilities in the technical area shall pass an annual written competency examination, demonstrate skills related to the required level of responsibility, and be certified by the facility's medical director as competent to perform their assigned duties. Current certification by a national board in dialysis technology may substitute for the written test.

(C) The technical staff shall annually complete a minimum of five hours of continuing education with a technical or end stage renal disease focus. Facility staff may provide continuing education. Continuing education documentation shall include the continuing education course title, duration, and author or instructor.

(3) The technical supervisor is responsible for supervision of technical services. The technical supervisor shall meet the education, training, and experience requirements described in this paragraph.

(A) The technical supervisor shall meet the requirements in paragraph (3) of this subsection.

(B) The technical supervisor shall ensure technical staff demonstrate competency in equipment maintenance and repair, mechanical service, water treatment systems, and reprocessing of hemodialyzers, if applicable.

(i) Before assuming technical supervisory responsibility, a technical supervisor trainee shall successfully complete the facility's orientation and training courses as established for each technical area.

(ii) The medical director shall approve the training courses. The training courses shall follow a written curriculum with stated objectives. The curriculum shall include all items noted in this clause and paragraph (4)(B) of this subsection.

(4) Facility staff responsible for the water treatment and dialysate systems shall demonstrate understanding of the risks to patients of exposure to water that has not been treated to remove contaminants and impurities.

(A) The facility shall maintain training documentation for each individual who operates (regularly or intermittently) these systems to ensure safe operation of the water treatment and dialysate systems.

(B) The staff responsible for water treatment and dialysate systems shall meet the education, training, and experience requirements described in paragraph (2) of this subsection and shall demonstrate competency by:

(i) successful completion of the facility training course specific to water treatment, dialysate preparation, and related tasks, which must be approved by the medical director and follow a written curriculum with state objectives;

(ii) completion of a training curriculum that includes

(I) introduction to end stage renal disease;

(II) principles of hemodialysis;

(III) principles of infection control and basic microbiology for water treatment systems, machines, and sampling techniques;

(IV) rationale for water treatment for dialysis;

(V) risks and hazards of using unsafe water for dialysis;

(VI) current water standards;

(VII) source water characteristics;

(VIII) communication with source water agencies and water treatment vendors;

(IX) selection of water treatment equipment;

(X) water purification equipment, to include filtration, carbon adsorption, and reverse osmosis;

(XI) ion exchange to include softeners and deionizers;

(XII) water distribution system and other equipment specific to the facility;

(XIII) monitoring system performance, to include online and offline monitoring, aseptic sample collection, incubation of samples, and interpretation of results;

(XIV) evaluation of water treatment component performance, to include filters, activated carbon adsorption beds, reverse osmosis, and ion exchange;

(XV) evaluation of system performance, to include monitoring schedules and review of system failures;

(XVI) purpose of each component of dialysate, to include electrolytes, glucose, acid, and buffer;

(XVII) hazards of exposure of patients to a dialysate containing a different concentration of electrolytes than prescribed;

(XVIII) testing methods in use to verify expected concentrations in any reconstituted components of the dialysate are achieved;

(XIX) action to take in the event testing of a mixed batch of dialysate concentrate does not meet the expected parameters;

(XX) labeling employed to positively identify each concentrate; and

(XXI) procedures to ensure the proper transfer of concentrates from the manufacturer's drums to the holding tanks;

(iii) confirmation of the ability to distinguish all primary colors; and

(iv) successful completion of the facility's orientation and training course as established for the water treatment and dialysate preparation systems technician trainee before the trainee's initial assumption of responsibility.

(5) The staff responsible for equipment maintenance and repair shall meet the education, training, and experience requirements described in paragraph (2) of this subsection and shall demonstrate competency by:

(A) successful completion of the facility training course outlined in paragraph (2) of this subsection, relating to water treatment systems;

(B) successful completion of a training curriculum, which includes:

(i) prevention of transmission of hepatitis through dialysis equipment;

(ii) safety requirements of dialysate delivery systems;

(iii) repair and maintenance of dialysis and other equipment specific to the facility;

(iv) electrical safety, including lockout or tagout;

(v) emergency equipment maintenance;

(vi) building maintenance;

(vii) fire safety and prevention requirements; and

(viii) emergency response procedures; and

(C) successful completion of a written competency exam and demonstration of skills specific to the facility's mechanical and equipment service and water treatment and distribution systems.

(6) The staff responsible for reprocessing hemodialyzers and other supplies shall meet the education, training, and experience requirements described in paragraph (2) of this subsection and shall demonstrate competency by:

(A) successful completion of a training curriculum that includes the components of the standards for reuse of hemodialyzers listed in §507.30 of this chapter (relating to Technical Standards); and

(B) successful completion of a written competency exam that includes return demonstration of skills specific to reprocessing of hemodialyzers and other dialysis supplies.

§507.55. Clinical Records.

(a) A facility shall develop, implement, and enforce policies and procedures for a clinical record system to ensure complete and accurate documentation of care provided to each patient. The clinical record system shall make documentation readily available and systematically organized to facilitate the compilation and retrieval of information.

(1) The facility shall centralize all information in the patient's clinical record and protect the record against loss or damage in accordance with state and federal regulations.

(2) The facility shall provide an area for clinical records storage that is separate from all patient treatment areas and secured from unauthorized access. The facility shall store the active clinical record of each patient currently treated by the facility on site.

(3) The facility shall maintain the confidentiality of each patient's personal and clinical records.

(4) The facility shall not use signature stamps to authenticate clinical record entries.

(5) The facility may preserve clinical records electronically. Electronic records shall meet all requirements of paper records, including protection from casual access and retention for the specified period. Systems shall ensure that facility staff may not alter entries regarding the delivery of care without evidence and explanation of such alteration.

(6) The facility shall preserve inactive clinical records by electronic means and may store inactive records off site, as long as the facility maintains security, and ensures the record is readily retrievable for review by the Texas Health and Human Services Commission (HHSC) or HHSC designee.

(7) Each patient's clinical record, whether hard copy, electronic, or a combination of both, shall include complete and pertinent information about the patient's condition, assessments by the interdisciplinary team, updated plans of care, all interventions and treatments prescribed and delivered, and details of any events occurring with the patient during treatment. The record of care shall be readily accessible to every authorized interdisciplinary team member so that safe care can be coordinated to best meet the patient's needs.

(8) Each clinical record shall include:

(A) identifying information;

(B) consents and notifications;

(C) if the patient requires an accommodation, details on how staff explained consent forms for treatment, whether staff obtained the patient's consent, and how staff explained to the patient the patient's rights and responsibilities;

(D) documentation that the physician explained the treatment risks, benefits, and complications to the patient before the patient's first treatment;

(E) documentation that a licensed registered nurse witnessed the patient signing the consent forms before the patient's first treatment;

(F) physician orders;

(G) progress notes;

(H) problem list;

(I) medical history and physical examination;

(J) professional assessments by the registered nurse, social worker, and dietitian;

(K) medications given during treatment, which may be listed on the treatment record; and a list of medications the patient takes at home;

(L) transfusion records;

(M) laboratory reports;

(N) diagnostic studies;

(O) hospitalization records;

(P) consultations;

(Q) records of creation and revision of access for dialysis;

(R) plans of care, including evidence of interdisciplinary team review and adjustment;

(S) evidence of patient education;

(T) daily treatment records; and

(U) discharge summary, if applicable.

(b) A facility physician shall complete a comprehensive medical history and physical examination no later than 30 calendar days from the patient's admission to the facility and at least annually thereafter.

(1) For a patient new to dialysis, the physician responsible for the dialysis care shall complete the history and examination.

(2) For an established dialysis patient, the history and examination may be completed by an advanced practice registered nurse or physician assistant.

(3) Before the first treatment in the facility, the physician shall inform the registered nurse functioning in the charge role of at least the patient's diagnoses, medications, hepatitis status, allergies, and dialysis prescription. The patient's clinical record shall include this data.

(c) The patient's clinical record shall provide an ongoing and accurate report of the patient's progress, reflecting changes in patient status, plans for and results of changes in treatment, diagnostic testing, consultations, and unusual events. Each interdisciplinary team member shall record the patient's progress as indicated by any change in the patient's medical, nutritional, or psychosocial condition.

(d) Facility staff shall note the patient's condition and response to treatment on the daily treatment record.

(e) A facility shall ensure care for transient patients meets the following requirements.

(1) Except as provided by paragraph (2)(B) of this subsection, before providing dialysis treatment to a transient patient the facility shall obtain and include, at a minimum:

(A) orders for treatment in this facility;

(B) a list of medications and allergies;

(C) laboratory testing results no earlier than one month before treatment, which include screening for Hepatitis B status;

(D) the most current plan of care;

(E) the most current treatment records from the home facility; and

(F) records of care and treatment at this facility.

(2) If a facility dialyzes a patient who is normally dialyzed in another facility, the facility shall meet the following requirements.

(A) The facility shall continuously evaluate staffing levels and use this information in determining whether to accept a transient patient for treatment.

(B) If a transient patient arrives unannounced, the facility may provide dialysis after obtaining, at a minimum, from the patient records:

(i) orders for treatment;

(ii) Hepatitis B status; and

(iii) medical justification by the physician ordering treatment that the patient's need for dialysis outweighs the need for the additional clinical information set out in this subsection.

(3) In the event a transient patient's hepatitis status is unknown, the patient may undergo treatment as if the Hepatitis B surface antigen (HbsAg) test results were potentially positive, except that the facility shall not treat such a patient in the HBsAg isolation room, area, or machine.

(f) Facility staff shall complete clinical records within 30 days after discharge. The discharge summary shall clearly identify the patient's disposition and include the diagnosis or cause of death, date of discharge or death, location of death, transplant, or relocation information when appropriate, and reason for discharge if not for transplantation or death.

(g) Clinical records are the facility's property, and the facility shall safeguard clinical records against loss, destruction, or unauthorized use.

(h) The facility shall provide copies of pertinent portions of a patient's record when the patient is transferred. The records provided shall include, at a minimum, the most current orders for dialysis treatment, last three treatment records, he current hepatitis status, and current plan of care. If the facility transfers the patient to another outpatient facility, the facility shall provide copies of the most recent history and physical and assessment of each interdisciplinary team member.

(i) The facility shall retain records for a minimum of five years after the patient's discharge and in accordance with state and federal regulations. The facility shall not destroy clinical records that relate to any matter that is involved in litigation, unless the litigation has been finally resolved.

(j) If a facility ceases operation, it shall arrange for the preservation of records to ensure compliance with this section. The facility shall notify HHSC in writing of the location of the clinical records and the clinical records custodian's name and address.

§507.56. Incident Reports.

(a) A facility shall report only the following incidents to the Texas Health and Human Services Commission (HHSC). The facility shall report these incidents to HHSC within 10 business days after the facility being informed or possessing knowledge of:

(1) the death of a dialysis patient that occurs in the facility;

(2) the death of a dialysis patient that occurs within 24 hours after the patient's last dialysis treatment, unless the death is related to:

(A) an accident unrelated to dialysis care and services;

(B) a pre-scheduled elective surgery;

(C) a previously executed do-not-resuscitate order or advance directive;

(D) a hospice patient; or

(E) a patient who withdraws from dialysis;

(3) emergent hospital transfers from the dialysis facility;

(4) the confirmed conversion of staff or a patient to Hepatitis B surface antigen (HbsAg) positive, unless it is a verified false positive;

(5) the involuntary transfer or discharge of a patient, unless the involuntary transfer or discharge is due to nonpayment or the patient was a participant in the ESRD Network's Second Chance program, in which case there is no incident report required if the patient is involuntarily discharged within the first 90 days of placement;

(6) a fire in the facility; or

(7) a generator out of operation.

(b) The facility shall report an incident listed in subsection (a) of this section to HHSC Complaint and Incident Intake through the HHSC online portal.

§507.57. Nonconventional Dialysis.

(a) A facility shall meet the following requirements for in-center self-care.

(1) If a licensed dialysis facility offers in-center self-care in addition to conventional hemodialysis, the facility shall develop, implement, and maintain policies and procedures related to self-care, including policies regarding staffing levels in the self-care milieu.

(2) While nurse to patient ratios must remain the same, the facility may reduce the number of patient care technicians from a 4:1 ratio to a 6:1 ratio if:

(A) the self-care area is separated from the conventional dialysis area, such as in a separate bay or room within the facility; and

(B) self-care patients can, at a minimum, demonstrate the ability to:

(i) set up and tear down the machinery used in their treatment;

(ii) hold their own sites at termination of treatment, except for a catheter patient; and

(iii) monitor and record their own vital signs before beginning and ending the day's treatment.

(3) A licensed facility that offers the option of in-center self-care shall ensure that all assessments, evaluations, history and physicals, treatment plans, modality options education, and similar documents and activities are completed before starting or moving to self-care.

(4) Before a patient moves from conventional dialysis to self-care in a licensed dialysis facility, the patient shall demonstrate verbal understanding of competencies in the self-care areas, as determined by the facility staff.

(5) The facility shall maintain written documentation of self-care competencies via checklists and competency testing in the patient's medical record.

(6) The facility shall annually evaluate a patient's competency and skills to verify the patient maintains the abilities and knowledge to continue self-care. The facility shall document the annual evaluation in the patient's medical record. A patient may take on additional aspects of self-care. Before the patient may independently complete the additional self-care aspects, the facility shall evaluate the patient's competency to perform the self-care aspects and document the evaluation for additional self-care aspects in the patient's medical record. The facility shall annually re-evaluate the patient's competency to perform the additional self-care aspects.

(b) A facility shall meet the following requirements for transitional care services.

(1) A facility offering transitional services shall develop, implement, and enforce policies and procedures specific to operation of transitional services.

(2) Licensed dialysis facilities that offer transitional care shall ensure that all assessments, evaluations, history and physicals, treatment plans and similar documents and activities are completed before beginning treatment.

(3) A facility offering transitional services shall provide the patient with appropriate education regarding end-stage renal disease, its treatment and treatment availability, and advisability of all modalities to include renal transplant, dietary concerns and needs, and social services.

(4) A facility offering transitional services shall ensure the patient retains all rights applicable to treatment in a licensed dialysis facility. The interdisciplinary treatment team shall assess a patient for transitioning services no later than 30 calendar days after entry into the program. If the team determines a patient requires continued services only available in a conventional dialysis setting, the facility shall consider the patient for transfer to a conventional setting to continue the benefits of dialysis. The facility shall not consider this transfer as an involuntary discharge from the transitional facility.

(5) Transitional direct care staff shall receive equivalent training to both in-center and home hemodialysis staff, including training to the manufacturer's specifications of the hemodialysis machine being used. The facility shall keep available upon request documentation of the transitional direct care staff's:

(A) training and skills, and

(B) competencies as approved by the medical director.

(c) A facility shall meet the following requirements for integrated hemodialysis systems.

(1) A licensed facility offering the use of self-contained or integrated hemodialysis systems shall develop, implement, and enforce policies and procedures related to these systems and staff shall have verification of competency for each type of machine they perform or monitor treatments on.

(2) If the licensed dialysis facility uses self-contained or integrated hemodialysis systems along with conventional hemodialysis machines, the facility shall separate the self-contained units or integrated hemodialysis systems from the conventional machines.

(3) Each patient shall receive education on the self-contained unit's use and efficacy.

(4) A facility using solely self-contained or integrated hemodialysis systems shall follow the manufacturer's recommendations and instructions for the use of the machines.

(5) A licensed facility offering the use of self-contained or integrated hemodialysis systems shall maintain a copy of the manufacturer's instructions on each type of unit used in the facility. The facility shall provide inspectors with a copy of the manufacturer's instructions and recommendations upon request.

(6) A facility shall ensure a registered nurse is present in the integrated hemodialysis systems treatment area, and the facility shall maintain the same staffing ratios as for conventional dialysis.

§507.59. Medical Services and Home Dialysis During a Public Health Disaster.

(a) This section applies only to an end stage renal disease (ESRD) facility located in a county for which:

(1) the governor declared a state of disaster due to a pandemic or epidemic, pursuant to Texas Government Code Chapter 418 (relating to Emergency Management);

(2) the commissioner of the Texas Department of State Health Services determined that a public health disaster exists, pursuant to Texas Health and Safety Code Chapter 81 (relating to Communicable Diseases; Public Health Disasters; Public Health Emergencies); and

(3) the Texas Health and Human Services Commission (HHSC) designated this section as applicable, pursuant to paragraphs (1) and (2) of this subsection.

(b) An ESRD facility may temporarily adopt accommodations under this section to meet patient needs, support infection control procedures, and maintain necessary social distancing in response to a public health disaster.

(c) Notwithstanding §507.52(b)(3) of this subchapter (relating to Medical Services), at a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once a month during the patient's treatment time.

(d) Notwithstanding §507.52(b)(4) of this subchapter, home dialysis patients shall be seen by a physician, an advanced practice registered nurse (APRN), or a physician assistant (PA) no less than once a month. This visit by a physician, an APRN, or a PA may be conducted using telemedicine medical services.

(e) Notwithstanding §507.53(l)(1) of this subchapter (relating to Home Dialysis Service), a registered nurse may conduct an initial monitoring visit of a patient's home adaptation before the patient beginning training for the selected home modality from outside the patient's home if the nurse performs the visit using a synchronous audiovisual interaction between the registered nurse and the patient while the patient is at home.

(1) The nurse shall conduct the visit to the same review standards as a normal face-to-face visit.

(2) If the nurse cannot perform the visit using a synchronous audiovisual interaction between the nurse and the patient, the nurse must conduct the visit in the patient's home.

§507.60. Staffing Table.

The attached graphic sets out minimum staffing levels for nursing staff, direct care staff, and total clinical staff.

Figure: 26 TAC §507.60

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

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SUBCHAPTER E. REQUIREMENTS FOR DIALYSIS TECHNICIANS

26 TAC §§507.71 - 507.75

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.72. Training Curricula and Instructors.

(a) Each training program for dialysis technicians shall develop a written curriculum with objectives specified for each section.

(b) The training curriculum for dialysis technicians shall include:

(1) an introduction to dialytic therapies, history, and major issues to include:

(A) a history of dialysis;

(B) definitions and terminology;

(C) communication skills;

(D) ethics and confidentiality;

(E) multidisciplinary process;

(F) roles of other team members; and

(G) information about renal organizations and resources;

(2) the principles of hemodialysis to include:

(A) principles of dialysis;

(B) access to the circulatory system; and

(C) anticoagulation, local anesthetics, and normal saline;

(3) understanding the individual with kidney failure to include:

(A) basic renal anatomy, physiology, and pathophysiology;

(B) the effect of renal failure on other body systems;

(C) symptoms and findings related to the uremic state;

(D) modes of renal replacement therapy, including transplantation;

(E) basic renal nutrition;

(F) basic psychosocial aspects of end stage renal disease;

(G) medications commonly administered to patients with end stage renal disease;

(H) confidentiality of patient personal and clinical records;

(I) professional conduct;

(J) patient rights and responsibilities; and

(K) rehabilitation;

(4) dialysis procedures to include:

(A) using aseptic technique;

(B) technical aspects of dialysis, operation and monitoring of equipment, initiation and termination of dialysis;

(C) delivering an adequate dialysis treatment and factors that may result in inadequate treatment;

(D) observing and reporting patient reactions to treatment;

(E) glucose monitoring and hemoglobin and hematocrit monitoring;

(F) emergency procedures and responses, such as cardiopulmonary resuscitation, air embolism management, and response to line separation and hemolysis;

(G) external and internal disasters, fire, natural disasters, and emergency preparedness; and

(H) safety and quality assurance and performance improvement (QAPI);

(5) hemodialysis devices to include:

(A) theory and practice of conventional, high efficiency, and high flux dialysis;

(B) dialysate composition, options, indications, complications, and safety;

(C) monitoring and safety; and

(D) disinfection of equipment;

(6) water treatment to include:

(A) standards for water treatment used for dialysis listed in §507.30 of this chapter (relating to Technical Standards);

(B) systems and devices;

(C) monitoring; and

(D) risks to patients of unsafe water;

(7) reprocessing, if the facility practices reuse, to include:

(A) principles of reuse;

(B) safety, QAPI, universal precautions, and water treatment; and

(C) standards for reuse in the standards listed in §507.30 of this chapter;

(8) patient teaching to include:

(A) the technician's role in supporting patient education goals; and

(B) adult education principles;

(9) infection control and safety to include:

(A) risks to patients of nosocomial infections, accidents, and errors in treatment;

(B) universal precautions, aseptic technique, sterile technique, and specimen handling;

(C) basic bacteriology and epidemiology;

(D) risks to employees of blood and chemical exposure; and

(E) electrical, fire, disaster, environmental safety, and hazardous substances; and

(10) QAPI to include:

(A) the technician's role in QAPI activities;

(B) principles of QAPI; and

(C) the importance of ongoing QAPI activities in ensuring the facility provides safe dialysis treatments to patients.

(c) The facility's training curricula shall comply with the following requirements related to a dialysis technician's additional responsibilities.

(1) If a dialysis technician is to assist with training or treatment of peritoneal dialysis patients, the facility's training curricula shall include:

(A) principles of peritoneal dialysis;

(B) sterile technique;

(C) peritoneal dialysis delivery systems;

(D) symptoms of peritonitis; and

(E) other complications of peritoneal dialysis.

(2) If a dialysis technician, other than a licensed vocational nurse (LVN), is to cannulate access or administer intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, or oxygen, the facility's training curricula shall include:

(A) access to the circulation to include:

(i) for a fistula, creation, development, needle placement, and prevention of complications;

(ii) for a graft, creation, materials, needle placement, and prevention of complications; and

(iii) symptoms to report;

(B) safe administration of medications to include:

(i) identifying the correct patient;

(ii) ensuring the appropriate medication;

(iii) measuring the appropriate dose;

(iv) determining the appropriate route; and

(v) checking the appropriate time for administration;

(C) administration of normal saline to include:

(i) reasons for administration;

(ii) potential risks and complications;

(iii) administration limits; and

(iv) information to report and record;

(D) administration of heparin to include:

(i) reasons for administration;

(ii) methods of administration;

(iii) preparation of ordered dose;

(iv) potential risks and complications; and

(v) information to report and record;

(E) administration of lidocaine to include:

(i) reasons for administration;

(ii) method of administration;

(iii) preparation of ordered dose;

(iv) potential complications and risks; and

(v) information to report and record; and

(F) administration of oxygen to include:

(i) reasons for administration;

(ii) method of administration;

(iii) delivery of the ordered flow rate;

(iv) potential complications and risks; and

(v) information to report and record.

(3) If a dialysis technician, other than a licensed vocational nurse, is to initiate or discontinue dialysis via a central venous catheter or manipulate a central venous catheter, the facility's training curricula shall include:

(A) patient assessment;

(B) infection control and aseptic technique;

(C) materials used and prevention of complications;

(D) observing and reporting patient reactions to treatment;

(E) safety checks, potential complications, and risks; and

(F) information to report and record.

(d) The instructor shall maintain a roster of attendance for each training class.

(e) The instructor shall evaluate each trainee weekly during the training program to determine the trainee's progress.

(f) The facility shall administer a written examination encompassing the required content. The dialysis technician trainee shall pass the exam with a score of at least 80 percent before the trainee's release from orientation.

(1) The examination shall encompass the content required in subsection (b) of this section.

(2) When the dialysis technician trainee cannulates access, administers medications, initiates or discontinues dialysis via a central venous catheter, or manipulates a central venous catheter, the examination shall encompass the content required in subsection (c) of this section.

(3) Other than the first examination for a specific responsibility in a facility, current certification as a dialysis technician by a nationally recognized testing organization may be substituted for the written examination.

(g) An instructor for the course to train an individual as a dialysis technician shall be:

(1) a physician who qualifies as a medical director;

(2) a registered nurse with at least 12 months of experience in hemodialysis obtained within the last 24 months and a current competency skills checklist on file in the facility, or a registered nurse instructor of a dialysis technician training course of an accredited college or university;

(3) a qualified dietitian or social worker providing training only within the individual's area of expertise; or

(4) a technician with at least 12 months experience, qualified by training and experience in water treatment, dialysate preparation, reprocessing, or other technical aspects of dialysis providing training only within their area of expertise.

(h) Licensed nurses and patient care technicians who have at least one year of experience in hemodialysis and a current competency skills checklist on file in the facility may assist in didactic sessions and serve as preceptors.

(i) For an individual with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of supervised clinical training shall be required. Training programs for dialysis technician trainees who have previous direct patient care experience may be shortened if they demonstrate competency with the required knowledge and skills but may not be less than a total of 80 clock hours of combined classroom education and clinical training.

§507.73. Competency Evaluation.

(a) The governing body shall ensure the facility's core staff members review the training records of each trainee, including tests and skills checklists, hear comments from the training instructors and preceptors, and validate that the trainee has successfully completed the training program and is competent to perform their job duties and tasks.

(b) An individual who completes the facility's orientation and training program and the facility determines is qualified to deliver dialysis patient care may qualify as a dialysis technician by passing the written examination described in §507.72(f) of this subchapter (relating to Training Curricula and Instructors) and demonstrating competency by completing the skills checklist described in subsection (c) of this section.

(c) The supervising nurse or a registered nurse who qualifies as an instructor under §507.72(g)(2) of this subchapter shall complete a competency skills checklist to document each dialysis technician trainee's knowledge and skills for:

(1) assembling necessary supplies;

(2) preparing dialysate according to procedure and dialysis prescription;

(3) assembling and preparing the dialysis extracorporeal circuit correctly;

(4) securing the correct dialyzer for the specific patient;

(5) installing and rinsing dialyzer and all necessary tubing;

(6) testing monitors and alarms, conductivity, and presence and absence of residual sterilants, if applicable;

(7) setting monitors and alarms according to facility and manufacturer protocols;

(8) obtaining pre-dialysis evaluation to include vital signs, weight, and temperature according to facility protocol and informing the registered nurse of unusual findings;

(9) inspecting access for patency and, after cannulation is performed and heparin administered, initiating dialysis according to the patient's prescription, observing universal precautions, and reporting unusual findings to the registered nurse;

(10) adjusting blood flow rates according to established protocols and the patient's prescription;

(11) calculating and setting the dialysis machine to allow fluid removal rates according to established protocols and the patient's prescription;

(12) monitoring the patient and equipment during treatment, responding appropriately to patient needs and machine alarms, and reporting unusual occurrences to the registered nurse;

(13) changing fluid removal rate, placing patient in Trendelenburg position, and administering replacement normal saline as directed by the registered nurse, physician order, or facility protocol;

(14) documenting findings and actions per facility protocol;

(15) describing appropriate response to dialysis-related emergencies such as cardiac or respiratory arrest, needle displacement or infiltration, clotting, blood leaks, or air emboli, and nonmedical emergencies such as power outages or equipment failure;

(16) discontinuing dialysis and establishing hemostasis by:

(A) inspecting, cleaning, and dressing access according to facility protocol; and

(B) reporting unusual findings and occurrences to the registered nurse;

(17) obtaining and recording post-dialysis vital signs, temperature, and weight and reporting unusual findings to the registered nurse;

(18) discarding supplies and sanitizing equipment and treatment chair according to facility protocol;

(19) communicating the patient's emotional, medical, psychological, and nutritional concerns to the registered nurse;

(20) maintaining current certification in cardiopulmonary resuscitation; and

(21) maintaining professional conduct, good communication skills, and confidentiality in the care of patients.

(d) For dialysis technician trainees who will be assisting with training or treatment of peritoneal dialysis patients, each trainee shall satisfactorily:

(1) assist patients in ordering supplies;

(2) make a dialysate exchange (draining and refilling the peritoneal space with dialysate) to include continuous ambulatory peri-

toneal dialysis exchange procedures, and initiation or discontinuation of continuous cycling peritoneal dialysis;

(3) observe peritoneal effluent;

(4) know what observations to report;

(5) collect dialysate specimen; and

(6) set up and operating continuous cycling peritoneal dialysis equipment.

(e) For dialysis technician trainees who will be cannulating dialysis access and administering intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, or oxygen, each trainee shall satisfactorily:

(1) cannulate to include:

(A) inspecting the access for patency;

(B) preparing the skin;

(C) using aseptic technique;

(D) placing needles correctly;

(E) establishing blood access;

(F) replacing needles;

(G) knowing when to call for assistance;

(H) securing needles; and

(I) removing needles;

(2) administer intravenous heparin to include:

(A) checking the patient's individual prescription;

(B) preparing the dose;

(C) labeling the prepared syringe;

(D) administering the dose; and

(E) observing for complications;

(3) administer normal saline to include:

(A) understanding unit protocol;

(B) checking the patient's prescription;

(C) recognizing signs of hypotension;

(D) notifying the registered nurse;

(E) administering normal saline; and

(F) rechecking vital signs;

(4) administer subcutaneous or topical lidocaine to include:

(A) checking the patient's prescription;

(B) identifying the correct medication;

(C) preparing the dose;

(D) administering the dose; and

(E) observing for complications; and

(5) administer oxygen to include:

(A) verifying the ordered flow rate from the nurse functioning in the charge role;

(B) setting up the equipment; and

(C) connecting the tubing for the patient.

(f) For dialysis technician trainees who will be initiating or discontinuing dialysis via a central venous catheter or manipulating a central venous catheter, each trainee shall satisfactorily:

(1) use aseptic technique;

(2) establish blood access;

(3) observe for complications;

(4) document findings and actions per facility protocol;

(5) know when to call for assistance and reporting unusual findings and occurrences to the registered nurse; and

(6) administer intravenous heparin to include:

(A) checking the patient's individual prescription;

(B) preparing the dose;

(C) labeling the prepared syringe;

(D) administering the dose; and

(E) observing for complications.

(g) If a dialysis technician is to cannulate a dialysis access, initiate or discontinue dialysis via a central venous catheter, manipulate a central venous catheter, administer intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, or oxygen, the medical director shall verify and document the dialysis technician's competency to perform these tasks and delegate authority to the technician in accordance with Texas Occupations Code Chapter 157 (relating to Authority of Physician to Delegate Certain Medical Acts).

§507.75. Prohibited Acts.

The facility shall ensure a dialysis technician does not:

(1) initiate patient education;

(2) alter ordered treatment, including shortening the treatment time;

(3) change central venous catheter dressings;

(4) administer any medications other than intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, or oxygen, which may only be administered during a routine dialysis treatment;

(5) administer blood or blood products;

(6) perform nonaccess site arterial puncture;

(7) accept physician orders;

(8) provide hemodialysis treatment to pediatric patients under the age of 18 who weigh less than 35 kilograms; or

(9) alter the level of electrolytes in dialysate through use of additives ("spiking").

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

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Karen Ray
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For further information, please call: (512) 834-4591

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SUBCHAPTER F. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT

26 TAC §§507.81 - 507.93

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.90. Enforcement.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, or orders.

(b) HHSC has jurisdiction to enforce violations of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(1) failure to comply with any applicable provision of Texas Health and Safety Code, including Chapter 251;

(2) failure to comply with any provision of this chapter or any other applicable laws;

(3) the facility, or any of its employees, committing an act that causes actual harm or risk of harm to the health or safety of a patient;

(4) the facility, or any of its employees, materially altering any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide a complete license application;

(7) failure to comply with an order of the executive commissioner or another enforcement procedure under Texas Health and Safety Code Chapter 251;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights that reflects more than nominal noncompliance;

(9) the facility aiding, committing, abetting, or permitting the commission of an illegal act;

(10) the facility, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents a facility is required to submit to HHSC or required to maintain pursuant to Texas Health and Safety Code Chapter 251, and the provisions of this chapter;

(11) failure to comply with other state and federal laws affecting the health, safety, and rights of facility patients;

(12) failure to timely pay an assessed administrative penalty as required by HHSC;

(13) failure to submit an acceptable plan of correction (POC) for cited deficiencies within the timeframe required by HHSC;

(14) failure to timely implement a POC for deficiencies cited by HHSC within the dates designated in the POC;

(15) failure to comply with applicable requirements within a designated probation period; or

(16) if the facility is participating under Title XVIII, and the CMS terminates the facility's Medicare provider agreement.

(c) HHSC has jurisdiction to enforce violations of Texas Health and Safety Code Chapter 251 and this chapter. HHSC may deny a license if the applicant:

(1) fails to provide timely and sufficient information or fees required by HHSC that is directly related to the application;

(2) has had the following actions taken against the applicant within the two-year period preceding the application:

(A) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(B) federal Medicare or state Medicaid sanctions or penalties;

(C) unsatisfied federal or state tax liens;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as an end stage renal disease (ESRD) facility or health care facility in any state;

(F) unresolved federal Medicare or state Medicaid audit exceptions;

(G) denial, suspension, or revocation of an ESRD facility license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(H) a court injunction prohibiting ownership or operation of an ESRD facility.

(d) HHSC may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility. HHSC applies the requirements of Texas Occupations Code Chapter 53 (relating to Consequences of Criminal Conviction).

(1) In determining whether a criminal conviction directly relates, HHSC considers the provisions of Texas Occupations Code §53.022 (relating to Factors in Determining Whether Conviction Directly Relates to Occupation) and Texas Occupations Code §53.023 (relating to Additional Factors for Licensing Authority to Consider After Determining Conviction Directly Relates to Occupation).

(2) The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensed facility because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate a facility:

(A) a misdemeanor violation of Texas Health and Safety Code Chapter 251;

(B) a misdemeanor or felony involving moral turpitude;

(C) a misdemeanor or felony relating to deceptive business practices;

(D) a misdemeanor or felony of practicing any health-related profession without a required license;

(E) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) a misdemeanor or felony under Texas Penal Code (TPC) Title 5 (relating to Offenses Against the Person), involving a patient, resident, or client of any health care facility, a home and community support services agency, or a health care professional; or

(G) a misdemeanor or felony under TPC:

(i) Title 4 (relating to Inchoate Offenses);

(ii) Title 7 (relating to Offenses Against Property);

(iii) Title 8 (relating to Offenses Against Public Administration);

(iv) Title 9 (relating to Offenses Against Public Order and Decency);

(v) Title 10 (relating to Offenses Against Public Health, Safety, and Morals); or

(vi) Title 11 (relating to Organized Crime).

(H) Offenses listed in this paragraph are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign, or military jurisdictions that indicate an inability or tendency for the person or entity to be unable to own or operate a facility.

(3) HHSC revokes a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(e) If HHSC proposes to deny, suspend, or revoke a license, HHSC sends a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, states the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and states that the applicant or license holder has an opportunity for a hearing before taking the action.

(1) The facility must request a hearing within 30 calendar days after receipt of the notice. Receipt of the notice is presumed to occur on the third business day after the notice is mailed by HHSC to the applicant's or licensee's last known address.

(2) The request for a hearing shall be in writing and submitted to the Texas Health and Human Services Commission, Enforcement Unit, Regulatory Services Division.

(3) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001 (relating to Administrative Procedure) and Texas Administrative Code, Title 1 Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(4) If the facility does not request a hearing in writing within 30 calendar days after receiving the notice, the facility is deemed to have waived the opportunity for hearing, and the proposed action shall be taken.

(5) If the facility fails to appear or be represented at the scheduled hearing, the facility has waived the right to a hearing, and the proposed action shall be taken.

(f) If HHSC suspends a license, the suspension shall remain in effect until HHSC determines that the reason for suspension no longer exists. An authorized representative of HHSC investigates before making a determination.

(1) During the time of suspension, the suspended license holder shall return the license to HHSC.

(2) If a suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this chapter; however, HHSC may not renew the license until HHSC determines that the reason for suspension no longer exists.

(g) If HHSC revokes or does not renew a license, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. HHSC may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(h) Upon revocation or nonrenewal, a license holder shall return the license to HHSC within 30 calendar days after notification from HHSC.

(i) In lieu of denying, suspending, or revoking the license, HHSC may place the facility on probation for a period of not less than 30 calendar days if the facility is found in repeated noncompliance and the facility's noncompliance does not endanger the public's health and safety.

(1) HHSC provides the facility notice of probation and the items of noncompliance at least 10 calendar days before the probation period begins.

(2) During the probation period, the facility must correct the items of noncompliance and report corrections to HHSC for approval.

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

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS

SUBCHAPTER B. SUPPLEMENTAL INCOME BENEFITS

28 TAC §130.102

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amended 28 TAC §130.102, concerning eligibility for supplemental income benefits (SIBs). Section 130.102 implements Texas Labor Code §408.1415, which sets standards for SIBs recipients to demonstrate an active effort to get employment.

The amendments to §130.102 are adopted with changes to the proposed text published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5589). DWC replaced the word "for" with "to obtain" in §130.102(d)(1)(D). Section 130.102 will be republished.

REASONED JUSTIFICATION. The amendments align the rule text with the statutory text. They add a reference to submitting job applications to mirror the language in Labor Code §408.1415(a)(3) and (b)(2), define "job application," and conform references to work search efforts. The amendments also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity. In response to comments, DWC replaced the word "for" with "to obtain" in §130.102(d)(1)(D) to match the wording in Labor Code §408.1415(a).

Amending §130.102 is necessary to eliminate confusion that has resulted from differences between the wording in the rule and the wording in the statute. It is also necessary to clarify that a job application is submitted to provide an employer or its designated representative information about a candidate for a specific position, and that a job application may be a physical or electronic form or other document. This ensures that the application is directed at a specific position, is about a specific candidate, can be physical or electronic, and can be a document other than a form.

Labor Code §408.1415 requires a person receiving SIBs to provide evidence to DWC of active participation in a vocational rehabilitation program, active participation in work search efforts through the Texas Workforce Commission (TWC), or active work search efforts documented by job applications submitted by the SIBs recipient.

DWC invited public comments on an informal draft posted on DWC's website on April 28, 2025. DWC considered the comments it received on the draft when drafting the proposal. DWC also held a public hearing on the proposal on October 1, 2025.

SUMMARY OF COMMENTS AND INFORMATION SUBMITTED, AND AGENCY RESPONSE.

Commenters: DWC received eight written comments from 34 commenters, and one oral comment at the October 1, 2025, public hearing. No commenters included information, data, research, or analysis about the cost, benefit, or effect of the proposal. The Office of Injured Employee Counsel (OIEC) commented in support of the proposal. Commenters in support of the proposal with changes were: American Safety Services, Inc., Odessa, Texas; Barrilleaux Energy Services, LLC, Magnolia, Texas; Black Label Services, Inc., Windsor, CO; Blakely Construction Co., Inc., Odessa, Texas; Branson Sherman Construction Inc. d/b/a WTB, Midland, Texas; Casing Specialties, Midland, Texas; Charger Services, LLC, Midland, Texas; Deutsche Windtechnik d/b/a DWT, Inc., Humble, Texas; G&W ESP Services, LLC, Midland, Texas; Gran Lago Services, LLC, Midland, Texas; J. Irwin Co., Bastrop, Texas; John Gibson, The Law Offices of John Gibson & Associates; Klein Automation & Electric, Inc., Hobbs, NM; Legacy Safety & Consulting, LLC, Hobbs, NM; Lone Start Instrumentation & Electric, Odessa, Texas; Lucky Services, Inc., Hobbs, NM; Mesa Well Servicing, LLP, Hobbs, NM; N & B Well Service, LLC, Monahans, Texas; Oil States Industries, Arlington, Texas; Onyx Contractors, LP, Midland, Texas; Paul L. Kelley, Paul Kelley Law, PLLC (at the hearing); Sage Enviro Tech Ltd., Corpus Christi, Texas; S&S Fishing & Rental, Inc., Andrews, Texas; Smith Laydown and Casing Services, LLC, Midland, Texas; Steve Dennis, Reid, Dennis & Frick; Texas Association of School Boards; TCI Casing Specialties, Midland, Texas; Tejas Completion Services, Richmond, Texas; Tejas Hot Shot Services & Transportation, LLC, Odessa, Texas; Texas Cotton Ginners' Trust; The Wireline Group, Houston, Texas; Trey Trucks, Ltd., Crane, Texas; Waukesha-Pearce Industries, Houston, Texas; and Wrangler Trucking, LLC, Gonzales, Texas. No commenters were against the proposal.

Comment on §130.102. A commenter supported amending §130.102 to conform with the statutory language in the Labor Code regarding work search efforts. The commenter also supported the new definition of "job application" to include both a physical or electronic form or other document.

Agency Response to Comment on §130.102. DWC appreciates the comment.

Comment on §130.102. A commenter stated that carriers can't verify job searches because the rule doesn't require injured workers to give carriers copies of their job applications.

Agency Response to Comment on §130.102. DWC appreciates the comment but declines to require injured workers to submit copies of their job applications to insurance carriers. Such a change would be beyond the scope of this rule, which is to align the rule text with the statutory text, not to address verification methods.

Comment on §130.102. Seven commenters stated that the rule doesn't address situations where injured workers apply for positions for which they are not qualified. They stated that applying for jobs the injured worker cannot perform or has no intention of accepting is not an active effort to obtain employment.

Agency Response to Comment on §130.102. DWC appreciates the comment but declines to amend the rule to address injured workers' individual qualifications or intent. Such a change would be beyond the scope of this rule, which is to align the rule text with the statutory text, not to opine on an employee's qualifications or suitability for a particular job.

Comment on §130.102(d)(1)(D). Thirty-two commenters stated that DWC should replace "for" with "to obtain" in §130.102(d)(1)(D) to align the rule with the statutory requirement that the documented activities that entitle a claimant to SIBs are those taken "to obtain employment."

Agency Response to Comment on §130.102(d)(1)(D). DWC appreciates the comment and has made the change.

Comment on §130.102(d)(1)(D). Nineteen commenters stated that DWC should add "prescribed by the employer" after "a physical or electronic form" in §130.102(d)(1)(D) to reflect employers' common practice of requiring job applications on the employer's specified form.

Agency Response to Comment on §130.102(d)(1)(D). DWC appreciates the comment but declines to make this change because codifying a common, but not universal, practice could have the unintended effect of excluding valid job applications. Such a change would also be beyond what the Labor Code requires.

Comment on §130.102(f). A commenter stated that solo job seekers should not use TWC's work search contacts to qualify for SIBs. The commenter stated that the rule should distinguish between the minimum number of work search contacts through TWC and the minimum number of job applications that solo job seekers must submit. The commenter recommends the following replacement language in §130.102(f): "… an injured employee must provide documentation sufficient to establish that he or she has, each week during the qualifying period, made work search efforts through the TWC or submitted job applications totaling at least the minimum number established by the TWC Local Workforce Development Board for entitlement to unemployment compensation in the injured employee's county of residence."

Agency Response to Comment on §130.102(f). DWC appreciates the comment but declines to make this change. TWC's published guidance includes submitting job applications in its list of acceptable work search activities. In addition, Section 130.102(d)(1) requires at least one or any combination of efforts, including returning to work, participating in vocational rehabilitation, work search efforts through TWC, or work search efforts documented by job applications. Any of those qualify as an active effort to obtain employment to qualify for SIBs. As a result, including submitting the minimum number of job applications in the types of work search efforts required is appropriate.

Comment on §130.102. A commenter supported the proposed changes to require employees to submit job applications themselves, rather than allowing others to do it for them, and to require a documentary job application. The commenter stated that these changes are consistent with the statute.

Agency Response to Comment on §130.102. DWC appreciates the comment.

Comment on §130.102(d)(1). A commenter stated that DWC should add a subparagraph (3) to §130.102(d)(1) that states, "If there exist factors affecting the availability of employment, such as access to employment in rural areas, economic conditions in the claimant's county of residence, or other appropriate employment availability factors, these factors shall be considered in evaluating work search efforts." The commenter stated that Labor Code §408.1415(f)(3) requires DWC to adopt rules that consider factors affecting the availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors. The commenter stated that nothing in the proposed rule differentiates between urban and rural work search efforts, or the economic conditions in the claimant's county of residence which can vary widely depending upon the part of the state.

Agency Response to Comment on §130.102(d)(1). DWC appreciates the comment, but declines to make the change. Section 408.1415(b)(3) requires the commissioner to consider factors affecting the availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors, in adopting rules under Section 408.1415. It does not require that the rule text itself distinguish between rural and urban areas in requiring a minimum number of work search efforts. That said, TWC's published guidance for the required number of work search activities varies by county, so it does take into account different economic conditions based on each county, urban or rural. For example, TWC currently only requires one work search activity in Edwards County, while it requires five in Bexar County.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §130.102 under Labor Code §§408.1415, 402.00111, 402.00116, and 402.061.

Labor Code §408.1415 requires a person receiving SIBs to provide evidence to DWC of active participation in a vocational rehabilitation program, active participation in work search efforts through the TWC, or active work search efforts documented by job applications submitted by the SIBs recipient. It also requires the commissioner of workers' compensation to adopt rules setting out compliance standards for these requirements.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

(a) General. An injured employee is not entitled to supplemental income benefits until the expiration of the impairment income benefit period.

(b) Eligibility Criteria. An injured employee who has an impairment rating of 15% or greater, who has not commuted any impairment income benefits, who has not permanently lost entitlement to supplemental income benefits and who has completed and filed an Application for Supplemental Income Benefits in accordance with this subchapter is eligible to receive supplemental income benefits if, during the qualifying period, the injured employee:

(1) has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury; and

(2) has demonstrated an active effort to obtain employment in accordance with Labor Code §408.1415 and this section.

(c) Direct Result. An injured employee has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings.

(d) Work Search Requirements.

(1) An injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period:

(A) has returned to work in a position which is commensurate with the injured employee's ability to work.

(B) has actively participated in a vocational rehabilitation program as defined in §130.101 of this title (Definitions).

(C) has actively participated in work search efforts conducted through the Texas Workforce Commission (TWC).

(D) has performed active work search efforts documented by job applications the injured employee submitted. For purposes of this section, "job application" means a physical or electronic form or other document that is submitted to an employer or its designated representative to provide information about a candidate to obtain a specific position.

(E) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor that specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

(2) An injured employee who has not met at least one of the work search requirements in any week during the qualifying period is not entitled to SIBs unless the injured employee can demonstrate that he or she had reasonable grounds for failing to comply with the work search requirements under this section.

(e) Vocational Rehabilitation. As provided in subsection (d)(1)(B) of this section, regarding active participation in a vocational rehabilitation program, an injured employee must provide documentation sufficient to establish that he or she has actively participated in a vocational rehabilitation program during the qualifying period.

(f) Work Search Efforts. As provided in subsection (d)(1)(C) and (D) of this section regarding active participation in work search efforts and active work search efforts, an injured employee must provide documentation sufficient to establish that he or she has, each week during the qualifying period, made the minimum number of work search efforts, including submitting the minimum number of job applications, consistent with the work search efforts established by TWC that are required for unemployment compensation in the injured employee's county of residence under the TWC Local Workforce Development Board requirements.

(1) If the required number of work search efforts changes during a qualifying period, the lesser number of work search efforts is the required minimum number of work search efforts for that period.

(2) If the injured employee is residing out of state, the minimum number of work search efforts required is the number required by the public employment service under applicable unemployment compensation laws for the injured employee's place of residence.

(g) Calculation of amount. Subject to any approved reduction for the effects of contribution, the monthly supplemental income benefit payment is calculated quarterly as follows:

(1) multiply the injured employee's average weekly wage by 80% (.80);

(2) add the injured employee's wages for all 13 weeks of the qualifying period;

(3) divide the total wages by 13;

(4) subtract this figure from the result of paragraph (1) of this subsection;

(5) multiply the difference by 80% (.80);

(6) if the resulting amount is greater than the maximum rate under the Act, Labor Code, §408.061, use the maximum rate; and

(7) multiply the result by 4.34821.

(h) Maximum Medical Improvement and Impairment Rating Disputes. If there is no pending dispute regarding the date of maximum medical improvement or the impairment rating before the expiration of the first quarter, the date of maximum medical improvement and the impairment rating is final and binding.

(i) Services Provided by a Carrier Through a Private Provider of Vocational Rehabilitation Services. The insurance carrier is responsible for reasonable travel expenses incurred by the injured employee if the employee is required to travel in excess of 20 miles one way from the injured employee's residence to obtain vocational rehabilitation services from a private provider.

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 4, 2025.

TRD-202504427
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: December 24, 2025
Proposal publication date: August 29, 2025
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.38

The General Land Office (GLO) adopts new 31 Texas Administrative Code (TAC) §15.38, relating to certification status of the Dune Protection and Beach Access Plan for the City of Starbase, Texas (City), without changes to the proposed text.

The proposed rule was published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6990) and will not be republished.

The GLO adopts new §15.38 to certify the City of Starbase's Dune Protection and Beach Access Plan (Plan) as consistent with state law.

Copies of the Plan may be obtained by contacting the GLO or the City of Starbase.

BACKGROUND INFORMATION AND JUSTIFICATION

Pursuant to the Open Beaches Act (OBA), Texas Natural Resources Code (Tex. Nat. Res. Code) Chapter 61, the Dune Protection Act (DPA), Tex. Nat. Res. Code Chapter 63, Tex. Nat. Res. Code §33.607, and 31 TAC §§15.3, 15.7, and 15.17, each local government with ordinance authority over construction adjacent to public beaches is required to adopt a plan for preserving and enhancing access to and use of public beaches and dune protection within the jurisdiction of the local government and submit its plan to the GLO for certification. If appropriate, the GLO will certify that the Plan and Erosion Response Plan (ERP) is consistent with state law by adoption or amendment of a rule, as authorized in Tex. Nat. Res. Code §§61.011(d)(5), 61.015(b), and 63.121. The certification by rule reflects the State's certifi-

cation of the plan; however, the text of the plan is not adopted by the GLO, as explained in 31 TAC §15.3(o)(4).

The DPA and 31 TAC §15.3 provide that a county may allow a municipality within the county to administer the DPA within its corporate limits and extraterritorial jurisdiction. Each municipality administering the DPA is required to establish a dune protection line and dune protection plan with procedures and requirements governing the review and approval of dune permits.

On May 3, 2025 residents of Cameron County (County) voted to incorporate Starbase as a Type C municipality within the State of Texas. Thereafter, on September 17th, 2025 the City passed Resolution No. 2025-09-17-D03-RE requesting that the County delegate authority to administer the DPA, to the City. On September 23rd, 2025 the County delegated the authority to administer the DPA to the City through Cameron County Commissioners Court Order No. 2025O09098.

On September 25th, 2025, the Starbase City Commission passed Ordinance No. 2025-09-25-F01-OR, adopting the City's Plan and ERP. The City provided public notice of the hearing on the proposed Plan and ERP and establishment of the dune protection line through publication in the Brownsville Herald on September 3rd, September 6th, and September 10th, 2025 in accordance with Tex. Nat. Res. Code § 63.013 and 31 TAC §15.3(l) and §15.17(c). On September 26th, 2025 the City submitted the proposed Plan and ERP to the GLO for certification.

COMMENTS

The 30-day comment period ended on November 24, 2025. During this period, the GLO did not receive any comments regarding the proposed rule.

ANALYSIS OF PLAN AND GLO'S AMENDMENT TO CHAPTER 15 ADDING NEW SECTION 31 TAC §15.38.

The City's Plan establishes the dune protection line at 1,000 feet landward of mean high tide, at the maximum extent of a local government's jurisdiction for establishing dune protection lines. The Plan also establishes procedures and requirements for dune protection permits seaward of the dune protection line and beachfront construction certificates within 1,000 feet landward of mean high tide or seaward of the first public road, whichever is greater, consistent with 31 TAC Chapter 15.

The City's Plan establishes an eroding area boundary in accordance with 31 TAC §15.2(32) at whichever distance landward of the line of vegetation is greater: 200 feet, or the distance determined by multiplying 50 years by the annual historical erosion rate (based on the most recent GLO approved data published by the University of Texas at Austin, Bureau of Economic Geology). All areas seaward of the eroding area boundary are considered an eroding area under the Plan and all applicable eroding area standards apply in that area.

The City's Plan prohibits the use of impervious surfaces seaward of the eroding area boundary in accordance with 31 TAC §15.6(f). Impervious surfaces may be used landward of the eroding area boundary, except where they would cause ponding, channeling or dune destabilization or where they would materially weaken dunes or materially damage dune vegetation. The allowance of impervious surfaces landward of the eroding area boundary complies with 31 TAC §15.6(f) since the Plan establishes eroding areas as the areas seaward of the eroding area boundary.

The City's ERP establishes a building setback line coextensive with the eroding area boundary. Except for construction of public amenities and beach access improvements, the City's Plan and ERP prohibit the construction, placement, or maintenance of a permanent structure seaward of the eroding area boundary and building setback line, unless a property owner qualifies for an exemption by demonstrating that there are no practicable alternatives to construction seaward of the eroding area boundary or building setback line.

The City's Plan and ERP provide stricter construction requirements for exempt properties. All exempt construction must provide plans and certifications for the structure by a registered professional engineer licensed in the State of Texas demonstrating a minimum two-foot freeboard above base flood elevation (BFE), no enclosures below BFE, feasible relocation of the habitable structure, compliance with the specifications in American Society of Civil Engineers, Structural Engineering Institute, Flood Resistant Design and Construction, ASCE 24-05, and that construction is designed to minimize impacts on natural hydrology. Construction should also be located landward of the toe of the foredune ridge, where practicable.

The Plan's prohibition on construction of new structures and impervious surfaces seaward of the eroding area boundary and building setback line provides increased protection for areas at higher risk of damage from flooding and erosion and reduces the risk of public expenditures for erosion and storm damage losses to public and private property. These restrictions also promote a continuous critical dune area that will help provide protection from erosion and storms and provides a vegetative buffer between development and the beach.

Pursuant to the enrollment of House Bill 5246, the 89th Legislature amended Tex. Govt. Code §482.107(8), effective September 1, 2025 to allow the Texas Space Commission (Space Commission) to issue an order, subject to the approval of the municipality's governing body, to temporarily close a highway, venue, or "Gulf Beach" as specified by Tex. Nat. Res. Code §33.203(11), which includes areas of Boca Chica beach.

On September 23, 2025 the Space Commission, pursuant to new Tex. Gov't Code §482.107(a)(8), issued standing Order No. 2025-01 authorizing the City to temporarily close a highway as defined by Tex. Transp. Code §221.001, or the "Gulf Beach" during space flight activities. Such temporary closures are necessary to safeguard public safety and operational security in furtherance of state aerospace policy and will be issued only as necessary consistent with the requirements in 43 Texas Administrative Code §22.12. The City shall ensure that a safety zone perimeter is established in coordination with law enforcement and entities conducting space flight activities. The Order ensures the following dates remain available to the public for recreational use and will not be subject to any access limitations:

1) the Saturday or Sunday preceding Memorial Day;

2) Memorial Day;

3) July 4;

4) a Saturday or Sunday preceding Labor Day; or

5) Labor Day.

In addition to the authority to close the Gulf Beach under the Space Commission Order, the City, pursuant to 31 TAC §15.7, is authorized to close the public beach in cases of emergencies related to public health and safety and must notify the GLO

as soon as practicable upon the closure and reopening of the beach. Such emergency closures must be minimized in scope and duration.

The City's Plan follows additional closure related provisions that are more protective of the public's access and use of the beach than the limitations on access restrictions outlined in the Space Commission's Order. These additional provisions in the adopted Plan are consistent with the access requirements related to spaceflight activities included in the Mitigated Finding of No Significant Impact and Record of Decision for the Final Tiered Environmental Assessment (Mitigated FONSI/ROD), issued by the Federal Aviation Administration on April 24, 2025.

The Mitigated FONSI/ROD states that there shall be no State Highway 4 access restrictions on the following:

1.) Memorial Day

a.) Memorial Day to Labor Day (the times of greatest visitor beach uses and enjoyment), no Weekend Access Restrictions from Friday at 6:00 a.m. through Sunday.

b.) Road access restrictions for any space flight activities would occur from Monday through Friday at 6:00 a.m. This predictive schedule ensures the public access to all open areas of the Laguna Atascosa National Wildlife Refuge (e.g., Boca Chica Beach) from Friday at 6:00 a.m. through Sunday from Memorial Day through Labor Day.

c.) When a space flight activity requires at least one road access restriction between Fridays at 6:00 a.m. and Sundays from Memorial Day to Labor Day, or on weekends from the day after Labor Day to the day before Memorial Day, it is considered a "Weekend Access Restriction."

d.) Weekend Access Restrictions may be requested up to five times per calendar year;

2.) Labor Day

a.) From the day after Labor Day to the day before Memorial Day (throughout the winter months), no Weekend Access Restrictions on Saturday or Sunday;

3.) July 4th;

4) Martin Luther King Jr. Day;

5) Presidents' Day;

6) Texas Independence Day;

7) Cesar Chavez Day;

8) Emancipation Day in Texas (also referred to as Juneteenth);

9) Veteran's Day;

10) Good Friday;

11) Easter;

12) Father's Day;

13) Mother's Day;

14) Thanksgiving Day, no access restrictions shall be permitted from Thanksgiving Day through the Sunday immediately following Thanksgiving;

15) Christmas Day; and

16) New Year's Day ("Holidays").

If any Holiday falls on a Monday or Friday, no Weekend Access Restrictions shall be permitted.

In accordance with the April 24, 2025 Mitigated FONSI/ROD, to reduce impacts to recreational users the City shall provide forty-eight (48) hours notice of any road and beach closure through its official website: www.starbase.texas.gov/.

A copy of the Final Tiered EA may also be obtained from the FAA's website: www.faa.gov/space/stakeholder_engagement/spacex_starship.

If a future FAA Mitigated FONSI/ROD modifies the dates of public beach access closures, increases the duration or total number of hours of closures in excess of the 2025 Mitigated FONSI/ROD, or changes the public notice process, express written GLO approval will be required prior to implementation by the City.

STATUTORY AUTHORITY

The new rule is adopted as authorized by Tex. Gov. Code §482.107(8) and Tex. Nat. Res. Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches and certification of local government beach access and dune protection plans as consistent with state law.

Tex. Nat. Res. Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121 are affected by the adopted new rule.

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 5, 2025.

TRD-202504438
Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
Effective date: December 25, 2025
Proposal publication date: October 24, 2025
For further information, please call: (512) 475-1859

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

CHAPTER 877. GRANT AWARDS

40 TAC §877.1, §877.2

The Texas Council for Developmental Disabilities (Council) adopts amendments to §877.1 concerning General Provisions and §877.2 concerning Application and Review Process. The rules were adopted without changes to the rules as proposed in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6468). The rules will not be republished.

The purpose of the amendments to §877.1 is to clarify language regarding that number of allowable grants from an organization and to §877.2 is to apply consistent language to all sections regarding the Council Request for Applications process.

No comments were received on the proposed amendments.

The amendments are authorized under the Texas Human Resources Code, §112.020, which provides authority for the Council to adopt rules as necessary to implement the Council's duties and responsibilities.

The amendments will affect Texas Human Resources Code, Title 7, Chapter 112, Developmental Disabilities.

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 1, 2025.

TRD-202504394
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Effective date: December 21, 2025
Proposal publication date: October 3, 2025
For further information, please call: (512) 948-2035