TEXAS REGISTER

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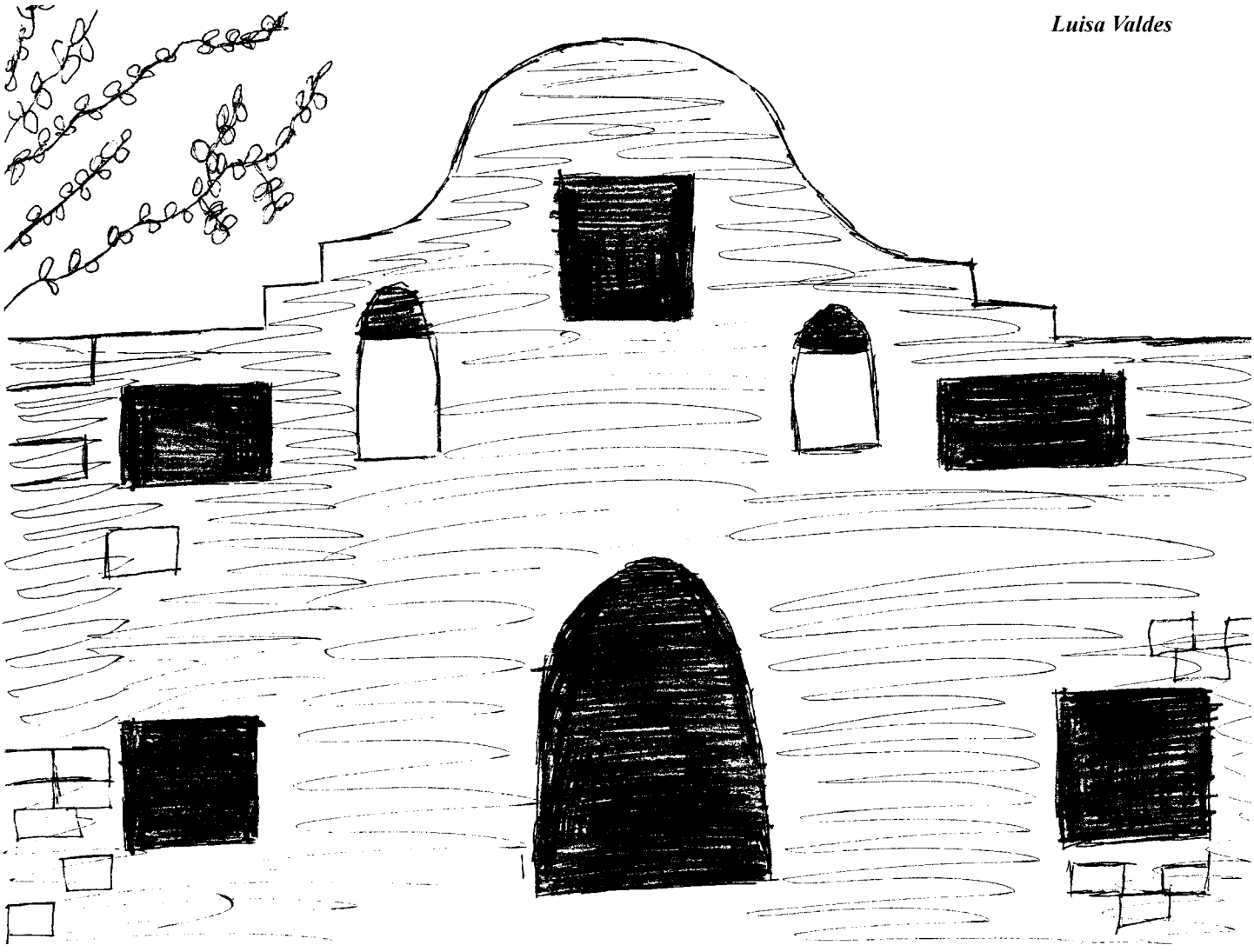

Luisa Valdes

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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In This Issue

WITHDRAWN RULES

ADOPTED RULES

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-1079-GA

Requestor:

The Honorable Tom Maness

Jefferson County Criminal District Attorney

Jefferson County Courthouse

1001 Pearl Street, 3rd Floor

Beaumont, Texas 77701-3545

Re: Authority of a federal senior status judge to conduct a marriage ceremony in Texas (RQ-1079-GA)

Briefs requested by October 8, 2012

RQ-1080-GA

Requestor:

The Honorable Donald W. Allee

Kendall County Attorney

201 E. San Antonio Street, Ste. 306

Boerne, Texas 78006-2050

Re: Whether a county may impose a sales tax on internet services provided to residents of a different county (RQ-1080-GA)

Briefs requested by October 10, 2012

RQ-1081-GA

Requestor:

The Honorable Ruth Jones McClendon

Chair, Committee on Rules and Resolutions

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a county may provide solid waste disposal service to a portion of the county that is within the extraterritorial jurisdiction of a municipality within that county (RQ-1081-GA)

Briefs requested by October 11, 2012

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201204824
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 12, 2012

♦ ♦ ♦

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. **[~~Square brackets and strikethrough~~]** indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY EXECUTIVE COMMITTEE

1 TAC §20.555

The Texas Ethics Commission (the commission) proposes an amendment to §20.555, relating to filing requirements for county executive committees.

Section 20.555 sets out campaign finance reporting requirements for a county executive committee (CEC) that accepts contributions or makes expenditures that exceed $25,000. The proposed amendment to §20.555 relates to the period during which a CEC's general-purpose committee may file a final report to terminate its filing obligations. The proposed amendment to §20.555 also includes non-substantive updates.

The CEC of a political party may designate a general-purpose committee as the principal political committee for that party in the county by filing a campaign treasurer appointment with the commission. A CEC of a political party is required to appoint a treasurer only if it accepts more than $25,000 in political contributions or makes more than $25,000 in political expenditures in a calendar year. A CEC may appoint a treasurer even if it is not required to do so. Once a CEC files an appointment of campaign treasurer, the treasurer is required to file campaign finance reports.

As required by law, the commission adopted a rule setting the reporting requirements for CECs. Under existing §20.555, a CEC that files an appointment of campaign treasurer may file its final report to terminate its filing obligations only in January. The proposed amendment to §20.555 would allow a CEC that has not exceeded one of the $25,000 thresholds to file a final report at any time.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

The amendment to §20.555 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission, and Election Code, Chapter 257, §257.007, which requires the commission to adopt rules to implement Election Code, Chapter 257.

The amendment affects Title 15 of the Election Code.

§20.555. County Executive Committee Accepting Contributions or Making Expenditures That Exceed $25,000.

(a) A county executive committee described by subsection (b) of this section is subject to the requirements of Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee), except where those rules conflict with this subchapter. In the case of conflict, this subchapter prevails over Subchapter F of this chapter.

(b) A county executive committee that accepts political contributions or that makes political expenditures that, in the aggregate, exceed $25,000 in a calendar year shall file:

(1) a campaign treasurer appointment with the commission no later than the 15th day after the date that amount is exceeded; and

(2) the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee). The first report filed must include all political contributions accepted and all political expenditures made before the county executive committee filed its campaign treasurer appointment.

(c) Contributions accepted from corporations and labor organizations under §253.104 of the Election Code [~~§24.19 of this title (relating to Contributions to a Political Party)~~] and reported under Subchapter H of this chapter (relating to Accepting and Reporting Contributions from Corporations and Labor Organizations) do not count against the $25,000 thresholds described in subsection (b) of this section.

(d) A county executive committee that filed a campaign treasurer appointment [~~and reports of contributions and expenditures~~] may file a [~~the report due by January 15 as its~~] final report, which[~~. Filing such a report~~] will notify the commission [~~the filing authority~~] that the county executive committee does not intend to file future reports [~~in the next calendar year~~] unless it exceeds one of the $25,000 thresholds. The final report may be filed:

(1) beginning on January 1 and by the January 15 filing deadline if the committee has exceeded one of the $25,000 thresholds in the previous calendar year; or

(2) at any time if the committee has not exceeded one of the $25,000 thresholds in the calendar year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 6, 2012.

TRD-201204644
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 463-5800

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter A, §1.1, concerning Definitions and Amenities for Housing Program Activities. The purpose of the repeal is to replace the section with a new section that encompasses all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs. The proposed new Chapter 10, concerning the Uniform Multifamily Rules is published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rule. It is not anticipated that the repeal will result in any new economic cost to any individual required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§1.1. Definitions and Amenities for Housing Program Activities.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204690
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

♦ ♦ ♦

10 TAC §1.5

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter A, §1.5, concerning Previous Participation Reviews. The purpose of this proposed new section is to provide notice to entities applying to participate in Department Programs that the Department will examine and evaluate their past performance.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 compliant affordable housing. There will be no change in the economic cost to any individuals required to comply with the new section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in the economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 21, 2012 to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, attn: Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.057 and §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other statutory provisions.

§1.5. Previous Participation Reviews.

(a) Purpose and Overview. The Texas Department of Housing and Community Affairs (the "Department") intends to administer programs with compliant partners. Development owners, sub-recipients, non-profit, and for-profit organizations who have previously received Department funding and failed to comply with state, federal, and/or program rules may be excluded from participation.

(b) Definitions. Capitalized terms are defined in Chapter 10, Subchapter A, §10.3 of this title (relating to Definitions). Any capitalized terms not specifically defined in §10.3 of this title, shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code (the "Code"), 24 CFR Part 92 (HOME Final Rule), and other Department rules as applicable.

(c) Applicability. A review of applicants' previous participation in all Department programs will be conducted prior to:

(1) awarding any Department funding, with the exception of individuals awarded funds through Household Commitment Contracts and Participating Lenders in the Department's Texas Homeownership Division Programs;

(2) approving an ownership transfer request of a Development monitored by the Department;

(3) executing a Carryover Allocation;

(4) modifying a Loan;

(5) modifying a contract that results in additional funding;

(6) closing a loan or executing a contract if more than one-hundred-twenty (120) days have elapsed from the date of Board approval;

(7) processing a request for a Qualified Contract; or

(8) approving an Entity as a Reservation System Participant.

(d) Scope. During the previous participation review, it will be determined if the requesting entity or any person controlling the requesting entity:

(1) owes the Department any fees;

(2) is sixty (60) days or more delinquent on a loan payment;

(3) has failed to provide proof of taxes paid or insurance as required by a Deed of Trust;

(4) has a past due single audit or single audit certification form;

(5) has any unresolved monitoring findings and/or disallowed expenditures identified by the Contract Monitoring or Community Affairs Monitoring sections of the Compliance Division;

(6) is on cost reimbursement with a Community Affairs program;

(7) is on the Department's or any federal agency's debarred, suspended or excluded list;

(8) controls a Development monitored by the Department that is in Material Noncompliance;

(9) controls a HOME Development with any uncorrected issue of noncompliance required by the HOME Final Rule (even if the property is not in Material Noncompliance);

(10) controls an NSP Development with any uncorrected issue of noncompliance required by FR-5447-N-01, October 19, 2010, as amended (even if the property is not in Material Noncompliance); or

(11) has a Department contract that is suspended at the time of the Previous Participation review.

(e) Issues identified during review. If any of the criteria listed in subsection (d) of this section are met, the entity requesting assistance will be notified of the issue and provided five (5) business days to submit all necessary corrective action to resolve the issue(s). The notification will be in writing and may be delivered by email. For rental Developments in Material Noncompliance, the effective score will be at the end of the five (5) business days. If the requesting entity does not resolve the issue(s), the request for assistance will be terminated. If the request for assistance is terminated, the Board has the ability to reinstate the request for assistance for consideration as provided in subsections (j) and (k) of this section.

(f) Timing. Previous participation reviews may be conducted prior to the Board meeting when funds will be awarded. If the previous participation review cannot be completed prior to the Board meeting when funds will be awarded, the award will be contingent upon the requesting entity successfully clearing the previous participation review. If the action is not subject to Board approval, the previous participation review will be conducted prior to the Department executing an agreement for assistance.

(g) Exceptions:

(1) the previous participation of an individual elected official affiliated with an application or request from a city, county, or local government will not be considered provided that they are not the contract executor;

(2) in general, the previous participation of a member of a nonprofit Board will not be considered unless they are the Executive Director, Chair of the Audit Committee, Board Chair, or any member of the Executive Committee. However, if it is determined that any member of the Board of the Nonprofit is on the Department's or federal agency's debarred list, the request for assistance will be terminated. If within the five (5) business day period referenced in subsection (e) of this section, the party with noncompliance resigns from the Board of the nonprofit, the noncompliance will not be taken into consideration;

(3) the Department will not take into consideration the score of a Development that the requesting entity has not controlled for at least three (3) years;

(4) the Department will not take into consideration the score of a Development for which the Affordability Period ended over three (3) years ago;

(5) the Department will not take into consideration the points associated with events of noncompliance during the period of time that the requesting entity did not control the Development;

(6) the Department will not take into consideration the score attributed to a Development for noncompliance with the CDBG Disaster Recovery Program or the FDIC's Affordable Housing Disposition Program;

(7) if a requesting entity no longer controls a Development but has controlled the Development at any time in the last three (3) years, the Department will determine the score for the noncompliance events with a date of noncompliance identified during the time the requesting entity controlled the Development. If the points associated with the noncompliance events identified during the requesting entity's control of the Development exceed the threshold for Material Noncompliance, the request for assistance will be terminated but may be subject to reinstatement by the Board as provided in subsections (j) and (k) of this section; or

(8) Work Out Developments. The fees, loan payments or events of noncompliance affiliated with a work out development may or may not be taken into consideration. Example: a Work-Out Development is more than sixty (60) days delinquent on loan payments. If the entity and Department staff are actively working to modify and restructure the loan and have entered into a written agreement to modify the loan this would enable the Development to come into compliance.

(h) Partial Previous Participation reviews:

(1) a full previous participation review will not be conducted at the time an owner requests IRS Form 8609. However, HTC Developments with any uncorrected issues of noncompliance or with pending notices of noncompliance will not be issued Form 8609s, Low Income Housing Credit Allocation Certifications, until all events of noncompliance are corrected;

(2) a full previous participation review will not be conducted prior to a Land Use Restriction Agreement (LURA) amendment. However, LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance (other than a provision being amended) or owes fees. No previous participation review will be conducted to amend a technical error to a LURA or other use agreement; and

(3) a full previous participation review will not be conducted prior to a contract extension. However, contract extension requests may be denied if there are uncorrected issues of noncompliance with the subject contract or if a response to a department notification is pending.

(i) Previous participation review for ownership transfers. Consistent with this section, the Department will perform a previous participation review prior to approving any transfer of ownership of a Development or any change in the Owner of a Development. The previous participation review shall be conducted with respect to the Developments controlled by the person coming into ownership, not with respect to the Development or Owner being transferred. If the property being transferred has any uncorrected issues of noncompliance or is in the corrective action period, the proposed incoming owner must provide a corrective action plan identifying dates of correction for any outstanding issues. The Department may deny the transfer of ownership based on financial capacity or lack of adequate relevant experience. The Department may require incoming owners to attend program training.

(j) Temporary Suspension of Previous Participation reviews. An entity whose request for assistance is terminated may request reinstatement. This process is separate and distinct from the waiver and appeals processes outlined in Chapter 10 of this title (relating to Uniform Multifamily Rules). The request must be in writing and must be submitted to the Department within five (5) business days of the date of the Department's letter notifying the requesting entity of the termination/denial. A timely filed request for reinstatement shall be placed on the agenda for the next Board meeting for which it can be properly posted.

(k) If an Application for assistance was terminated, the Board may consider reinstatement of the application only in the event that it determines, after consideration of the relevant, material facts and circumstances that:

(1) it is in the best interests of the Department and the state to proceed with the award;

(2) the award will not present undue increased program or financial risk to the Department or state;

(3) the applicant is not acting in bad faith; and

(4) the applicant has taken reasonable measures within its power to remedy the cause for the termination.

(l) Reinstatement of a terminated Application or request for assistance merely makes the Application eligible to be considered and does not, in and of itself, constitute approval.

(m) A request for assistance properly terminated because the requesting entity or any person controlling the requesting entity is on the Department's or a federal agency's debarred list cannot be reinstated for consideration. The request for assistance can be re-submitted, if the person or entity that is on the debarred list is no longer part of the requesting entity.

(n) The Board may provide a suspension of previous participation reviews for a single award or action or at their discretion for set period of time. In the event that the Board chooses to suspend previous participation reviews for a set period of time, the conditions existing at the time the reviews were suspended will not be taken into consideration. However, if there are any new events of noncompliance or any new issues described in this subsection (d) of this section, the matter will be brought back to the Board for consideration.

(o) An entity may not request a suspension of previous participation reviews prior to applying for funding or requesting assistance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204686
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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10 TAC §1.9, §1.25

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter A, §1.9, concerning Qualified Contract Policy, and §1.25, concerning Right of First Refusal at Fair Market Value. The purpose of these repeals is to move the sections under a proposed new Chapter 10, concerning Uniform Multifamily Rules, and amend them to combine all right of first refusal information in the new right of first refusal rule and to include only information on qualified contracts in the new qualified contract rule. In addition, all rules pertaining to post award and asset management requirements are being repealed from various other sections under this title by separate action. The proposed new 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements, is published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeals are in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine has also determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of the repealed sections and proposed new Chapter 10 will be a more consistent and uniform approach to the activities that occur after an award of funds is made. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rule. It is not anticipated that the repeal and replacement will have a change in the economic cost to any individual required to comply with the repealed or recreated sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in economic effect on small or micro-businesses as a result of the repeal.

LOCAL EMPLOYMENT IMPACT STATEMENT. The Department has determined that there will be no effect on local economies as a result of the repeal.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia, Director of Asset Management; or by FAX to (512) 475-7500. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article or statute.

§1.9. Qualified Contract Policy.

§1.25. Right of First Refusal at Fair Market Value.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204684
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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10 TAC §1.19

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, §1.19, concerning Deobligated Funds. The purpose of the proposed repeal is to establish a simplified process for the use of deobligated or other available funds the program governs. The proposed new 10 TAC §1.19 is published concurrently with this proposed repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal is to increase program flexibility in expending funds and assisting households and communities. There will be no economic cost to any individuals required to comply with the repealed section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the proposed repeal. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to Brooke Boston at the following address: brooke.boston@tdhca.state.tx.us, or by fax to (512) 475-1162. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repealed section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repealed rule affects no other code, article, or statute.

§1.19. Deobligated Funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204660
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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10 TAC §1.19

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, §1.19, concerning Reobligation of Deobligated Funds and Other Related Sources of Funds. The purpose of the proposed new section is to establish a new rule to set forth a clear and simplified policy for the use of deobligated or other available funds the program governs. The proposed repeal of 10 TAC §1.19 is published concurrently with this proposed new section in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section will be 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section will be in effect, the public benefit anticipated as a result of the new section is to increase program flexibility in expending funds and assisting households and communities. There will be no economic cost to any individuals required to comply with the proposed new section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the new section. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to Brooke Boston at the following address: brooke.boston@tdhca.state.tx.us, or by fax to (512) 475-1162. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute.

§1.19. Reobligation of Deobligated Funds and Other Related Sources of Funds.

(a) Purpose. The Department strives to use public funds in a timely compliant manner. From time-to-time, it becomes necessary to make changes to previously awarded contracts for funds, or programmed activities in order to expedite the delivery of funds, meet state or federal guidelines or statutes, or meet unexpected needs like disaster relief or leveraging of additional funds. The funds made available from these actions are generally considered deobligated funds, however each Department program's rules and/or contracts may provide for greater specificity regarding what events may authorize or permit a deobligation of funds. This section identifies how the Department will reprogram and reobligate deobligated or otherwise unexpended funds or program income. The funds covered by this section are previously awarded funds under a program administered by the Department, funds that become available to the Department through program income or loan repayments (except those loan repayments required to be included as appropriations under the General Appropriations Act, Rider 9), and funds received by other means not part of a new funding allocation.

(b) Deobligated Funds and Program Income.

(1) Deobligated funds are those funds voluntarily or involuntarily released from the cancellation of a contract or award by the Department involving some or all of a contractual financial obligation. The Department has specified those events which may authorize or permit a release or cancellation of its contractual commitment of funds to any administrator or contractor resulting in deobligated funds pursuant to the federal guidance, program rules and contractual documents executed between the Department and an administrator or contractor. Deobligated funds also include those funds awarded under board authority or delegated authority but declined by an administrator or contractor, and those funds which an administrator or contractor fails to fully expend and voluntarily releases. The Board may determine and authorize other circumstances which warrant deobligation.

(2) Deobligated funds do not include funds reserved in a reservation system under a notice of funding and subsequently cancelled and returned to the reservation system under that notice of funding.

(3) Program Income is the return of funds to the department by the administrator or contractor after the funds were used for their intended purpose or any other funds generated from the use of program funds or as otherwise defined in specific program rules.

(c) Reporting. The Board will be provided with periodic reports on deobligation and program income activity and balances for programs that are impacted by this section.

(d) Timely Reobligation of Funds. The Department will reprogram and/or reallocate funds under this section in a timely fashion and will as a goal strive to ensure that the unprogrammed balance for any program which has Deobligated funds does not exceed 15 percent of the most current annual allocation for more than three (3) consecutive months will initiate efforts to reprogram or reobligate funds.

(e) Reobligation of Funds. This rule directs staff on the use of funds that are either characterized as deobligated funds under this rule or program income funds. To the extent that federal requirements further limit the eligible use of Deobligated funds or program income, those limitations must also be satisfied.

(1) Reserve for Disasters. The Department shall not recommend to reprogram or reassign Deobligated Funds from the HOME Program for purposes other than disaster relief unless the remaining Deobligated Fund balance for that program after reprogramming of funds is an amount equivalent to or greater than 5 percent of the most current annual allocation of such funds, as established once per year.

(2) Authority for Reobligation. It is the rule of the Department that funds available for reobligation can be used, without further Board approval, contingent upon subsequent report to the Board, in these instances:

(A) for disaster relief as purposed in paragraph (1) of this subsection. Disaster relief includes but is not limited to disaster declarations or documented extenuating circumstances such as imminent threat to health and safety; and

(B) when not reserved for disaster relief as specified in paragraph (1) of this subsection, for any activity or program previously approved by the Board for that program for the year the funds become available. For example, if $400,000 of Housing Trust Funds become available through loan repayments and deobligations in 2013, those funds can be reprogrammed into any activity referenced in the 2012 - 2013 Housing Trust Fund plan approved by the Board; likewise if $1 million becomes available in 2013 of HOME funds in excess of the disaster set-aside, those funds can be reprogrammed into activities authorized by the Board and the U.S. Department of Housing and Urban Development (HUD) in the One Year Action Plan. The use of these funds within a previously authorized activity can include, but is not limited to:

(i) use for successful appeals;

(ii) funding of applications or awards for existing Department waiting lists or reservation systems;

(iii) contract increases authorized in accordance with the program's contract amendment policies;

(iv) re-release or amended release of Notices of Funding Availability;

(v) fully funding an application that was previously only partially funded; and

(vi) funding other critical agency goals or initiatives.

(3) In the instance of funds available for reobligation being used for any purpose other than those listed in paragraph (2) of this subsection, the Board will be required to provide specific authorization.

(f) After adoption in final form and publication in the *Texas Register,* this section shall supersede any other rule or policy governing the use of Deobligated Funds for the Department regardless of where published, unless any portion of this section conflicts with statutory language or federal rules, in which case those shall be controlling.

(g) Any portion of this rule may be waived for good cause by the Governing Board of the Department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204661
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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SUBCHAPTER B. UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES

10 TAC §§1.31 - 1.37

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter B, §§1.31 - 1.37, concerning Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines. The purpose of the repeal is to move and revise the current rules in a new subchapter of a proposed consolidated multifamily chapter. In addition, the rules pertaining to Reserve for Replacement Requirements are moved to 10 TAC Chapter 10, Subchapter E, concerning to Post Award and Asset Management Requirements. The proposed new Chapter 10 is published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repealed sections are in effect, the public benefit anticipated as a result of the repealed sections will be the adoption of new rules to enhance the state's ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuals required to comply with the repealed sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, attn: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. on OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affect no other code, article or statute.

§1.31. General Provisions.

§1.32. Underwriting Rules and Guidelines.

§1.33. Market Analysis Rules and Guidelines.

§1.34. Appraisal Rules and Guidelines.

§1.35. Environmental Site Assessment Rules and Guidelines.

§1.36. Property Condition Assessment Guidelines.

§1.37. Reserve for Replacement Rules and Guidelines.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204682
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER A. GENERAL INFORMATION AND DEFINITIONS

10 TAC §§10.1 - 10.4

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter A, §§10.1 - 10.4, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to explain the purpose of the uniform multifamily rules, define terms, and provide guidance on program dates.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There will not be any economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§10.1. Purpose.

The rules in this chapter apply to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establish the general requirements associated in making such awards. Applicants pursuing such assistance from the Department 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 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This rule does not apply to any project-based rental or 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 rule remain subject to this rule.

§10.2. General.

(a) These rules may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally, Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

(1) deadlines for filing Applications and other documents;

(2) any additional submission requirements that may not be explicitly provided for in this chapter;

(3) any applicable Application set-asides and requirements related thereto;

(4) award limits per Application or Applicant;

(5) any federal or state laws or regulations that may supersede the requirements of this chapter; and

(6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, 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 multifamily rules or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) 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 rule.

§10.3. Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable

rental property administered by Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code, Chapter 2306, Internal Revenue Code (the "Code"), §42, the HOME Final Rule, and other Department rules as applicable.

(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 (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by the Department staff that is required to clarify or correct one or more inconsistencies in an 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. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(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 may be terminated upon foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP 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 the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent if the Development is proposed to be placed in service prior to December 31, 2013 or such timing as deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress;

(ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Application Acceptance Period--That period of time during which Applications may be submitted to the Department.

(7) Bank Trustee--A bank authorized to do business in this state, with the power to act as trustee.

(8) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 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 2 feet deep and 3 feet wide and high enough to accommodate 5 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.

(9) 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.

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

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

(12) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

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

(14) Certificate of Reservation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(15) 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).

(16) 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.

(17) Colonia--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Texas Water Code, §17.921; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department.

(18) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(19) Commitment of Funds--Occurs when the Development is approved by the Department and a Commitment is executed between the Department and a Development Owner or Applicant. For the HOME Program, this occurs when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). This may also be referred to as an Obligation.

(20) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, overall condition, location, age, unit amenities, utility structure, and common amenities.

(21) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

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

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

(24) Control (including the terms "Controlling," "Controlled by," and/or "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. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Multiple Persons may be deemed to have Control simultaneously.

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

(26) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(27) 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 debt service required to be paid during the same period.

(28) 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.

(29) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

(30) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving 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 and receiving less than 10 percent of the total Developer fee.

(31) Development Site--The area, or if scattered site, areas on which the Development is proposed to be located.

(32) 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 project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(33) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, or post award documents as required by the program.

(34) 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 and/or Commitment with the Department. (§2306.6702)

(35) Development Team--All Persons or Affiliates thereof that play a role in the Development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(36) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(37) Economically Distressed Area--An area that has been identified by the Water Development Board as meeting the criteria for an economically distressed area under Texas Water Code, §17.92(1).

(38) Effective Gross Income (EGI)--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.

(39) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

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

(41) 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 §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(42) Executive Award and Review Advisory Committee (also referred to as the "Committee")--The Department committee created under Texas Government Code, §2306.1112.

(43) Existing Residential Development--Any Development Site which contains existing residential units at the time the Application is submitted to the Department.

(44) 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 Land Use Restriction Agreement; or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(45) 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.

(46) General Contractor (including "Contractor")--One who contracts for 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. Prime subcontractors will also be treated as a General Contractor if any of the criteria in subparagraphs (A) and (B) of this paragraph are true (in which case, such subcontractor fees will be treated as fees to the General Contractor):

(A) more than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor ("prime subcontractors"); or

(B) more than 75 percent of the contract sum in the construction contract is subcontracted to three or less subcontractors, material suppliers, and equipment lessors ("prime subcontractors"); or

(C) the General Contractor has less than seven (7) subcontractors.

(47) General Partner--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for or Control of the limited liability company.

(48) 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.

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

(50) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(51) Gross Demand--The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(52) 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.

(53) 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.

(54) HTC Development--Sometimes referred to as "HTC Property." A Development using Housing Tax Credits allocated by the Department.

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

(56) Historically Underutilized Businesses (HUB)--A business that is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51 percent of the business is owned, operated, and actively controlled and managed by a minority or woman and that meets the requirements in Texas Government Code, Chapter 2161.

(57) 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.

(58) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter.

(59) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period and which the Board allocates to the Development.

(60) Housing Quality Standards (HQS)--The property condition standards described in 24 CFR §982.401.

(61) 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.

(62) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(63) Land Use Restriction Agreement (LURA)--An agreement 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)

(64) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department.

(65) Managing General Partner--A general partner of a partnership 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 be used for a 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.

(66) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(67) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(68) Market Rent--The rent for a particular Comparable Unit determined after adjustments are made to rents charged by owners of Comparable Units on properties without rent and income restrictions.

(69) Material Deficiency--Any individual Application deficiency or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application.

(70) Material Noncompliance--Defined as:

(A) a Housing Tax Credit (HTC) Development located within the State of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds (30 points) in accordance with the Material Noncompliance provisions, methodology, and point system in Subchapter F of this chapter (relating to Compliance Monitoring);

(B) non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds (30 points). Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds (50 points). Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds (80 points); and

(C) for all programs, a Development will be in Material Noncompliance if the noncompliance is stated in Subchapter F of this chapter to be in Material Noncompliance.

(71) 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.

(72) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

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

(74) Net Rentable Area (NRA)--The unit space that is available exclusively to the tenant and is typically 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. 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.

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

(76) 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.

(77) 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.

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

(79) 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 twelve (12) calendar months.

(80) 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.

(81) 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.

(82) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(83) 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.

(84) Primary Market (PMA)--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(85) Principal--Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include 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 10 percent or more interest in the corporation and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent 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.

(86) 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.

(87) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(88) Property Condition Assessment (PCA)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA 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 PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(89) 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.

(90) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

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

(92) Qualified Elderly Development--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of "housing for older persons" under the federal Fair Housing Act.

(93) Qualified Nonprofit Organization--An organization that meets the requirements of Texas Government Code §2306.6706 and §2306.6729, and §42(h)(5) of the Code and is seeking Competitive Housing Tax Credits.

(94) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(95) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(96) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of units or less on the Development Site.

(97) 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 a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and 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.

(98) Related Party--Includes certain individuals or entities as defined in Texas Government Code, §2306.6702. Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(99) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission) that may not have been presented to the Board for decision;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(100) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(101) Right of First Refusal--An Agreement to provide a right to purchase the Property to a nonprofit or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(102) Rural Area--An area that is located:

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

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for funding by the Texas Rural Development Office of the USDA, other than an area that is located in a municipality with a population of more than 50,000.

(103) Secondary Market (SMA)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(104) 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.

(105) Site Control--Ownership or a current contract or series of contracts that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to require conveyance to the Applicant.

(106) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, fencing, pools and landscaping.

(107) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code and Treasury Regulation 1.42-14.

(108) 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.

(109) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt. The services offered generally address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(110) Target Population--The designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(111) Tax-Exempt Bond Development--A Development requesting or having been awarded 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 §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(112) 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.

(113) 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 Subchapter F of this title, and published on the Department's web site (www.tdhca.state.tx.us).

(114) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor; or

(C) anyone receiving any portion of the administration, contractor or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.

(115) 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.

(116) Transitional Housing--A Supportive Housing development 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 governmental entity or a qualified non-profit 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.

(117) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(118) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(119) 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.

(120) Unit of General Local Government--A city, town, county, village, tribal reservation or other general purpose political subdivision of the State. For purposes of §11.9 of this title (relating to Competitive HTC Selection Criteria) Unit of General Local Government shall mean a city or county.

(121) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than one-hundred twenty (120) square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.

(122) 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 percent occupancy level for at least twelve (12) consecutive months 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 a development stabilized in the Market Study.

(123) Urban Area--The area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an area described by paragraph (102)(B) of this subsection or eligible for funding as described by paragraph (102)(C) of this subsection.

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

(125) 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.

(126) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation §1.42-10 and §10.607 of this chapter (relating to Utility Allowances).

(127) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Re-use and Target Population fail to fully account for 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 these specific terms and their usage within the applicable rules. 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's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such 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. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A determination cannot be challenged by any other party.

§10.4. Program Dates.

This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

(1) Full Application Neighborhood Organization Request Date. The request must be sent no later than fourteen (14) calendar days prior to the submission of Parts 5 and 6 of the Application for Tax Exempt Bond Developments or at Application for other programs.

(2) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. Such deadline will generally be defined in the applicable NOFA.

(3) Notice to Submit Lottery Application Delivery Date. No later than December 14, 2012, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(4) Applications Associated with Lottery Delivery Date. No later than December 28, 2012, Applicants that participated in the BRB Lottery must submit the complete tax credit Application to the Department.

(5) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(6) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable). For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(7) Market Analysis and Civil Engineer Feasibility Study Delivery Date. For Direct Loan Applications, the Market Analysis must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Market Analysis must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204698
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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SUBCHAPTER B. SITE AND DEVELOPMENT RESTRICTIONS AND REQUIREMENTS

10 TAC §10.101

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter B, §10.101, concerning Site and Development Restrictions and Requirements. The purpose of the proposed new section is to provide guidance on multifamily development design and site selection for developments that receive funding or assistance from the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 thoughtful site selection and development design of affordable housing. There will not be any economic cost to any individuals required to comply with the new section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, ATTN: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new section affects Texas Government Code, Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site 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, subject to more stringent local requirements. 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 one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the Unit of General 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.

(2) Mandatory Site Characteristics. Developments Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) services. Only one service of each type listed in subparagraphs (A) - (R) of this paragraph will count towards the number of services required. A map must be included identifying the Development Site and the location of the services by name. All services must exist or, if under construction, must be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:

(A) full service grocery store;

(B) pharmacy;

(C) convenience store/mini-market;

(D) department or retail merchandise store;

(E) bank/credit union;

(F) restaurant (including fast food);

(G) indoor public recreation facilities, such as civic centers, community centers, and libraries;

(H) outdoor public recreation facilities such as parks, golf courses, and swimming pools;

(I) medical offices (physician, dentistry, optometry) or hospital/medical clinic;

(J) public schools (only eligible for Developments that are not Qualified Elderly Developments);

(K) senior center;

(L) religious institutions;

(M) day care services (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);

(N) post office;

(O) city hall;

(P) county courthouse;

(Q) fire station; or

(R) police station.

(3) Undesirable Site Features. Development Sites with the undesirable features identified in subparagraphs (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA are exempt. For purposes of this requirement, the term 'adjacent' means sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph, staff may request a determination from the Board as to whether such feature is unacceptable:

(A) Developments located adjacent to or within 300 feet of junkyards;

(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Developments in which the buildings are located within the easement of any overhead high voltage transmission line or inside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles;

(F) Developments in which the buildings are located within the accident zones or clear zones for commercial or military airports; or

(G) Developments located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002.

(4) Undesirable Area Features. If the Development Site is located between 301 feet - 1,000 feet of any of the undesirable area features in subparagraphs (A) - (D) of this paragraph then the Applicant must disclose the presence of such feature to the Department. The standard to be applied in making a determination under this paragraph is whether the undesirable area feature is of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria). For a Housing Tax Credit Application the Applicant is required to disclose the presence of such feature at the time the pre-application (as applicable) is submitted to the Department so as to expedite the review of such information. For all other types of Applications, and for those Housing Tax Credit Applicants who did not submit a pre-application, the Applicant is required to disclose the presence of such feature at the time the Application is submitted to the Department. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application. Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the Board pursuant to §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of site ineligibility and termination of the Application cannot be appealed. The Board's decision cannot be appealed.

(A) A history of significant or recurring flooding:

(B) Significant presence of blighted structures;

(C) Fire hazards that could impact the fire insurance premiums for the proposed Development; or

(D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports.

(5) Unacceptable sites include, without limitation, those containing an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated. If the Department makes such a determination, the Applicant will be allowed an opportunity to address any identified concerns.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code).

(ii) Any Development with any building(s) with four or more stories that does not include an elevator;

(iii) A Housing Tax Credit Development that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(v) A Development seeking Housing Tax Credits that is reasonably believed by staff to clearly not meet the general public use requirement under Treasury Regulation §1.42-9 unless the Applicant has obtained a private letter ruling that the proposed Development is permitted; or

(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 the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Qualified Elderly Developments.

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

(ii) Any Qualified 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, and/or security officer. These employee Units must be specifically designated as such; or

(iii) Any Qualified Elderly Development (including Qualified Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size will be 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas will be limited to 80 Units. Other Developments do not have a limitation as to the 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, at a minimum, and will involve at least $25,000 per Unit in Building Costs and Site Work. If financed with USDA the minimum is $19,000 and for Tax-Exempt Bond Developments, less than twenty (20) years old, the minimum is $15,000 per Unit. These levels must be maintained through the issuance of IRS Forms 8609.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must provide all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the

amenities in subparagraphs (C) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. These amenities must be at no charge to the tenants.

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Laundry Connections;

(C) Blinds or window coverings for all windows;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Exhaust/vent fans (vented to the outside) in bathrooms;

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which may include compact fluorescent bulbs;

(K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);

(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units in Supportive Housing Developments only); and

(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 (1.5) spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly.

(5) Common Amenities.

(A) All Developments must provide 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:

(i) Developments with 16 Units must qualify for one (1) point;

(ii) Developments with 17 to 40 Units must qualify for four (4) points;

(iii) Developments with 41 to 76 Units must qualify for seven (7) points;

(iv) Developments with 77 to 99 Units must qualify for ten (10) points;

(v) Developments with 100 to 149 Units must qualify for fourteen (14) points;

(vi) Developments with 150 to 199 Units must qualify for eighteen (18) points; or

(vii) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period. If fees 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 accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. 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.

(C) The common amenities and respective point values are set out in clauses (i) - (xxix) of this subparagraph. Some amenities may be restricted to a specific Target Population. An Application 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) Full perimeter fencing (2 points);

(ii) Controlled gate access (2 points);

(iii) Gazebo w/sitting area (1 point);

(iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(v) Community laundry room with at least one washer and dryer for each 25 Units (3 points);

(vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);

(vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);

(viii) Swimming pool (3 points);

(ix) Splash pad/water feature play area (1 point);

(x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);

(xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 30 Units loaded with basic programs, 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);

(xii) Furnished Community room (2 points);

(xiii) Library with an accessible sitting area (separate from the community room) (1 point);

(xiv) Enclosed community sun porch or covered community porch/patio (1 point);

(xv) Service coordinator office in addition to leasing offices (1 point);

(xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);

(xvii) Health Screening Room (1 point);

(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(xix) Horseshoe pit, putting green or shuffleboard court (1 point);

(xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot; (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or

(xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;

(xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);

(xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);

(xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);

(xxvii) Common area Wi-Fi (1 point); or

(xxviii) Twenty-four hour monitored camera/security system in each building (3 points);

(xxix) Secured bicycle parking (1 point);

(xxx) Green Building Certifications. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED) and National Green Building Standard (NAHB) Green. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the nine (9) items listed under items (-a-) - (-i-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this item;

(-a-) at least 20 percent of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved greywater collection system. This can include rainwater harvested from gutters and downspouts to a storage tank or cistern where it can be treated or filtered for potable uses; untreated rainwater may be used for non-potable uses;

(-b-) native trees and plants installed that are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;

(-c-) install water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units are located so they are fully shaded 75 percent of the time during summer months (i.e. May through August);

(-e-) install Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;

(-i-) recycling service provided throughout the compliance period.

(II) Enterprise Green Communities (4 points). The Development must incorporate all mandatory and optional items 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.

(III) LEED (4 points). 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).

(IV) National Green Building Standard (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(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:

(i) five hundred (500) square feet for an Efficiency Unit;

(ii) six hundred (600) 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 Amenities. Housing Tax Credit Applications may select amenities for scoring 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 (7 points). Applications not funded with Housing Tax Credits (e.g. HOME Program) must include enough amenities to meet a minimum of (4 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 Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments

will start with a base score of (3 points) and Supportive Housing Developments will start with a base score of (5 points):

(i) covered entries (0.5 point);

(ii) nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) microwave ovens (0.5 point);

(iv) self-cleaning or continuous cleaning ovens (0.5 point);

(v) refrigerator with icemaker (0.5 point);

(vi) 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);

(vii) laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (1.5 points);

(viii) thirty (30) year shingle or metal roofing (0.5 point);

(ix) covered patios or covered balconies (0.5 point);

(x) covered parking (including garages) of at least one covered space per Unit (1 point);

(xi) 100 percent masonry on exterior (1.5 points) (Applicants may not select this item if clause (xii) of this subparagraph is selected);

(xii) greater than 75 percent masonry on exterior (0.5 point) (Applicants may not select this item if clause (xi) of this subparagraph is selected);

(xiii) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);

(xiv) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);

(xv) High Speed Internet service to all Units (1 point).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of (8 points); Applications not funded with Housing Tax Credits (e.g. HOME Program or other Direct Loans) must include enough amenities to meet a minimum of (4 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 §10.614 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item:

(A) joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc. (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) food pantry/common household items accessible to residents at least on a monthly basis (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom course is not acceptable (1 point);

(H) annual health fair (1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized team sports programs or youth programs offered by the Development (1 point);

(K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);

(L) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (2 points);

(N) twice monthly arts, crafts and other recreational activities such as Book Clubs and creative writing classes (2 points);

(O) annual income tax preparation (offered by an income tax prep service) (1 point);

(P) monthly transportation to community/social events such as lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc. (1 point);

(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);

(R) specific and pre-approved caseworker services for seniors, Persons with Disabilities or Supportive Housing (1 point);

(S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc. and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points); and

(T) 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).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements reflected in the Certification of Development Owner as set forth in §10.208 of this chapter (relating to Forms and Templates) and any other applicable state or federal rules and requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204699
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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

10 TAC §§10.201 - 10.208

(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 figure in 10 TAC §10.208 is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 21, 2012, issue of the Texas Register.)

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter C, §§10.201 - 10.208, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules. The purpose of the proposed new sections is to provide guidance for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be qualified applicants, thorough applications, and a consistent approach to making awards of funding or assistance for affordable multifamily developments. There is the potential for some new direct cost impact as a result of the proposed adoption of the new sections due to a third party report, specifically a civil engineer feasibility study which has previously been performed at the discretion of the developer at a later stage in the process, but the difference in impact at this stage could be considered minimal. It is difficult to forecast the amount of change in economic cost to any individual required to comply with the proposed new subchapter because each development proposed is unique. However, the report is estimated to cost the applicant starting at $2,000.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses, other than the movement of the civil engineer feasibility study to a different stage of the process, and the difference in impact at this stage of the process could be considered minimal. There is no anticipated difference in cost of compliance between small and large businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Texas Government Code, Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§10.201. Procedural Requirements for Application Submission.

The purpose of this section is to identify 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 evaluation was performed by the Department. Competitive Housing Tax Credit (HTC) Applications may be subject to fees for withdrawn Applications. Applicants are subject to the schedule of fees as set forth in §10.901 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 and receipted and meet all of the Department's criteria with all the required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed to have not made an Application.

(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 an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed and that digital media is fully readable by the Department.

(C) The Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete Application to the Department. Each copy should be in a single file and individually book-

marked in the order as required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g. Third Party Reports) outside of the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant sees fit.

(D) Applications must include materials addressing each and 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 may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications that receive a Certificate of Reservation from the Texas Bond Review Board (TBRB) on or before November 15 of the prior program year will be required to satisfy the requirements of the prior year QAP and Uniform Multifamily Rules. Applications that receive a Certificate a Reservation from the TBRB on or after January 2 of the current program year will be required to satisfy the requirements of the current program year QAP and Uniform Multifamily Rules.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application fee described §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receive advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. Those Applications designated as Priority 3 must submit Parts 1 - 4 within fourteen (14) calendar days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. The remaining parts of the Application and any other outstanding documentation, regardless of TBRB Priority designation, must be submitted to the Department at least seventy-five (75) calendar days prior to the Board meeting at which the decision to issue a Determination Notice would be made.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but do not close the bonds prior to the Certificate of Reservation expiration date, and subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) and (B) of this paragraph:

(A) the new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The Application must remain unchanged which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications. (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration; or

(B) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if there is public opposition, the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued.

(4) 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 or cancellation. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. Applications believed likely to be competitive are sometimes referred to as Priority Applications. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority 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. Applications deemed to be Priority Applications may change from time to time. The Department 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 §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation 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. Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. 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 Texas Bond Review Board (TBRB); and

(ii) For all other Developments, the date the Application is received by the Department; and

(iii) Notwithstanding the foregoing, after July 31 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. Review priority for 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. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification, correction or non-material missing information to resolve inconsistencies in the original Application. Staff will request the deficient information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, or if an e-mail address is not provided in the Application, by facsimile to the Applicant and one other contact party if identified by the Applicant in the Application. 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. Issues initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, based upon a review of the response provided by the Applicant. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. However, final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) Administrative Deficiencies for Competitive HTC and Rural Rescue Applications. Unless an extension has been timely requested and granted; and if Administrative Deficiencies are not 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 (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative 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. 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) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not 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 a late fee of $500 for each business day the deficiency remains unresolved will be assessed and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority 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 priority review may only cover the specific issue and not the entire Application. A limited priority 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.

§10.202. 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. If such ineligibility is determined by staff to exist, then prior to termination the Department will send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed below include those requirements in §42 of the Internal Revenue Code, Texas Government 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 or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (M) of this paragraph apply to the Applicant. If any of the criteria apply to any member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; (§2306.6721(c)(2))

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, mis-

appropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application deadline;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; 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 breached a contract with a public agency and failed to cure that 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 identified by the Department as being in Material Noncompliance with or has repeatedly violated the LURA or if such Material Noncompliance or repeated violation is identified during the Application review or the program rules in effect for such property as further described in Subchapter F of this chapter (relating to Compliance Monitoring) and remains unresolved; (§2306.6721(c)(3))

(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;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an Application is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has previous Contracts or Commitments that have been partially or fully deobligated during the twelve (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 Party is on notice that such deobligation results in ineligibility under these rules;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of these rules and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title; or

(L) 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, voluntarily or involuntarily, that has terminated within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. 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 terminated based upon factors in the disclosure. If, not later than 30 days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the Executive Director makes an initial determination that the person or persons should not be involved in the Application, that initial determination shall be brought to the Board for a hearing and final determination. If the Executive Director has not made and issued such an initial determination on or before the day thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) - (v) of this subsection shall be considered:

(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 propose 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.

(M) has worked or works to create opposition to any Application, has formed a Neighborhood Organization (excluding any allowable technical assistance), has given money or a gift to cause the Neighborhood Organization to take its position as it relates to §11.9(d)(1) of this title (relating to Competitive HTC Selection Criteria).

(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 Texas Government Code, §2306.1113 exists relating to Ex Parte Communication. (§2306.1113) An ex parte communication occurs, when an Applicant or Person representing an Applicant initiates substantive 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 Texas Government 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. 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. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(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 member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; (§2306.6703(a)(1)); or

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in Texas Government Code, §2306.6703(a)(2) are met.

§10.203. 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 must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted and for all other Applications no older than three (3) months prior to the date the Application is submitted. If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(1) Neighborhood Organization Requests.

(A) In accordance with the requirements of this subparagraph, the Applicant must request from local elected officials a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site. No later than the Full Application Neighborhood Organization Request Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) or §10.4 of this chapter (relating to Program Dates), as applicable, the Applicant must email, fax, or mail with return receipt requested a completed Neighborhood Organization Request letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or its ETJ, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph whose jurisdiction is over or whose boundaries include the Development Site. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required 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 encouraged 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 officials in office at the time the Application is submitted.

(A) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

(B) Superintendent of the school district;

(C) Presiding officer of the board of trustees of the school district;

(D) Mayor of the municipality;

(E) All elected members of the Governing Body of the municipality;

(F) Presiding officer of the Governing Body of the county;

(G) All elected members of the Governing Body of the county; and

(H) State Senator and State Representative.

(3) Contents of Notification. The notification must include, at a minimum, all information described in subparagraphs (A) - (F) of this paragraph:

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

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

(C) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

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

(E) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and

(F) the total number of Units proposed and total number of low-income Units proposed.

§10.204. Required Documentation for Application Submission.

The purpose of this section is to identify the documentation that is required at the time of Application submission unless specifically indi-

cated or otherwise required by Department rule. If any of the documentation indicated below is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. 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. The Application may include documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, included in §10.208 of this chapter (relating to Forms and Templates), 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. Applicants are encouraged to read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(2) Certification of Principal. This form, included in §10.208 of this chapter, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department.

(3) Architect Certification Form. This form, included in §10.208 of this chapter, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Designation as Rural or Urban. 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 Texas Government 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. Notwithstanding the foregoing, an Applicant proposing a Development in a place listed as urban by the Department may be designated as located in a Rural Area if the municipality has less than 50,000 persons, as reflected in Site Demographics and Characteristics Report, and a letter or other documentation from USDA is submitted in the Application that indicates the Site is located in an area eligible for funding from USDA in accordance with Texas Government Code, §2306.004(28-a)(C). For any Development not located within the boundaries of a municipality, the applicable designation is that of the closest municipality or place.

(5) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development of 150 units or more. Acceptable documentation to meet this requirement shall include:

(i) an experience certificate issued by the Department in the past two (2) years; or

(ii) any of the items in subclauses (I) - (IX) of this clause:

(I) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(II) AIA Document G704--Certificate of Substantial Completion;

(III) AIA Document G702--Application and Certificate for Payment;

(IV) Certificate of Occupancy;

(V) IRS Form 8609, (only one per development is required);

(VI) HUD Form 9822;

(VII) Development agreements;

(VIII) Partnership agreements; or

(IX) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience.

(B) For purposes of this requirement any individual attempting to use the experience of another individual must demonstrate they have or had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(i) The names on the forms and agreements in subparagraph (A)(ii) of this paragraph must tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application.

(ii) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing that has been in material non-compliance under the Department's rules or for affordable housing in another state, has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(iii) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(iv) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(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. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) deed(s) of trust on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been executed by the lender;

(II) be addressed to the Development Owner;

(III) include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include anticipated interest rate, including the mechanism for determining the interest rate;

(V) include any required Guarantors; and

(VI) include and address any other 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.

(B) Gap Financing. Any anticipated federal, state or local gap financing, whether soft or hard debt, must be identified in the Application. Acceptable documentation shall include 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.

(C) Owner Contributions. If the Development will be financed through more than 5 percent of Development Owner contributions, a letter from a Third Party CPA must be submitted that verifies the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed. Additionally, a letter from the Development Owner's bank or banks must be submitted that confirms sufficient funds are available to the Development Owner.

(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) anticipated developer fees paid during construction and anticipated deferred developer fees; and

(v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. The information provided must be consistent with all other documentation in the Application.

(7) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, 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 §10.607 of this chapter (relating to Utility Allowances).

(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 be identified. "Miscellaneous" or other non-descript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules.

(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.

(i) Applicants must also provide a detailed cost breakdown of projected Site Work costs, if any, prepared by a Third Party engineer. If any Site Work costs exceed $15,000 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 the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. 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. 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. 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 or proof of application for such funds must be provided. 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 Rehabilitation Developments. The items identified in clauses (i) - (vii) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied or if the Application proposes the demolition of any occupied housing. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items

described in clauses (i) - (vii) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) historical monthly operating statements of the Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) 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 (6) 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 tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) for Qualified Elderly or Supportive Housing Developments, identification of the number of existing tenants qualified under the Target Population elected under this chapter;

(v) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(vi) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vii) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(8) Architectural Drawings. All Developments must provide 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. Developments must provide:

(A) A site plan which:

(i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(ii) identifies all residential and common buildings;

(iii) clearly delineates the flood plain boundary lines and shows all easements;

(iv) if applicable, indicates possible placement of detention/retention pond(s); and

(v) indicates the location of the parking spaces.

(B) Building floor plans. Submitted for each building type and include square footage. Adaptive Reuse Developments are only required to provide building plans delineating each Unit by number and type; and

(C) Unit floor plans for each type of Unit. Adaptive Reuse Developments are only required to provide Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations. Elevations must be submitted for each building type and include a percentage estimate of the exterior composition and proposed roof pitch. Rehabilitation and Adaptive Reuse Developments may submit photographs if the Unit configurations are not being altered and after renovation drawings must be submitted if Unit configurations are proposed to be altered.

(9) Site Control.

(A) Evidence that the Development Owner has the ability to compel legal title to a developable interest in the Development Site or, Site Control must be submitted. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months 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 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 use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided:

(i) a recorded warranty deed with corresponding executed settlement statement; or

(ii) a contract for lease with a minimum term of forty-five (45) years and is valid for the entire period the Development is under consideration for Department funding; or

(iii) a contract for sale, an option to purchase or a lease that includes an effective date; price; address and/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 §10.302 of this chapter (relating to Underwriting Rules and Guidelines), then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(10) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph.

(A) No Zoning Ordinance in Effect. The Application must include a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a Unit of General Local Government that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from the chief executive officer of the Unit of General Local Government or another local 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. The Application must include a signed release that was provided to the Unit of General Local Government agreeing to hold the Unit of General Local Government and all other parties harmless in the event that the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. 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, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction which addresses the items in clauses (i) - (iv) of this subparagraph:

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

(ii) the applicable destruction threshold;

(iii) Owner's rights to reconstruct in the event of damage; and

(iv) penalties for noncompliance.

(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 (6) months old as of the close of the Application Acceptance Period then a letter from the title company indicating that nothing further has transpired on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists 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.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors 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.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved. Documentation for individual board members and executive directors, any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer fee and Units of General Local Government are all required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and 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 and authorize the parties overseeing such assistance to release compliance histories to the Department.

(13) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. 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 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 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.

(i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;

(ii) The Nonprofit Participation exhibit as provided in the Application;

(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 §42(h)(5) of the Code 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;

(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;

(VI) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

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

(-a-) in this state, if the Development is located in a Rural Area; or

(-b-) 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 General Partner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4) then they must disclose in the Application the basis of their nonprofit status.

§10.205. Required Third Party Reports.

The Environmental Site Assessment, Property Condition Assessment and Appraisal (if applicable) must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates) and §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis Report and Civil Engineer Feasibility Study must be submitted no later than the Market Analysis and Civil Engineer Feasibility Study Delivery Date as identified in §10.4 of this chapter and §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline the Application will be terminated. A searchable 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 §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period 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) 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 those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. This report, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then an updated Market Analysis from the Person or organization which prepared the initial report must be submitted. The Department will not accept any Market Analysis which is more than twelve (12) months old as of the first day of the Application Acceptance Period.

(A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 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))

(C) 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) Property Condition Assessment (PCA). This report, required for Rehabilitation and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then an updated PCA from the Person or organization which prepared the initial report must be submitted. The Department will not accept any PCA which is more than twelve (12) months old as of the first day of the Application Acceptance Period. For Developments which require a capital needs assessment from USDA, the capital needs assessment may be substituted and may be more than six (6) 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 §10.306 of this chapter.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then an updated appraisal from the Person or organization which prepared the initial report must be submitted. The Department will not accept any appraisal which is more than twelve (12) months old as of the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

(5) Civil Engineer Feasibility Study. This report, required for any New Construction Development, prepared in accordance with this paragraph, which reviews site conditions and development requirements of the proposed Development.

(A) Executive Summary.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey no older than six (6) months to the beginning of the Application Acceptance Period; or Category 1B - Standard Land Boundary Survey no older than twelve (12) months from the beginning of the Application Acceptance Period).

(C) Preliminary site plan identifying all structures, site amenities, parking and driveways, topography, drainage and detention, water and waste water utility distribution, retaining walls and any other typical or required items.

(D) Review of the Environmental Site Assessment.

(E) Review of Geotechnical Report/Study (attachment).

(F) Storm Water Management (Detention/Retention/Drainage).

(G) Topography Review (provide existing topography survey or USGS Topography).

(H) Site Ingress/Egress Requirements (Fire/TxDot/Median Cuts, Deceleration Lanes).

(I) Off-Site requirements (Utilities/Roadways/Other).

(J) Water/Sanitary Sewer Service Summary (attach distribution maps).

(K) Electric, Gas, and Telephone Service Summary (attach distribution maps).

(L) Zoning/Site Development Ordinances (do not include copies of ordinances).

(M) Building Codes/Ordinances/Design Requirements Summary (do not include copies of ordinances).

(N) Entitlement/Site Development/Building Permit Process Summary, Fees and Timing.

(O) Other Considerations, Conditions, Issues or Topics Relevant to Development of the Site as proposed.

§10.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)).

The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. 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 award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements. The recommendation with amendments, if any, approved by the Board, will supersede any conflicting information in the Application.

§10.207. Waiver of Rules for Applications.

(a) General Process. This waiver section is applicable only to Subchapters B and C of this chapter (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). An Applicant must request a waiver or pre-clearance, as applicable based on the requirements stated herein, in writing at or prior to the submission of the pre-application for Competitive Housing Tax Credit Applications and Tax Exempt Bond Developments where the Department is the Issuer. For all other Applications, the waiver request must be submitted at the time of Application submission. Regarding waivers, the request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701 are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program. Regarding pre-clearance determinations, the request should include sufficient documentation in order for the Board to make a determination (e.g. detailed information regarding site features or community revitalization plans) and should reference the section of the rules which calls for such determination. Where appropriate the Applicant is encouraged to submit with the requested waiver or pre-clearance any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development. Any waiver or pre-clearance, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved.

(b) Waivers and/or Pre-Clearance Granted by the Executive Director. The Executive Director may waive or grant pre-clearance as provided in this rule. Even if this rule grants the Executive Director authority to waive or pre-clear a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver or pre-clear any item to the extent such requirement is mandated by statute. Denial of a waiver and/or pre-clearance by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(c) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters A - C, E, and G of this chapter (relating to Uniform Multifamily Rules) except no waiver shall be granted to provide forward commitments or if it is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules. A requested waiver must establish how the waiver is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law or purpose or policy set forth in Texas Government Code, Chapter 2306. In this regard, the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, and 2306.6701 are general in nature and apply to the role of the Department and its programs, including the tax credit program, taken as a whole and the Board does not view the fact that an outcome requiring a waiver would be consistent with any of those enumerated policies or purposes as establishing a presumption that specific transaction must be granted a waiver in order for the program, as a whole, to be consistent with those policies and purposes.

§10.208. Forms and Templates.

This section includes forms and templates to be used in the Uniform Application.

Figure: 10 TAC §10.208

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204700
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§10.301 - 10.307

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.307, concerning Underwriting and Loan Policy. The purpose of the new sections is to move and amend the repealed rules to a subchapter of a proposed consolidated multifamily rule. In addition, all repealed rules pertaining to reserve for replacement requirements are being moved to 10 TAC Chapter 10, Subchapter E of the proposed consolidated multifamily rule pertaining to Post Award and Asset Management Requirements.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will enhance the state's ability to provide decent, safe, sanitary and affordable housing. It is not anticipated that proposed new sections will have a change in the economic cost to any individual required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in economic effect on small or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT. The Department has determined that there will be no change in effect on local economies as a result of the of the proposed new sections.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect no other code, article or statute.

§10.301. General Provisions.

(a) Purpose. The rules in this subchapter apply to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan 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 the Department's portfolio. In addition, this chapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), 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 are subject to the discretion of the Department and final determination by the Board.

(b) Appeals. Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). In addition, the Department encourages the use of Alternative Dispute Resolution (ADR) methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

(a) General Provisions. Pursuant to Texas Government 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, §42(m)(2) of the Internal Revenue Code (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules of the Texas Government Code and the Code, resulting in a Credit Underwriting Analysis Report used by the Board in decision making with the goal to assist as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report considers all information timely provided by the Applicant. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. The Report contents will be based solely upon information that is provided in accordance with the timeframes provided in the current Qualified Allocation Plan (QAP) or Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount based on the lesser amount calculated by the program limit method, if applicable, gap/DCR method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

(1) Program Limit Method. For Applicants requesting a Housing Credit Allocation, 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 as defined in §10.3 of this chapter (relating to Definitions). For Applicants requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on the current program rules or NOFA at the time of underwriting.

(2) Gap/DCR 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 down to 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 or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section.

(3) The Amount Requested. The amount of funds that is requested by the Applicant as reflected in the original Application documentation.

(d) Operating Feasibility. The operating financial feasibility of developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from income to determine Net Operating Income. The annual Net Operating Income is divided by the cumulative annual debt service required to be paid to determine the Debt Coverage Ratio. The Underwriter characterizes a Development as infeasible from an operational standpoint when the Debt Coverage Ratio does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may make adjustments to the financing structure, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program and market factors. Miscellaneous income and vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) Rental Income. The Underwriter will independently calculate the 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 §10.303 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.

(ii) Net Program Rents. The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses 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 Applicant's EGI to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

(II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.

(III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.

(IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the Total Housing Development Cost schedule.

(iii) Contract Rents. The Underwriter reviews 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 increase.

(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 rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.

(i) Exceptions must be justified by operating history of existing comparable properties.

(ii) The Applicant must show that the 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.

(iii) The Applicant's operating expense schedule should reflect an itemized offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iv) Collection rates of exceptional fee items will generally be heavily discounted.

(v) If an additional fee is charged for the use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. Qualified Elderly Developments and 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) Effective Gross Income (EGI). The Underwriter independently calculates EGI. If the EGI estimate provided by the Applicant is within 5 percent of the EGI calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating 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 pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the Development type, the size of the Units, and the Applicant's expectations as reflected in their pro forma. Historical stabilized certified financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The TDHCA Database of properties in the same location or region as the proposed Development also provides heavily relied upon data points; expense data from the TDHCA Database is available on the TDHCA 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 Public Housing Authority (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. Well documented information provided in the Market Analysis, Appraisal, the Application, and other sources may be considered.

(A) General and Administrative Expense (G&A)--Expense for operational 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 Effective Gross Income as documented in a property management agreement. Typically, 5 percent of the Effective Gross Income is used, though higher percentages for rural transactions that are consistent with the TDHCA Database may be used. Percentages as low as 3 percent may be used if well documented.

(C) Payroll Expense. Expense for direct on-site staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a comparable development. It does not, however, include direct security payroll or additional tenant services payroll.

(D) Repairs and Maintenance Expense. Expense for repairs and maintenance, Third-Party maintenance contracts and supplies. It should not include capitalized expenses that would result from major replacements or renovations. Direct payroll for repairs and maintenance activities are included in payroll expense.

(E) Utilities Expense. Utilities expense includes all gas and electric energy expenses paid by the Development.

(F) Water, Sewer and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Insurance expense includes any insurance 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 percent or a comparable assessed value may be used.

(ii) Property tax exemptions or a Proposed Payment In Lieu Of Tax (PILOT) agreement must be documented as being reasonably achievable. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.

(I) Reserves. An annual reserve for replacements of future capital expenses and any ongoing operating reserve requirements. The Underwriter includes minimum reserves 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 PCA. 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 PCA 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 Expenses. The Underwriter will include other reasonable and documented expenses. These include audit fees, tenant services, security expense and compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

(i) Tenant Services. Cost to the Development of any non-traditional tenant benefit such as payroll for instruction or activities personnel and associated operating expenses. Tenant services expenses are considered in calculating the Debt Coverage Ratio.

(ii) Security Expense. Contract or direct payroll expense for policing the premises of the Development.

(iii) Compliance Fees. Include only compliance fees charged by the Department and are considered in calculating the Debt Coverage Ratio.

(iv) Cable Television Expense. Includes fees charged directly to the Development Owner to provide cable services to all Units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in General and Administrative Expense as described in subparagraph (A) of this paragraph.

(K) The Underwriter may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report. If the Applicant's total expense estimate is within 5 percent 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. The difference between the EGI and total operating expenses. If the first year stabilized NOI figure provided by the Applicant is within 5 percent of the NOI calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR the Underwriter will maintain and use his independent calculation of NOI unless the Applicant's first year stabilized EGI, total expenses, and NOI are each within 5 percent of the Underwriter's estimates.

(4) Debt Coverage Ratio. DCR is calculated by dividing Net Operating Income by the sum of scheduled loan principal and interest payments for all permanent sources of funds. Loan principal and interest payments are calculated based on the terms indicated in the term sheet(s) for financing submitted in the Application. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate, 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. The Underwriter may adjust the underwritten interest rate based on data collected on similarly structured transactions or rate index history.

(B) Amortization Period. The Department generally requires an amortization of not less than thirty (30) years and not more

than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization is made for the purposes of the analysis and recommendations. In non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.

(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 thirty (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. The acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35. HOPE VI and USDA transactions may underwrite to a DCR less than 1.15 or greater than 1.35 based upon documentation of acceptance from the lender.

(i) For Developments other than HOPE VI and USDA transactions, if the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause:

(I) a reduction of the interest rate or an increase in the amortization period for Direct Loans;

(II) a reclassification of Direct Loans to reflect grants, if permitted by program rules;

(III) a 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 assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause:

(I) reclassification of Department funded grants to reflect loans, if permitted by program rules;

(II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;

(III) an increase in the permanent loan amount for non-Department funded loans 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/DCR method described in subsection (c)(2) of this section.

(iv) Although adjustments in debt service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma.

(A) The Underwriter's first year stabilized pro forma is utilized unless the Applicant's first year stabilized EGI, operating expenses, and NOI are each within 5 percent of the Underwriter's estimates.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for expenses.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as determined by the Underwriter.

(e) Total Housing Development Costs. The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected Total Housing Development Cost. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that it 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 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for acquisition/Rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to Property Condition Assessment Guidelines). If the Applicant's 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.

(1) Acquisition Costs. The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) Excess Land Acquisition. In cases where more land is to be acquired 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). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Identity of Interest Acquisitions.

(i) The acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, 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; or

(II) was the owner in whole or in part of the Property during any period within the thirty-six (36) months prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide subclauses (I) and (II) of this clause.

(I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) Acquisition of Buildings for Tax Credit Properties. Building acquisition cost will be included in the underwritten Total Housing Development Cost and/or Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten Total Housing Development Cost and/or Eligible Basis will include the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

(i) the Applicant's stated building acquisition cost;

(ii) the building acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;

(iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or

(iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development and that will continue to affect the Development after transfer to the new owner in determining the building value. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(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 and supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms and 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. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.

(ii) The Underwriter will use cost data provided by the Property Condition Assessment (PCA). In the case where the PCA is inconsistent with the Applicant's estimate as proposed in the Total Housing Development Cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations.

(5) Contingency. All contingencies identified in the Applicant's project cost schedule including any soft cost contingency will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments and 10 percent of Building Cost plus Site Work and off-sites 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 costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7 percent or 10 percent limit, as applicable.

(6) Contractor Fee. 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. Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16 percent on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18 percent on Developments with Hard Costs at $2 million or less. For 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 fees and Development Consultant fees included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less.

(B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/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.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and

(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.

(D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent 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. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans are not included in Eligible Basis.

(9) Reserves. The Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is reasonable and well documented. Reserves do not include capitalized asset management fees or other similar costs.

(10) Other Soft Costs. For Housing Tax Credit Developments, all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities and operating reserves. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the Underwriter questions the amount or eligibility of any soft costs, the Applicant will be given an opportunity to clarify and address the concern prior to completion of the Report.

(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). The Underwriter will 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 in the this chapter;

(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 UPCS 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;

(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 will result in an Application being referred to the Committee. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

(1) 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 and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) the Development must be designed to comply with the QAP, as proposed.

(2) 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.

(3) Supportive Housing. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter;

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) Total Housing Development Costs. For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(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. An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. 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) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate. The method for determining the Gross Capture Rate for a Development is defined in §10.303(d)(11)(F) of this chapter. The Underwriter will independently verify all components and conclusions of the Gross Capture Rate and may at their discretion use independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:

(A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or

(B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or

(C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or

(D) targets Persons with Disabilities and the Gross Capture Rate exceeds 30 percent.

(E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) 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 §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing which is at least 50 percent 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 Underwriter's recommended financing structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Pro Forma Rent. The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.

(4) Initial Feasibility. The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.

(5) Long Term Feasibility. Any year in the first fifteen (15) years of the Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects:

(A) negative Cash Flow; or

(B) a Debt Coverage Ratio below 1.15.

(6) Exceptions. The infeasibility conclusions may be excepted where either of the criteria apply.

(A) The requirements in this subsection may be waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments meeting the requirements of one of more of paragraphs (3) - (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply.

(i) The Development will receive Project-based Section 8 Rental Assistance for at least 50 percent of the Units and a firm commitment with terms including Contract Rent and number of Units is submitted at Application.

(ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.

(iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units.

(iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property 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.

(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) - (3) of this subsection.

(1) If not listed as approved by the Department, Market Analysts must submit subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the Application Acceptance Period for which the Market Analyst must be approved. To maintain status as an approved Qualified Market Analyst, updates to the items described in subparagraphs (A) - (C) of this paragraph must be submitted annually on the first Monday in February for review by the Department.

(A) Documentation of good standing from the Texas Comptroller of Public Accounts.

(B) A current organization chart or list reflecting all members of the firm who may author or sign the 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.

(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 ninety (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.

(3) The list of approved Qualified Market Analysts is posted on the Department's web site and updated within seventy-two (72) hours of a change in the status of a Market Analyst.

(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 Property 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 Property address or location, description of Property, 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) Summary Sheet. 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 Property. 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 (3) year history of ownership for the subject Property.

(8) Secondary Market Area. A Secondary Market Area is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Secondary Market Area definition. The entire PMA, as described in this paragraph, must be contained within the Secondary Market boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)

(A) The Secondary Market Area will be defined by the Market Analyst with:

(i) size based on a base year population of no more than 250,000 people inclusive of the Primary Market Area; and

(ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau.

(B) The Market Analyst's definition of the Secondary Market Area must include:

(i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;

(ii) a complete demographic report for the defined SMA; and

(iii) a scaled distance map indicating the SMA boundaries as well as the location of the subject Development and all comparable Developments.

(9) Primary Market Area. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Primary Market Area definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The Primary Market Area will be defined by the Market Analyst with:

(i) size based on a base year population of no more than 100,000 people;

(ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract or ZIP code, and if the PMA is defined by census tract or ZIP code.

(B) The Market Analyst's definition of the Primary Market Area must include:

(i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;

(ii) a complete demographic report for the defined PMA; and

(iii) a scaled distance map indicating the PMA boundaries as well as the location of the subject Development and all comparable Developments.

(C) Comparable Units. Identify Developments in the PMA with Comparable Units. In Primary Market Areas lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each 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; and

(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; and

(xi) for rental developments only, the occupancy and turnover.

(10) Market Information.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

(i) total housing;

(ii) rental developments (all multi-family);

(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 both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). 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.

(i) All demographic reports must include population and household data for a five (5) 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 Developments targeting seniors, 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 or ZIP codes 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 elderly population for a Qualified Elderly Development, if available, and should avoid making adjustments from more general demographic data. 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 (5) year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the Qualified Elderly or Persons with Special Needs targeted 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 1.5 persons per Bedroom (round up).

(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 35 percent for the general population and 50 percent for Qualified 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 1.5 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 Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross 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 based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 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 (3) or more Bedrooms:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Qualified Elderly Developments:

(-a-) minimum eligible income is based on a 50 percent rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households.

(iv) Demand from Secondary Market Area:

(I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;

(II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and

(III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(v) 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.

(11) 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) - (I) 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 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 §10.302(i) of this chapter. 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.

(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) Total adjustments in excess of 15 percent must be supported with additional narrative.

(v) Total adjustments in excess of 25 percent 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) 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 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and

(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.

(E) Relevant Supply. The Relevant Supply of proposed and unstabilized Comparable Units includes:

(i) the proposed subject Units;

(ii) Comparable Units with priority over the subject that have made application to the Department and have not been presented to the Board for decision;

(iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit Type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(H) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(I) 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)

(12) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) 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.

(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 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.

§10.304. Appraisal Rules and Guidelines.

(a) General Provision. 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 include a statement that the report preparer has read and understood the requirements of this section.

(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.

(c) Appraiser Qualifications. The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) 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.

(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 (3) 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 and/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/or 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.), 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 (e.g., 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 (3) 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.).

(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 reader 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 (3) 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 or 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 (e.g., 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 (OAR) 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. 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 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" inclusive of the value associated with the rental assistance. 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 and/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 restricted rents should be contemplated when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) and/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 com-

parables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department should be conducted and reported in conformity with the standards of the American Society for Testing and Materials. The initial report should conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-05). 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 TDHCA 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 should address TDHCA 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 the Department. The ESA report should 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 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 asbestos containing materials (ACMs) would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(6) 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; and

(7) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary.

(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 a 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 subsection.

§10.306. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least twenty (20) years. The PCA must also include discussion and analysis of:

(1) Useful Life Estimates. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(2) Code Compliance. The PCA should review and 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 PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property;

(3) Program Rules. The PCA should 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, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;

(4) Statement of Acknowledgement. The PCA provider must affirm in the report that the Applicant's scope of work for improvements and the immediate needs of the Rehabilitation are considered and reconciled within the PCA report and the PCA Cost Schedule Supplement; and

(5) Cost Estimates for Repair and Replacement. It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Develop-

ment Cost schedule and scope of work submitted as an exhibit of the Application.

(A) Immediately Necessary Repairs and Replacement. Systems or components which are expected to have a remaining useful life of less than one (1) 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 should be considered immediately necessary repair and replacement. The PCA 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 repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal 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 PCA 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 PCA 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 and no less than fifteen (15) 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 percent per annum.

(b) 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;

(4) USDA guidelines for Capital Needs Assessment; or

(5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting Property Condition Assessments, Multifamily Buildings.

(c) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of 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.

(d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address TDHCA 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 TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

§10.307. Direct Loan Requirements.

Direct Loans through the Departments must be structured according to the criteria as identified in paragraphs (1) - (5) of this section:

(1) the interest rate may be as low as zero percent provided all applicable program requirements are met as well as requirements in this subchapter. In the case of HOME funds, to the extent Match in an amount less than 5 percent of the HOME funds is provided, an interest rate no lower than 2 percent may be requested;

(2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years;

(3) the loan shall be structured with a regular monthly payment beginning at the end of the construction period and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing; and

(4) the loan shall have a deed of trust with a permanent lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing. Notwithstanding the foregoing, the loan shall have a lien position that is superior to any other sources for financing that have soft repayment structures, non-amortizing balloon notes, are deferred forgivable loans or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing.

(5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (C) of this paragraph:

(A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; and

(B) a letter from the Applicant, Developer or Development Owner's bank(s) confirming funds equal to 10 percent of the Total Housing Development Cost are available; or

(C) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204681
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408, concerning Post Award and Asset Management Requirements. The new subchapter replaces sections, in whole or part, of current chapters under this title, including Chapters 1, 49, 50, 53, and 60 which are proposed for repeal in this issue of the *Texas Register,* and re-establishes them under this subchapter. The proposed new sections describe the requirements for multifamily activities that occur after the approval of an award including requirements for commitment and determination notices, post award status and draw requirements, amendments, ownership transfers, right of first refusal and qualified contracts.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new sections are in effect, enforcing or administering the proposed new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of the proposed new sections will be a more consistent and uniform approach to the activities that occur after an award of funds is made. There is no anticipated new direct cost impact as a result of the proposed adoption of the new sections. It is not anticipated that the proposed new sections will have a change in economic cost to any individual required to comply with the proposed new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in economic effect on small businesses or micro-businesses as a result of the proposed new sections.

LOCAL EMPLOYMENT IMPACT STATEMENT. The Department has determined that there will be no effect on local economies as a result of the proposed new sections.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia, Director of Asset Management; or by FAX to (512) 475-7500. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect Texas Government Code, Chapter 2306, including Subchapter DD, concerning Low Income Housing Tax Credit Program.

§10.400. Purpose.

The purpose of this chapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This chapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless staff makes a recommendation that is clearly documented to the Board based on the need to fulfill the goals of the applicable multifamily program as expressed herein and other applicable Department rules, and the Board accepts the recommendation.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all provision of law and rule, including compliance with the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, completion of underwriting and satisfactory compliance with the results thereof, full and satisfactory addressing of any Administrative Deficiencies and conditions of award, Commitment, Contract or any other matters.

(c) The Department shall notify, in writing, the mayor, chief 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 or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) the Applicant or the 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 this chapter (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 or the 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 or the procedures or requirements of the Department.

(e) Direct Loan Commitment. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan or award and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. The Commitment shall have a deadline for the loan closing to occur no more than six (6) months from execution of the Commitment, which may be extended in accordance with the provisions in this chapter.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments.

(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 Subchapter D of this chapter (relating to Underwriting and Loan Policy) and 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 thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 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 without prior Board approval for good cause.

(b) Determination Notices. For Tax Exempt Bond Developments the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, 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 thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for under the Bond Reservation or if the financing or development change significantly as determined by the Department.

(c) The amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director. Increases to the tax credit amount are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Commitment and Determination Notice Documentation. 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) - (6) 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 has the authority to do business in Texas in the form of a Certificate of Filing from the Texas Office of the Secretary of State;

(2) a Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Name Reservation from the Texas Office of the Secretary of State;

(3) evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) any changes to representations made in the application subject to §10.405 of this chapter (relating to Amendments).

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan (as further described in the Tax Exempt Bond Process Manual);

(B) evidence that the Development Owner or management company has attended Department-approved Fair Housing training, relating to leasing and management issues, for at least five (5) hours;

(C) evidence that the Development architect or engineer responsible for Fair Housing compliance for the Development has attended Department-approved Fair Housing training, relating to design issues, for at least five (5) hours; and

(D) evidence that the financing has closed, such as an executed settlement statement.

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than two (2) years from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Multifamily Programs Procedures 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, or an approved extension, has not been received by this deadline. This termination is final and not appealable, and immediately upon issuance of notice of termination staff is directed to award the credits to other qualified Applicants based 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 reevaluated by the Department.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, Site Control must be identical to the Development Site that was submitted at the time of Application submission as determined by the Department.

(4) Evidence that the Development Owner entity has been formed must be submitted with the Carryover Allocation.

(5) The Department will not execute a Carryover Allocation Agreement with any Development Owner having any member in Material Noncompliance on October 1 of the current program year.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, the Development Owner must incur more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than the 10 Percent Test Documentation Delivery Date as identified in §11.2 of this title. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (5) of this subsection, along with all information outlined in the Post Carryover Activities Manual. The 10 Percent Test documentation will be contingent upon the submission of these items as well as all other conditions placed upon the Application in the Commitment. Documentation to be submitted includes:

(1) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site;

(2) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties or other conditions on or affecting the Development that would materially and adversely impact the ability to acquire, develop and operate as set forth in the Application. Copies of such supporting documents will be provided upon request;

(3) a Management Plan and an Affirmative Marketing Plan as further described in the Post Carryover Activities Manual;

(4) evidence confirming attendance of the Development Owner or management company at Department-approved Fair Housing training, relating to leasing and management issues, for at least five (5) hours and of the Development architect or engineer responsible for Fair Housing compliance at Department-approved Fair Housing training, relating to design issues, for at least five (5) hours on or before the time the 10 Percent Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10 Percent Test Documentation; and

(5) a Certification from the lender or syndicator identifying all Guarantors.

(h) Construction Status Report. Within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, and every quarter thereafter all multifamily developments must submit a construction status report consisting of the items identified in paragraphs (1) - (4) of this subsection for the first report and items identified in paragraphs (3) and (4) of this subsection for all subsequent reports unless changes to the original submissions of paragraphs (1) and (2) of this subsection have occurred, in which case such amendments shall also be submitted with the subsequent report. Construction status reports shall be due within ten (10) days of the first day of each quarter (January, April, July, and October) and continue on a quarterly basis until the entire development is complete and all units are placed in service, whereupon a final report will be due:

(1) the executed partnership agreement with the investor or other documents setting forth the legal structure and ownership;

(2) the executed construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(3) the construction contract and the most recent AIA G702 and G703 (or equivalent) certified by the Architect of Record; and

(4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). After the Department receives the Construction Status Report, the Department will generate a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to, specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities. The executed LURA and all exhibits will be sent to the Development Owner whereupon the Development Owner will then execute the LURA and have the fully-executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credit are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA or has alternative arrangements which are acceptable to the Department and approved by the Executive Director.

(j) Cost Certification. The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(II) of the Code to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit Allocation Amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (G) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxiii) of this subparagraph, and pursuant to the Post Carryover Activities Manual:

(i) Carryover Allocation Agreement/Determination Notice and Election Statement;

(ii) Development Owner's Statement of Certification;

(iii) Development Owner Summary;

(iv) Evidence of Nonprofit and CHDO Participation;

(v) Evidence of Historically Underutilized Business (HUB) Participation;

(vi) Development Summary (including list of tenant services, unit and common amenities);

(vii) As-Built Survey;

(viii) Closing Statement;

(ix) Title Policy;

(x) Evidence of Placement in Service;

(xi) Independent Auditor's Reports;

(xii) Total Development Cost Schedule;

(xiii) AIA Form G702 and G703, Application and Certificate for Payment;

(xiv) Rent Schedule;

(xv) Utility Allowance;

(xvi) Annual Estimated Operating Expenses and 15-Year Pro forma;

(xvii) Current Annual Operating Statement and Rent Roll;

(xviii) Final Sources of Funds;

(xix) Executed Limited Partnership Agreement;

(xx) Loan Agreement or Firm Commitment;

(xxi) Architect's Certification of Fair Housing Requirements;

(xxii) TDHCA Compliance Workshop Certificate; and

(xxiii) Previous Participation Exhibits;

(C) received written notice from the Department that all deficiencies noted during the final construction inspection have been resolved in accordance with Subchapter F of this chapter (relating to Compliance Monitoring);

(D) informed the Department of and received written approval for all amendments and ownership transfers relating to the Development in accordance with §10.405 of this chapter (relating to Amendments) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)); (§2306.6731(b))

(E) submitted to the Department the recorded LURA in accordance with subsection (i) of this section;

(F) paid all applicable Department fees, including any past due fees; and

(G) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter.

§10.403. Direct Loans.

(a) Loan Closing. In preparation for closing any Direct Loan the Development Owner must submit the items described in paragraphs (1) - (10) of this subsection:

(1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director may approve a closing to move forward without the closing on other sources. The Executive Director may require a personal guarantee from a Principal of the Development Owner for the interim period;

(2) when Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(3) Owner/General Contractor agreement and Owner/architect agreement;

(4) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(5) if layered with Competitive Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);

(6) a budget that includes the amount of Development funds specifying the acquisition cost, construction costs, developer fees, other soft costs and Match to be provided. The sources of funds used to finance the Development must be submitted. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of environmental clearance;

(8) verification of HUD Site and Neighborhood clearance;

(9) documentation necessary to show compliance with the Uniform Relocation Act and any other relocation requirements that may apply; and

(10) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited to a promissory note, deed of trust, construction loan agreement, LURA, and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliate grants the Department any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the program's requirements. The construction loan agreement shall provide for a construction or development period of eighteen (18) months from the actual date of loan closing at which point the permanent loan repayment period will begin. An extension of the construction or development period of not more than six (6) months may be approved for good cause by the Executive Director or designee at any time during the construction or development period. Extensions longer than six (6) months or requests other than during the construction or development period may only be approved by the Board for good cause.

(c) Disbursement of Funds (including developer fees). The Development Owner must comply with the requirements in paragraphs (1) - (9) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement:

(1) except for disbursements for acquisition and closing costs, a down-date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion;

(2) for hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) the Department may require that sufficient funds be held back from initial disbursement to allow for periodic disbursements as may be necessary to meet federal requirements;

(4) if applicable, up to 90 percent of Development funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match, including the date of provision, prior to release of the final 10 percent of funds. If funds are utilized for acquisition costs, a contract between the Development Owner and the Person providing the Match which specifies the terms of the Match provision may be accepted;

(5) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement of developer fees if it is determined that the Development is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(7) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must generally include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(8) include the withholding of 10 percent of the construction contract for retainage. Retainage will be held until at least thirty (30) calendar days after all of the items described in subparagraphs (A) - (D) of this paragraph are received:

(A) completion of construction;

(B) a final inspection, after which receipt, a clearance is issued by the Department;

(C) labor standards final wage compliance report;

(D) receipt of certificates of occupancy for New Construction or a certification of completion from the Development architect for Rehabilitation; and

(9) for final disbursement requests, the Development Owner must submit documentation required for Development completion reports which may include documentation of full compliance with the Uniform Relocation Act and any other applicable relocation requirements.

§10.404. Reserve for Replacement Requirements.

(a) Maintenance. The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by maintaining a reserve for replacement in accordance with Texas Government Code, §2306.186. The reserve must be established for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section.

(b) Escrow Agent to Reserve Funds. The First Lien Lender shall maintain the Reserve Account through an escrow agent acceptable to the First Lien Lender to hold reserve funds in accordance with an executed escrow agreement and the rules set forth in this section and Texas Government Code, §2306.186.

(1) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Department shall:

(A) be a required signatory party in all escrow agreements for the maintenance of reserve funds;

(B) be given notice of any asset management findings or reports, transfer of money in Reserve Accounts to fund necessary repairs, and any financial data and other information pursuant to the oversight of the Reserve Account within thirty (30) days of any receipt or determination thereof; and

(C) subordinate its rights and responsibilities under the escrow agreement, including those described in this subsection, to the First Lien Lender or Bank Trustee through a subordination agreement subject to its ability to do so under the law and normal and customary limitations for fraud and other conditions contained in the Department's standard subordination clause agreements as modified periodically, to include subsection (c) of this section.

(2) The escrow agreement and subordination agreement, if applicable, shall further specify the time and circumstances under which the Department can exercise its rights under the escrow agreement in order to fulfill its obligations under Texas Government Code, §2306.186 and as described in this section.

(3) Where the Department is the First Lien Lender and there is no Bank Trustee as a result of a bond trust indenture or tax credit syndication, or where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(c) Final Certification Submission. If the Department is not the First Lien Lender with respect to the Development, each Development Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Development Owner's Financial Certification packet a signed certification by the First Lien Lender including:

(1) reserve for replacement requirements under the first lien loan agreement (if applicable);

(2) monitoring standards established by the First Lien Lender to ensure compliance with the established reserve for replacement requirements; and

(3) a statement by the First Lien Lender indicating:

(A) the Development Owner has met all established reserve for replacement requirements; or

(B) the plan of action to bring the Development in compliance with all established reserve for replacement requirements.

(d) Repair Reserve. If the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall set aside the repair reserve amount as described in subsection (e)(1) - (3) of this section through the date described in subsection (f)(2) of this section through the appointment of an escrow agent as further described in subsection (b)(3) of this section. The Development Owner shall submit on an annual basis within the Department's required Development Owner's Financial Certification packet a signed certification by the First Lien Lender including:

(1) financial statements, audited if available, with clear identification of the replacement Reserve Account balance and all capital improvements to the Development within the fiscal year;

(2) identification of costs other than capital improvements funded by the replacement Reserve Account; and

(3) signed statement of cause for:

(A) use of replacement Reserve Account for expenses other than necessary repairs, including property taxes or insurance;

(B) deposits to the replacement Reserve Account below the Department's or First Lien Lender's mandatory levels as defined in subsections (c) - (e) of this section; and

(C) failure to make a required deposit.

(e) Reserve Account. If the Department is the First Lien Lender with respect to the Development, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (f)(2) of this section.

(1) For New Construction Developments, not less than $250 per Unit; or

(2) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(3) For all Developments, the Development Owner of a multifamily rental housing Development shall contract for a Third-Party Property Condition Assessment and the Department will re-evaluate the annual reserve requirement based on the findings and other support documentation. Submission by the Development Owner to the Department will occur within thirty (30) days of completion of the Property Condition Assessment and must include the complete Property Condition Assessment, the First Lien Lender and/or Development Owner response to the findings of the Property Condition Assessment, documentation of repairs made as a result of the Property Condition Assessment, and documentation of adjustments to the amounts held in the replacement Reserve Account based upon the Property Condition Assessment. A Property Condition Assessment will be conducted:

(A) at appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department; or

(B) at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance for the Development by the Department, if the Department is the First Lien Lender or the First Lien Lender does not require a Third-Party Property Condition Assessment.

(f) Land Use Restriction Agreement (LURA). A Land Use Restriction Agreement or restrictive covenant between the Development Owner and the Department must require:

(1) the Development Owner to begin making annual deposits to the Reserve Account on the later of:

(A) the date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied; or

(B) the date that permanent financing for the Development is completely in place as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date when the permanent loan is executed and funded;

(2) the Development Owner to continue making deposits until the earliest of:

(A) the date on which the Development Owner suffers a total casualty loss with respect to the Development;

(B) the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(C) the date on which the Development is demolished;

(D) the date on which the Development ceases to be used as a multifamily rental property; or

(E) the later of the end of the Affordability Period specified by the Land Use Restriction Agreement or restrictive covenant; or the end of the repayment period of the first lien loan.

(g) Change of Ownership Responsibilities. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section.

(h) Penalties and Material Non-Compliance. If a request for extension or waiver is not approved by the Department then a penalty of up to $200 per dwelling Unit in the Development and/or characterization of the Development as being in Material Non-Compliance, as defined in §10.3 of this chapter (relating to Definitions) may be taken when:

(1) a Reserve Account, as described in this section, has not been established for the Development;

(2) the Department is not a party to the escrow agreement for the Reserve Account;

(3) money in the Reserve Account:

(A) is used for expenses other than necessary repairs, including property taxes or insurance; or

(B) falls below mandatory deposit levels;

(4) Development Owner fails to make a required deposit;

(5) Development Owner fails to contract for the Third-Party Property Condition Assessment as required under this section; or

(6) Development Owner fails to make necessary repairs.

(i) Department-Initiated Repairs. The Department or its agent may make repairs to the Development if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by physical inspection. Repairs may be deemed necessary if the Development is notified of the Development Owner's failure to comply with federal, state, and/or local health, safety, or building code. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(1) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and the funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Development Owner or Developer; or

(2) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(j) Exceptions to Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

§10.405. Amendments.

(a) Amendments to Application or Award Prior to Land Use Restriction Agreement (LURA) Recording or amendments that do not result in a change to the LURA. (§2306.6712) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development and for Competitive HTC Applications, and reallocate the credits to other Applicants on the waiting list.

(1) If a proposed modification would materially alter a Development approved for an allocation of Housing Tax Credits, or if the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a proposed form of amendment, if requested by the Department, and the applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.

(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in

§10.204(5) of this chapter (relating to Required Documentation for Application Submission). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment will be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(3) Amendment requests may be denied if the Board determines that the modification proposed in the amendment:

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

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

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

(A) a significant modification of the site plan;

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

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

(D) a reduction of 3 percent or more in the square footage of the units or common areas;

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

(F) a modification of the residential density of the Development of at least 5 percent;

(G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;

(H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Restrictions and Requirements) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

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

(5) In evaluating the amendment under this subsection, Department Staff shall consider whether the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.

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

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units being served, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment is necessary for the continued feasibility of the Development; and

(B) if it is determined by the Department that an allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, or a delay in the Right of First Refusal (ROFR) requirements. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. Prior to staff taking a recommendation to the Board for consideration, the procedures in paragraphs (1) - (5) of this subsection must be followed. An amendment to the LURA is not considered material if the change is the result of a work out arrangement or loan modification or other condition recommended by the Asset Review Committee:

(1) the Development Owner must submit a written request accompanied by an amendment fee as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;

(2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;

(3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;

(4) at least seven (7) business days before the Board meeting when the Development Owner would like the Board to consider their request, the Development Owner must hold a public hearing. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located

in a municipality, or the county commissioners, if located outside of a municipality; and

(5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(c) Amendments to Direct Loan Terms. An Applicant may request a change to the terms of a loan or loan commitment. Any such request will be fully vetted and Applicants are encouraged to make such requests in a timely manner providing sufficient time for the Department staff to review and, if necessary, underwrite the changes. The Executive Director or authorized designee may approve amendments to loan terms as described in paragraphs (1) - (5) of this subsection. Board approval is necessary for other any changes:

(1) extensions of up to twelve (12) months to the loan closing date in the loan Commitment. An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) extensions of up to six (6) months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;

(4) changes to the loan amortization or interest rate that cause the annual repayment amount to change less than 20 percent; and

(5) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. If the extension is requested at least thirty (30) calendar days in advance of the deadline, no fee will be required; however, if the extension is requested at any point after the applicable deadline the applicable fee as further described in §10.901 of this chapter must be submitted. Extension requests submitted after the deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. A Development Owner must provide written notice to the Department as least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of the Development. Department approval must be requested for any new member to join in the ownership of a Development, except for changes to the limited partner or other partners required by the investment limited partner. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity other than an Affiliate of the Development Owner or non-Controlling Related Party for estate planning purposes unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(b) Transfers Prior to 8609 Issuance. Transfers (other than to an Affiliate or non-Controlling Related Party for estate planning purposes included in the ownership structure) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (e.g. potential bankruptcy, removal by a partner, etc.). The Development Owner and the proposed transferee must provide to the Department with a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(c) Documentation Required. A Development Owner must submit documentation requested by the Department, including but not limited to a list of the names of transferees and Related Parties and detailed information describing the experience and financial capacity of transferees and related parties, to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. All transfer requests must disclose the reason for the request. The Development Owner shall certify that the tenants in the Development have been notified in writing of the transfer no later than thirty (30) calendar days prior to the approval of the transfer request to the Department. Not later than five (5) business days after the date the Department receives all necessary information under this section, staff shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter. If the Department determines that the transfer, involuntary removal or replacement, was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make recommendations to the Board for the debarment of the entity and/or its principals and affiliates.

(d) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the General Partner; or

(2) in cases where the General Partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(e) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(f) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407. Right of First Refusal.

(a) General. This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal to nonprofit or tenant organizations. The purpose of this section is to provide administrative procedures and guidance on the valuation

of properties under this restriction using different terminology in the LURA. All requests for Right of First Refusal (ROFR) submitted to the Department, regardless of existing regulations, must adhere to this process. A ROFR request must be made in accordance with the LURA for the Development. If a LURA includes a provision creating ROFR, a Development Owner may not request a Qualified Contract until the requirements outlined in this section have been satisfied. The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, Department staff will not approve an ownership transfer to an entity that controls a Property in Material Noncompliance as defined in §10.3 of this chapter (relating to Definitions). However, an entity that controls a Property in Material Noncompliance that wishes to pursue the acquisition of a Department-administered Property may follow the procedures outlined in Subchapter F of this chapter (relating to Compliance Monitoring). Satisfying the ROFR requirement does not terminate the LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal of the Property or an executed purchase offer from any buyer other than a qualified nonprofit or tenant organization that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement;

(2) the Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or tenant organization without going through the ROFR process outlined herein. To proceed with the ROFR request, submit the notice of intent and all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to a for-profit entity, the Development Owner shall provide a notice of intent to the Department of said determination to sell the Development and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified Nonprofit Organization or tenant organization that has a limited priority in exercising a ROFR to purchase the Development, the Development Owner must first offer the Property to this entity. If the nonprofit entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the notice of intent to sell the Property. The Department will determine from this documentation whether the ROFR requirement has been met. In the event that this organization is not operating when the ROFR is to be made, the ROFR must be provided to another Qualified Nonprofit Organization. Upon review and approval of the notice of intent and denial of offer letter, the Department will notify the Development Owner in writing that the ROFR requirement has been satisfied. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) documentation verifying the ROFR offer price of the property:

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months from the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (regarding Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value; or

(D) if the property has both a minimum purchase price requirement for the restricted portion of the property and a fair market value price for the unrestricted portion then a proportional value of each shall be calculated based on the proportion of Net Rentable Area of each unless otherwise addressed in the LURA; and

(E) any attempt to close on an offer below the minimum purchase price may violate §42(i)(7)(B) of the Code, and will not be approved as an ownership transfer without the opinion of legal counsel of and approved by the limited partner;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) any recent Physical Needs Assessment conducted by a Third-Party that is less than one (1) year old from the date of the submission of the request and in the Development Owner's possession;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Prop-

erty's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

(11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within five (5) business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the nonprofit buyer list maintained by the Department to inform them of the availability of the Property for the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. Prospective nonprofit purchasers may submit offers at, above, or below the determined value posted on the website. If the Department or Development Owner receives offers to purchase the Property from more than one tenant or Qualified Nonprofit Organization, the Development Owner shall sell the Property to the organization selected by the Development Owner on such basis as it shall determine appropriate. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) and (2) of this subsection:

(1) if the LURA requires a ninety (90) day ROFR posting period, within ninety (90) days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if an offer from a nonprofit is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if an offer from a nonprofit is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the nonprofit fails to consummate the purchase, the ROFR requirement will be deemed met;

(C) if an offer from a nonprofit is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the ninety (90) day period;

(D) if no offers are received during the ninety (90) day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section shall be given within two (2) years before the expiration as required by Texas Government Code, §2306.6726. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the notice of intent shall be given within two (2) years before the date upon which the Development Owner intends to sell the Development. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent, the Development Owner may enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified Nonprofit Organization that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Nonprofit Organization or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a tenant organization approved by the Department; and

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose;

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified Nonprofit Organization, tenant organization or the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the minimum purchase price.

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

(1) Prior to closing a sale of the Property, the final settlement statement and final sales contract with all amendments must be submitted to the Department. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, the Department will notify the Development Owner in writing that they may sell the Property or request a Qualified Contract pursuant to §10.408 of this chapter (relating to Qualified Contract Requirements). If the Development Owner proceeds with a sale of the Property, prior to such sale, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)).

(2) If the closing price is materially less than the amount identified in the sales contract or appraisal that submitted in accordance with subsection (c)(2)(A) - (E) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

(1) the best interests of the residents of the Development;

(2) the impact the decision would have on other Developments in the Department's portfolio;

(3) the source of the data used as the basis for the Development Owner's appeal;

(4) the rights of nonprofits under the ROFR;

(5) any offers from an eligible nonprofit to purchase the Development; and

(6) other factors as deemed relevant by the Executive Director.

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) Eligibility. A Development Owner may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year proceeding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(3) Development Owners who received an allocation of credits on or after January 1, 2002 are not eligible to request a Qualified Contract. (§2306.185)

(c) Preliminary Qualified Contract Request. A Development Owner is eligible to file a pre-request any time after the end of the year proceeding the last year of the Initial Affordability Period.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Property does not have any outstanding instances of noncompliance, with the exception of the physical condition of the Property;

(B) there is a Right of First Refusal (ROFR) connected to the Property that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(D) the Development Owner has all of the necessary documentation to submit a Request.

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the property (non-TDHCA); and

(D) local code compliance report within the last twelve (12) months or HUD-certified UPCS inspection.

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) The documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) consistent with Subchapter D of this chapter;

(H) a current property condition assessment consistent with Subchapter D of this chapter;

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker approved by the Department to market and sell the Property. The fee for this service will be paid by the seller, not to exceed 6 percent of the QC Price.

(3) Within ninety (90) days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month;

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price; and

(4) the QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. The Department will then assess if the prospective purchaser is a Qualified Purchaser. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) allow access to the Property and tenant files;

(2) keep the Department informed of potential purchasers; and

(3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at the QC Price, the Development Owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. Although the Development Owner is obligated to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period. Once the Department presents a QC to the Development Owner, the possibility of terminating the Extended Use Period is removed forever and the Property remains bound by the provisions of the LURA.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause

and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit evidence, in the form of a signed certification and a copy of the letter to be created by the Department, that the tenants in the Development have been notified in writing that the LURA has been terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance with the physical condition of the Property.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain as affordable after the end of the Compliance Period, the Department will implement modified compliance monitoring policies and procedures. Refer to the Extended Use Period Compliance Policy in Subchapter F of this chapter (relating to Compliance Monitoring) for more information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204685
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.601 - 10.625

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter F, §§10.601 - 10.625, concerning Compliance Monitoring. The purpose of this proposed new subchapter is to provide guidance on complying with multifamily Department programs.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to increased costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be compliant affordable housing. There will be no change in the economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in the economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect Texas Government Code, Chapter 2306 with regard to the cited programs.

§10.601. Purpose and Overview.

(a) This subchapter satisfies the requirement of Internal Revenue Code (the "Code") §42(m)(1)(B)(iii) to provide a procedure that will be followed for monitoring for noncompliance with the provisions of the Code and to notify the Internal Revenue Service (IRS) of such noncompliance. This subchapter is consistent with requirements established under applicable state and federal laws, rules, and regulations. The Department will monitor in accordance with this subchapter. Nothing in this subchapter serves to waive, alter, or amend the requirements of any duly recorded Land Use Restriction Agreement (LURA). A party to a LURA wishing to have the LURA amended must submit a formal request to the Department, and the Department will review any such request to determine if it is acceptable and, if acceptable, specify any appropriate requirements for, or conditions, or limitations on any such amendment. The Department monitors rental Developments receiving assistance under:

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

(2) the HOME Investment Partnerships Program (HOME);

(3) the Tax Exempt Bond Program (BOND);

(4) the Housing Trust Fund Program (HTF);

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

(6) the Tax Credit Exchange Program (Exchange); and

(7) the Neighborhood Stabilization Program (NSP).

(b) All Developments monitored by the Department are subject to the Department's enforcement rules, found in Chapter 60, Subchapter C of this title (relating to Administrative Penalties).

(c) Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The Compliance Division monitors to ensure Owners comply with the program rules and regulations, Texas Government Code, Chapter 2306, the LURA requirements and conditions, and representations imposed by the Application or award of funds by the Department. This subchapter does not address forms and other records that may be required of Development Owners by the IRS or other governmental entities, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

§10.602. Construction Monitoring.

(a) The Department will monitor the entire construction phase for all applicable requirements according to the level of risk. After Final Construction during the Affordability Period, the Department will periodically monitor the Development to assure that the initial compliance review was correct.

(b) Owners are required to submit evidence of final construction within thirty (30) days of completion in a format prescribed by the Department. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws and the Engineer of Record (if applicable) must submit

a certification that the Development was built in compliance with the design requirements.

(c) The Department will conduct a final inspection after receipt of notification of final construction. During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility laws. In addition, a Uniform Physical Condition Standards inspection may be completed.

(d) Owners will be provided a written notice after the final inspection. If any deficiencies are noted, a corrective action period will be provided.

(e) Forms 8609 and final retainage will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

(f) During any construction inspection, if the Owner and the Department are unable to agree that an identified issue is a violation, the Owner must request Alternative Dispute Resolution (ADR). The process for engaging ADR is outlined in §10.622 of this chapter (relating to Alternative Dispute Resolution).

§10.603. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed no later than September 1st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data. Under special circumstances, the Department may, at its discretion, waive the online reporting requirements where a hardship can be demonstrated. In the absence of a written waiver, all Developments are required to submit reports online.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (c) of this section. For example, if a Development is awarded funds in calendar year 2007, the first report is due in 2009. The AOCR is comprised of five sections:

(1) Part A "Owner's Certification of Program Compliance." All Development Owners must annually certify to compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. In addition, Owners are required to report on the race and ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance. HTC Developments during the Compliance Period will also be required to provide the name and mailing address of the syndicator in the Annual Owner's Compliance Report;

(2) Part B "Unit Status Report." All Developments must annually report the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations;

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

(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide the data requested in the Owner's Financial Certification; and

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

(c) Parts A, B, C and E of the Annual Owner's Compliance Report must be provided to the Department no later than the last day in April of each year, reporting data current as of December 31st of the previous year (the reporting year). Part D, "Owner's Financial Certification," which includes the current audited financial statements and income and expenses of the Development for the prior year, must be submitted to the Department no later than the last day of April, each year.

(d) Any Development for which the AOCR, Part A, "Owner's Certification of Program Compliance," is not received or is received past the due date will be considered not in compliance with this section. If Part A is incomplete, improperly completed, or is not submitted by the Development Owner, it will be considered not received and not in compliance with this section. The Department will report to the IRS on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any HTC Development that fails to comply with this requirement.

(e) Department staff will review Part A of the AOCR for compliance with the requirements of the appropriate program. If it appears that the Development is not in compliance based upon the report, the Owner will be given written notice and provided a corrective action period to clarify or correct the report. If the Owner does not respond to the notice, the report will be subject to the sanctions listed in subsections (f) and (g) of this section.

(f) If any required section, or sections (Parts A, B, C, D and/or E) of the report are not received on or before the deadline for submission specified in subsection (c) of this section, a notice of noncompliance will be sent to the Owner, specifying a corrective action deadline. If the report is not received on or before the corrective action deadline, the Department shall:

(1) For all HTC Developments, issue Form 8823 notifying the IRS of the violation; and

(2) For all Developments, score the noncompliance in accordance with §10.621 of this chapter (relating to Material Noncompliance Methodology).

(g) The Department may assess and enforce the sanctions described in paragraphs (1) and (2) of this subsection against an Owner who fails to submit all or any part of the AOCR on or before the due date of each year and has multiple, consistent, and/or repeated violations of failure to submit all or any part of the AOCR by the due date each year:

(1) a late processing fee in the amount of $1,000; and/or

(2) a HTC Development that fails to submit the required AOCR for three (3) consecutive years may be reported to the IRS as no longer in compliance and never expected to comply.

(h) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for

the reporting period. For example, the report due October 10th should report occupancy as of September 30th. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

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

(j) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(k) Exchange developments must submit Form 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) thirty (30) days after the Department issues the executed form(s).

§10.604. Recordkeeping Requirements.

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §10.603 of this chapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

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

(c) HTC records must be retained for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for NSP and HOME rental Developments must comply with the provisions of 24 CFR §92.508(c), which generally requires retention of rental housing records for five (5) years after the Affordability Period terminates.

(e) Housing Trust Fund (HTF) rental Developments must retain tenant files for at least three (3) years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including, but not limited to, the Application and Development costs and documentation, must be retained for at least five (5) years after the Affordability Period terminates.

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

§10.605. Notices to the Department.

(a) If any of the events described in paragraphs (1) - (4) of this subsection occur, written notice must be provided to the Department within the respective timeframes:

(1) Written notice must be provided at least thirty (30) days prior to any sale, transfer, or exchange of the Development or any portion of the Development;

(2) Notification must be provided within thirty (30) days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster);

(3) Owners of Bond Developments shall notify the Department of the date on which 10 percent of the Units are occupied and the date on which 50 percent of the Units are occupied, within ninety (90) days of such dates; and

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

(b) Owners are responsible for maintaining current information (including contact persons, physical addresses, mailing addresses, email addresses, and phone numbers) for the Ownership entity and management company in the Department's Compliance Monitoring and Tracking System (CMTS). Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely on the information supplied by the Owner in CMTS to meet this requirement.

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

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program, using the definitions of annual income described in HUD Handbook 4350.3 as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing Form 8823, the Department will evaluate annual income consistent with the IRS Guide. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in.

(b) The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form.

(c) The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's income certification form will be accepted.

§10.607. Utility Allowances.

(a) The Department will monitor to determine if HTC, HOME, BOND, HTF, NSP, TCAP, and Exchange properties comply with published rent limits which include an allowance for tenant paid utilities. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on an allocation method or "ratio utility billing system" (RUBS), this monthly amount will be considered a mandatory fee. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, Owner may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than the allowable limit. For HOME, BOND, HTF, and NSP buildings, Owners may account for utilities paid directly to the Owner or to a third party billing company in their utility allowance. Where residents are responsible for some, or all, of the utilities -- other than telephone, cable, and internet -- Development Owners must use a utility allowance that complies with both this section and the applicable program regulations. An Owner may not change utility allowance methods or start charging residents for a utility without written approval from the Department. *Example 607(1):* A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period.

In year 8, the owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website.

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

(c) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed by HUD (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings.

(d) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in paragraphs (1) - (5) of this subsection:

(1) The utility allowance established by the applicable Public Housing Authority (PHA) for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development. If the PHA publishes different schedules based on building type, the Owner is responsible for implementing the correct schedule based on the Development's building type(s). *Example 607(2):* The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consist of twenty buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each building type. In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency on an ongoing basis. If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility. If an Owner chooses to implement a methodology as described in paragraph (2), (3), (4), or (5) of this subsection, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received. In general, if the property is located in an area that does not have a municipal, county or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. In the event the property is located in an area without a clear municipal or county housing authority the Department may permit the use of another housing authority's utility allowance schedule on a case by case basis. Prior approval from the Department would be required and the owner would be required to obtain approval on an annual basis;

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: http://www.powertochoose.org/ to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must be signed by the utility provider representative and specifically include all "component charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(3) The HUD Utility Schedule Model. A utility estimate can be calculated by using the "HUD Utility Schedule Model" that can be found at http://www.huduser.org/portal/resources/utilmodel.html (or successor Uniform Resource Locator). The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, on a CD, within the timeline described in subsection (f) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent;

(4) An Energy Consumption Model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of building location. The ninety (90) day period after which the new utility allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate; and

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

(e) For a Development Owner to use the Actual Use Method they must:

(1) Provide a minimum sample size of usage data for at least 5 Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. *Example 607(3):* A Development has 20 three bedroom/one bath Units, and 80 three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(2) Scan the information in subparagraphs (A) - (E) of this paragraph onto a CD and submit it to the Department no later than the beginning of the ninety (90) day period in which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. *Example 607(4):* The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2010. The data provided is from February 1, 2009 through January 31, 2010. The Owner must submit the information to the Department no later than March 31, 2010 for the information to be valid;

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

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data;

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

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

(E) Documentation of the current utility allowance used by the Development;

(3) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the guidelines described in subparagraphs (A) - (E) of this paragraph;

(A) If data is obtained for more than 20 percent or 5 of each Unit Type, all data will be used to calculate the allowance;

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

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

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

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

(4) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in paragraph (2) of this subsection;

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent; and

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance.

(f) Effective dates. If the Owner uses the methodologies as described in subsection (b), (c), or (d)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. For methodologies as described in subsection (d)(2) - (5) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance. With the exception of the methodology described in subsection (d)(5) of this section, if a response is not received from the Department within the ninety (90) day period, the Owner may temporarily use the submission as a safe harbor until the Department provides written authorization (the Owner cannot assume that the allowance is approved by the Department but can operate in good faith prior to notification). Failure to submit the proposed utility allowance to the Department and make it available to the residents will result in a finding of noncompliance.

(g) Requirements for Annual Review. Owners utilizing the methods described in subsections (b) and (c) of this section must demonstrate that the utility allowance has been reviewed annually. Any change in the method described in subsection (d)(1) of this section can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. Owners utilizing the methods described in subsection (d)(2) - (5) of this section must submit to the Department, once a calendar year, copies of the utility estimate and simultaneously make the estimate available to the residents by posting the estimate in a common area of the leasing office at the Development. Changes in utility allowances cannot be implemented until the estimate has been submitted to the Department and made available to the residents by posting in the leasing office for a ninety (90) day period. The back-up documentation required by the methodology the Owner has chosen must be submitted to the Department for approval no later than October 1st; however, the Department encourages Owners to submit documentation prior to the October 1st deadline in order to ensure that the Department has adequate time to review and respond to the Owner's estimate.

(h) Combining Methodologies. With the exception of HUD regulated buildings and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, gas, etc.). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(i) Increases in Utility Allowances for Developments with HOME and NSP funds. Unless otherwise instructed by HUD, the Department will permit owners to implement changes in utility allowance in the same manner as Housing Tax Credit (HTC) Developments.

(j) The Owner shall maintain and make available for inspection by the tenant the data upon which the utility allowance schedule is calculated. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the Owner and tenant.

(k) In general, the Department permits Owners to select the method for establishing a utility allowance. However, in accordance with the HOME Final Rule 24 CFR §92.252(c) and as adopted by Texas NSP, the Department has the right to calculate the utility allowance for HOME rental Developments. In addition, the Department will select the method for establishing the utility allowance for Housing Tax Credit properties who's LURA terminated early.

(l) If Owners want to utilize the HUD Utility Schedule Model or the Energy Consumption Model to establish the initial utility allowance for the Development, prior to the commencement of leasing activities, the Owner must submit utility allowance documentation for Department approval.

(m) The Department will review utility allowances for reasonableness by comparing the allowance to other available data. If the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

§10.608. Lease Requirements.

(a) Eviction, termination, refusal to renew a lease. For HTC Developments, Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.

(b) For HOME and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) prohibits Owners from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253).

(c) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.

(d) HTC and BOND Developments must use a lease or lease addendum that requires households to report changes in student status.

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

(f) All owners must provide prospective households with a Department approved fair housing disclosure notice. This notice must be executed by the household no more than thirty days and no less than three days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a unit on a Development administered by the Department, including households transferring units within the same Development.

(g) For HOME and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that, all households at HOME and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355 and §570.487(c))

§10.609. Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP, and BOND Developments.

(a) Recertification Requirements for 100 percent low income HTC, Exchange and TCAP Developments:

(1) Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTC Developments perform annual income recertifications. Households will maintain the designation they had at initial certification;

(2) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self certification from each household that reports the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). In addition, the self certification will collect information about student status to establish ongoing compliance with the HTC program. The Development must collect this self certification information on the Department's Annual Eligibility Certification (AEC) form and must maintain the certification in all household files; and

(3) One-Hundred percent low income HTC Developments that are not required to complete annual income recertifications but voluntarily continue to do so must obtain the AEC form described in paragraph (2) of this subsection and maintains it in all household files. The Department will not review recertification documentation during a monitoring review unless noncompliance is identified with the initial certification. Failure to complete the AEC form will result in a noncompliance finding under, "Failure to maintain or provide Annual Eligibility Certification" and scored in the Department's Compliance Status System as applicable.

(b) Recertification Requirement for Mixed Income HTC, Exchange and TCAP Developments. HTC projects (as defined on Part II question, 8b of IRS Form 8609) with Market Units must complete annual income recertifications. Section 10.610 of this chapter (relating to Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments) sets out the requirements for maintaining compliance with the Available Unit Rule.

(c) Student Requirements for HTC, Exchange and TCAP Developments. Changes to student status reported by the household at anytime during their occupancy or on the AEC require the Owner to determine if the household continues to be eligible under the HTC program. During the Compliance Period, if the household is comprised of full-time students, the household must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. During the Compliance Period, noncompliance with this section will result in the issuance of IRS Form 8823 reporting noncompliance under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable. Regardless of the requirements stated in a LURA, after the Compliance Period, the Department will not monitor to determine if households meet the student requirements of the Housing Tax Credit program.

(d) Recertification Requirements for 100 percent low income BOND Developments. If 100 percent of the Units are set-aside for households at 60 percent or 50 percent of Area Median Income, regardless of the requirements in the LURA, recertifications are not required.

(e) Recertification Requirement for mixed income BOND Developments. If less than 100 percent of the Units are set-aside for households at 60 percent or 50 percent Area Median Income, Low Income households must be recertified to establish compliance with the Available Unit Rule. Regardless of the requirements stated in the LURA, Eligible Tenants (as defined in the Development's LURA) do not need to be annually recertified.

(f) Student Requirements for 100 percent low income BOND Developments. One-hundred percent low income Bond Developments must continue to annually screen households for student status. Bond Developments that do not also have Housing Tax Credits must use the Department's Certification of Student Eligibility form and it must be maintained in the household's file. Bond developments layered with HTCs may use the Annual Eligibility Certification to annually screen

for student status. Changes to student status that the household reports at anytime during their occupancy or during annual screening for student status, require the Owner to determine if the household continues to be eligible under the Bond program. If the household is comprised of full-time students then the household must meet a program exception, which must be documented and maintained in the household's file.

(g) Student requirements for mixed income BOND Developments. Mixed Income Bond Developments must annually screen low income households for student status during the recertification process. If the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. Noncompliance with this section will result in a noncompliance finding under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable.

(h) Recertification Requirements for HOME Developments:

(1) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.203 and §92.252 of the HOME Final Rule, regardless of the requirements stated in a LURA, recertification requirements will be monitored as shown in paragraph (2)(A) - (F) of this subsection;

(2) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2001 will have the sixth year of the affordability period determined in *Example 609(1):*

(A) Year 1: May 15, 2001 - May 14, 2002;

(B) Year 2: May 15, 2002 - May 14, 2003;

(C) Year 3: May 15, 2003 - May 14, 2004;

(D) Year 4: May 15, 2004 - May 14, 2005;

(E) Year 5: May 15, 2005 - May 14, 2006;

(F) Year 6: May 15, 2006 - May 14, 2007;

(G) Year 7: May 15 2007 - May 14, 2008;

(H) Year 8: May 15, 2008 - May 14, 2009;

(I) Year 9: May 15 2009 - May 14, 2010;

(J) Year 10: May 15 2010 - May 14, 2011;

(K) Year 11: May 15 2011 - May 14, 2012; and

(L) Year 12: May 15 2012 - May 14, 2013.

(3) In the scenario in paragraph (2) of this subsection, all households in HOME Units must be recertified with source documentation between May 15, 2006 to May 14, 2007 and between May 15, 2012 and May 14, 2013. In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME funds, *Example 609(1),* a household moved into a HOME unit on June 10, 2010, the household's self certification must be completed by June 10, 2011, and the household must be recertified with source documentation effective June 10, 2012. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's income certification form will be accepted. Noncompliance with this section will result in a noncompliance finding of, "Owner failed to maintain or provide tenant annual income recertification" and scored in the Department's Compliance Status System as applicable. If the household reports on their self certification that their household income is above the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then a recertification with verifications is required.

(i) Recertification Requirements for One-Hundred Percent HTF Developments. Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTF Developments performed annual income recertifications. The household will maintain its initial low-income designation at move-in and throughout the household's occupancy, i.e., Extremely Low Income (ELI), Very Low Income (VLI) and Low Income (LI), provided that the Owner does not charge gross rent in excess of the applicable rent limit.

(j) Recertification Requirements for HTF Developments with Market Units. HTF Developments with Market Units in one or more buildings (as evidenced in their LURA) must perform annual income recertifications of all households residing in HTF Program Units. The HTF program requires Developments to comply with the Available Unit Rule. If a household's income exceeds 140 percent of the recertification limit (highest income tier), the household must be redesignated as over income (OI) and the Next Available Unit on the Development must be leased to a household with an income and rent less than the EVI, VLI, and LI limit depending on what designation the Development needs to maintain compliance with the LURA. The OI household may be redesignated in accordance with lease terms as Market once the OI Unit is replaced with another low-income Unit.

(k) Recertification Requirements for HTF Developments with Market units and other Department administered multifamily rental programs. HTF Developments with other Department administered programs will comply with the requirements of the other program. *Example 609(2):* If a Development is a mixed income HTF and 100 percent low income HTC, all households must be certified at move in. Then, once a calendar year, in accordance with the HTC requirements, the AEC must be obtained. It is not necessary to complete a full income recertification of the households designated under the HTC program.

(l) Recertification Requirements for NSP Developments. NSP Developments are not required to perform annual recertifications unless the LURA specifically requires recertifications.

(m) If a Development is required to perform an annual income recertification of a low-income household for a TDHCA program, the AEC is not also required. *Example 609(3):* If a Development has TDHCA HOME funds and Housing Tax Credits, the owner must obtain an Income Certification form from each household designated under the HOME program. Since the property is required to obtain the Income Certification form, the AEC is not required. *Example 609(4):* A mixed income Development was awarded Housing Tax Credits in 1990 and in 2011. Since the 2011 allocation requires all low-income households to be recertified, §10.620(b)(12) of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period) does not apply.

§10.610. Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments.

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 or 40/60 (20 percent of the Units restricted to the 50 percent income and rent limit, or 40 percent of the

Units restricted at the 60 percent income and rent limits). The minimum set-aside elected sets the maximum income and rent limits for the low-income units on the Development. Many Developments have additional income and rent requirements (i.e., 30 percent, 40 percent and 50 percent) that are lower than the minimum set-aside requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA. The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met.

(b) For 100 percent HTC Developments that are not required to perform annual recertification, regardless of the requirements stated in the Development's LURA, the additional rent and occupancy restrictions will be monitored as follows:

(1) Households initially certified at the 30 percent income and rent limits. Households will maintain their designation they had at initial move-in. The Unit will continue to meet the 30 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 30 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 30 percent limit;

(2) Households initially certified at the 40 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 40 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 40 percent limit; and

(3) Households initially certified at the 50 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 50 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 50 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 50 percent limit.

(c) Mixed Income HTC Developments with Market Units will be monitored as follows:

(1) The HTC program requires Mixed Income Developments with Market Units to comply with the Available Unit Rule. When a household's income at recertification exceeds 140 percent of the applicable current income limit elected by the minimum set-aside, the owner must comply with the Available Unit Rule and lease the next available unit (same size or smaller) in the building to a low-income household to maintain compliance. For HTC Developments that are required to perform annual recertifications, the additional rent and occupancy restrictions will be monitored as follows;

(A) Households initially certified at the 30, 40 or 50 percent income and rent limits,

(B) Households will maintain the designation they had at initial move in unless the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside. The Unit will continue to meet the designation from the initial certification provided that the Owner does not charge gross rent in excess of the additional rent and occupancy rent limit,

(C) The household will not be required to vacate the Unit for other than good cause. When the household vacates the Unit, the next available Unit on the Development must be leased so as to meet the Development's additional rent and occupancy restrictions, and

(D) If the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside, the household must be redesignated as over income (OI) and the Next Available Unit Rule must be followed. *Example 610(1):* A household was initially certified at the 40 percent income limit at move in. The household's income increases at recertification above the 40 percent income limit to the 50 percent income limit. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge rent in excess of the 40 percent rent limit. When the household vacates the Unit, the Next Available Unit on the Development is leased to a household with an income and rent less than the 40 percent limits.

(2) This subsection does not require HTC Developments to lease more Units under the additional occupancy restrictions than established in their LURA. *Example 610(2):* If a Development is required to lease 10 units at the 40 percent income and rent levels and has satisfied the requirement, the owner is not required to offer the 40 percent rent to other households, even if their income is less than the 40 percent income limit.

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

§10.611. Household Unit Transfer Requirements for All Programs.

(a) Household Transfers for One-Hundred percent HTC, Exchange, and TCAP Developments. For HTC Developments that are 100 percent low-income, a household may transfer to any Unit within the same project, as defined as a multiple building project on Part II, question 8b of the IRS Form 8609. If the Owner elected to treat each building as a separate project, as defined on Part II, question 8b of the 8609 form, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the Development.

(b) Household Transfers for Mixed Income HTC, Exchange and TCAP Developments. For HTC Developments that are Mixed Income with Market Units, a household may transfer to another building in the same project, as defined as a multiple building project on Part II of the IRS Form 8609 if the household was not over income (OI) at the time of the last annual income recertification. If the Owner elected to treat each building as a separate project, as defined on Part II of the IRS Form 8609, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the Development.

(c) Household transfers for BOND, HTF, HOME, and NSP. For BOND, HTF, HOME, and NSP Developments, households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved onto the Development. If the Development is layered with Housing Tax Credits, default to transfer guidelines under the HTC rules.

(d) Household Transfers in the Same Building for all Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The unit designations will swap status. *Example 611(1):* Building 1 has 4 low-income Units. Units 1 through 3 are occupied by low-income households and Unit 4 is a vacant low-income unit. The household in Unit 2 moves to Unit 4 and the Unit designations swap status. Unit 2 is now a vacant low-income unit.

§10.612. Requirements Pertaining to Households with Rental Assistance.

(a) The Department will monitor to ensure Development Owners comply with Texas Government Code, §2306.269 and §2306.6728, regarding residents receiving rental assistance under Section 8, U.S. Housing Act of 1937 (42 U.S.C. §1437f).

(b) The policies, standards and sanctions established by this section apply only to:

(1) multifamily housing developments that receive assistance described in subparagraphs (A) and (B) of this paragraph, from the Department on or after January 1, 2002; (§2306.185)

(A) a loan or grant in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal possession of the Development; or

(B) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal title to the Development;

(2) multifamily rental housing Developments that applied for and were awarded housing tax credits after 1992;

(3) housing developments that benefit from the incentive program under Texas Government Code, §2306.805; and

(4) housing Developments that receive funding from the NSP program or the HOME program (24 CFR §92.252(d)).

(c) Owners of multifamily rental housing developments described in subsection (b) of this section are prohibited from:

(1) excluding an individual or family from admission to the Development because the individual or family participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f), or other federal rental assistance program; and

(2) using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual's or family's share of the total monthly rent payable to the Owner of the Development. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding $2,500 per year.

(d) To demonstrate compliance with this section, Owners shall:

(1) State in their leasing criteria that the Development will comply with state and federal fair housing and antidiscrimination laws;

(2) Apply screening criteria uniformly (rental, credit, and/or criminal history), including employment policies, and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules; and

(3) Approve and distribute an Affirmative Marketing Plan that will be used to attract prospective applicants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, familial status, or religious affiliation. Racial groups to be marketed to may include White, African American, Native American, Alaskan Native, Asian, Native Hawaiians or Other Pacific Islanders. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. The Affirmative Marketing Plan must be provided to the property management and onsite staff. Owners are encouraged to use HUD Form 935.2A, and may use any version of this Form as applicable. The Affirmative Marketing Plan must identify:

(A) which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach. All Developments must select persons with disabilities as one of the groups identified as least likely to apply. When identifying racial/ethnic minority groups the Development will market to, factors such as the characteristics of the housing's market area should be considered. *Example 612(1):* An Owner obtains census data showing that 6.5 percent of the city's total population are identified as Asian Americans. However, the Owner's demographic data for the Development shows that zero Asian American households are represented. The Owner chooses to identify Asian American groups as one of the groups least likely to apply at the Development without special outreach;

(B) procedures that will be used by the Owner to inform and solicit applications from persons who are least likely to apply. Specific media and community contacts that reach those groups designated as least likely to apply must be identified (community outreach contacts may include neighborhood, minority, or women's organizations, grass roots faith-based or community-based organizations, labor unions, employers, public and private agencies, disability advocates, or other groups or individuals well known in the community that connect with the identified group(s). *Example 612(2):* An Owner has identified the disabled as least likely to apply and has decided to send letters on a quarterly basis to the Case Manager at a non-profit organization coordinating housing for developmentally disabled adults. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired;

(C) how the Owner will assess the success of Affirmative Marketing efforts. Affirmative Marketing Plans should be reviewed on an annual basis to determine if changes should be made and plans must be updated every five (5) years to fully capture demographic changes in the housing's market area;

(D) records of marketing efforts must be maintained for review by the Department during onsite monitoring visits. *Example 612(3):* The Owner keeps copies of all quarterly correspondence mailed to the contacts or community groups identified in the Affirmative Marketing Plan. The letters are dated and addressed and show that the Owner is actively marketing vacancies, or a waiting list to the groups identified in the Owner's plan. Failure to maintain a reasonable Affirmative Marketing Plan and documentation of marketing efforts on an annual basis will result in a finding of noncompliance;

(E) if a Development does not have any vacant units, Affirmative Marketing is still required and Owners must maintain a waiting list. If a Development does not have any vacancies and the waiting list is closed, Affirmative Marketing is not required; and

(F) in accordance with 24 CFR §92.253(d) of the HOME Final Rule and as adopted by Texas NSP, Owners of HOME and NSP Developments must maintain a written waiting list and tenant selection criteria. Failure to maintain these documents will result in a finding of noncompliance.

§10.613. Onsite Monitoring.

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

(b) The Department will perform onsite monitoring reviews of each low income Development. The Department will conduct:

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

(2) the first review of all other Developments as leasing commences;

(3) subsequent reviews at least once every three years during the Affordability Period;

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

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

(c) The Department will perform onsite file reviews and monitor:

(1) a sampling of the low income resident files in each Development, and review the income certifications;

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

(3) the rent records and any additional information that the Department deems necessary.

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

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

§10.614. Monitoring for Social Services.

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during onsite visits beginning with the second onsite review, and must be submitted to the Department upon request. *Example 614(1):* The Owner's LURA requires provision of onsite daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services. *Example 614(2):* The Owner's LURA requires a monetary amount to be expended on a monthly basis for supportive services. The Owner maintains a copy of an agreement with a Supportive Service provider and documents the amount expended to evidence compliance with this requirement.

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

§10.615. Monitoring for Non-Profit Participation or HUB Participation.

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

(b) If an Owner wishes to change the non-profit, or HUB, prior approval from the Department is necessary. The Annual Owner's Compliance Report also requires Owners to certify to compliance with this requirement. Failure to comply with the requirements of this section shall result in a finding of noncompliance. In addition, the IRS will be notified if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(c) The Department does not enforce partnership agreements or determine equitable fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction.

§10.616. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. The Department may contract with a third party to complete UPCS inspections.

(b) HTC Development Owners are required by Treasury Regulation 1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department will evaluate UPCS reports in the manner described in paragraph (1) of this subsection:

(1) A finding of Major Violations will be cited if:

(A) Life threatening health, safety, or fire safety hazards are reported on the Notification of Exigent and Fire Safety Hazards Observed form and are not corrected within twenty-four (24) hours of the inspection with notification of correction submitted to the Department within seventy-two (72) hours of the inspection. Failure to notify the Department of correction within seventy-two (72) hours of the correction of any exigent health and safety or fire safety hazards listed on the

Notification will result in a finding of Major Violations of the UPCS for the Development; or

(B) An overall UPCS score of less than 70 percent (69 percent or below) is reported.

(2) A finding of Pattern of Minor Violations will be assessed if an overall score between 70 percent and 89 percent is reported; or

(3) Findings of both Major and Minor Violations will be assessed if deficiencies reported meet the criteria for both.

(d) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time (including smoke detectors and blocked egresses) to the IRS on Form 8823. Accordingly, the Department will submit Form 8823 for any UPCS violation. However, if the violation(s) does not meet the conditions described in subsection (c)(1) or (2) of this section, the issue will be noted in the Department's compliance status system as Administrative Reporting and no points will be assigned in the Department's compliance status evaluation of the Development. Non-HTC Developments that do not meet thresholds for Major and Pattern of Minor Violations as described in subsection (c)(1) or (2) of this section and correct all life threatening health, safety, and fire safety hazards noted at the time of inspection as directed in subsection (c)(1)(A) of this section will not receive findings for UPCS inspections. Items noted that do not exceed thresholds for Major and Pattern of Minor Violations must be corrected by submission of an Owner's Certification of Repair within the ninety (90) day corrective action period.

(e) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards (examples of such documentation include work orders, photographs, and/or invoices to third party repair specialists).

(f) The Department will provide to the Owner in writing a ninety (90) day corrective action period to respond to a notice of noncompliance for violations of the UPCS. The Department will not grant extensions unless there is good cause and the Owner clearly requests an extension during the corrective action period. The Department will respond to an owner's request for an extension within five (5) business days. Under no circumstances will the corrective action period exceed six (6) months.

(g) 24 CFR §92.251 of the HOME Final Rule requires rental property assisted with HOME funds to be maintained in compliance with all local codes and HQS (24 CFR §982.401). To meet this requirement, beginning the second year after completion of construction or rehabilitation, all HOME rental Development Owners must annually complete an HQS inspection of all HOME assisted Units. Any noted deficiencies must be repaired. The Department will review HQS inspection sheets for all Units for compliance with this requirement during onsite monitoring visits.

(h) Selection of Units for inspection:

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than thirty (30) days; and

(2) Units vacant for more than thirty (30) days are assumed to be ready for occupancy and will be inspected. No deficiencies will be cited for inspectable items if utilities are turned off and the inspectable item is present and appears to be in working order.

§10.617. Notice to Owners.

The Department will provide written notice to the Development Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, or program rules and regulations, including §42 of the Code. Correspondence from the Department may be sent electronically to the email addresses in the Compliance Monitoring Tracking System. If sent electronically, a paper copy will not be mailed unless specifically requested. The notice will specify a correction period during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six (6) months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period. If any communication to the Development Owner under this section is returned to the Department as refused, unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner. The Development Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Development Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).

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

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

(b) Rent or Utility Allowance Violations of additional rent restrictions (HTC). If the Owner agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable limit. *Example 618(1):* For Code §42 purposes, the maximum allowable limit is 60 percent. However, the Owner agreed to lease some Units to households at the 30 percent income and rent limits. It was discovered that the 30 percent households were overcharged rent. The Owner will be required to reduce the current amount of rent charged and refund the excess rents to the households.

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses. The amount of time Development staff spends on checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add $5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. *Example 618(2):* A Development's out of pocket

cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult. Should an Owner desire to include a higher amount to cover staff time, prior approval is required and wage information and a time study must be supplied to the Department. Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category Gross rent(s) exceeds tax credit limits. The noncompliance will be corrected on the later of January 1st of the next year. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year.

(d) Rent or Utility Allowance Violations on Non-HTC Developments and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess rent collected must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be dispersed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments:

(1) 100 percent HOME assisted Developments. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to 30 percent of the household's adjusted income;

(2) HOME Developments with any Market Rate units. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the comparable Market rent; and

(3) HOME Developments layered with other Department affordable housing programs. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the rent allowable under the other program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC Developments). Revenue Rulings 92-61 and 2004-82 provide guidance on employee occupied units. Provided that all the criteria in the Rulings are met, if the owner of the Development does not charge the employee for rent, the unit will be removed from the numerator and denominator of the applicable fraction to determine compliance. If the owner charges the employee any amount of rent, the Department will evaluate the eligibility of the household. If the household's income exceeds the maximum allowable limit or there is any other noncompliance, the event will be cited, scored and reported to the IRS on Form 8823 as appropriate.

§10.619. Notices to the Internal Revenue Service (HTC Properties).

(a) Even when an event of noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than forty-five (45) days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance.

(b) The Department will retain records of noncompliance or failure to certify for six (6) years beyond the Department's filing of the respective IRS Form 8823. The Department will retain the AOCRs and records for three years from the end of the calendar year the Department receives the certifications and records.

(c) The Department will send the Owner of record copies of any IRS Forms 8823 submitted to the IRS. Copies of Forms 8823 will be submitted to the syndicator for Developments awarded tax credits after January 1, 2004. The Development Owner is responsible for providing the name and mailing address of the syndicator in the Annual Owner's Compliance Report.

§10.620. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

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

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the rules detailed in paragraphs (1) - (12) of this subsection:

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

(2) At least once every three (3) years the property will be physically inspected including the exterior of the Development, all building systems and 10 percent of Low Income Units. No less than five but no more than thirty-five of the Development's HTC Low Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

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

(4) Reports to the Department must be submitted electronically as required in §10.603 of this chapter (relating to Reporting Requirements);

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

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

(7) Rents will remain restricted for all HTC Low Income Units. After the Compliance Period, utilities paid to the Owner can be accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit;

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

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

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

(11) The total number of required HTC Low Income Units must be maintained Development wide; and

(12) The Annual Eligibility Certification must be collected for all low income households on an annual basis. See §10.609 of this chapter (relating to Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP, and BOND Developments).

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (5) of this subsection.

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

(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low income occupancy requirements will be monitored Development wide, not building by building;

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

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

(5) Mixed income Developments are not required to conduct annual income recertifications.

(d) Regardless of the requirements stated in a LURA, the Department will monitor in accordance with this section.

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

§10.621. Material Noncompliance Methodology.

(a) The Department maintains a compliance history of each monitored Development in the Department's Compliance Status System. Developments with more than one program administered by the Department are scored by program. The Development will be considered in Material Noncompliance if the score for any single program exceeds the Material Noncompliance threshold for that program.

(b) A Development will not be assigned the scores noted in this section until after the Owner has been provided a written notice of the noncompliance and provided a corrective action deadline to show that either the Development was never in noncompliance or that the noncompliance event has been corrected.

(c) This section identifies all possible noncompliance events for all programs monitored by the Physical Inspection and Compliance Monitoring Sections of the Compliance Division. However, not all issues listed in this section pertain to all Developments. In addition, only certain noncompliance events are reportable on Form 8823. Those events that are reportable under the HTC program on Form 8823 are so indicated in subsections (h) and (i) of this section.

(d) For HTC Developments, all Forms 8823 issued by the Department will be entered into the Department's Compliance Status System. However, Forms 8823 issued prior to January 1, 1998 will not be considered in determining Material Noncompliance.

(e) For all programs, a Development will be in Material Noncompliance if the noncompliance event is stated in this section to be Material Noncompliance. The Department may take into consideration the representations of the Owner regarding monitoring notices and Owner responses; however, unless an Owner can prove otherwise, the compliance records of the Department shall be presumed to be correct.

(f) All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department, are scored even if the Development no longer actively participates in the program, with the exception of properties in the CDBG disaster recovery and Federal Deposit Insurance Corporation's (FDIC) Affordable Housing Disposition Program.

(g) Noncompliance events are categorized as either "Development events" or "Unit/building events". Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the noncompliance event rather than a score for each Unit or building. Other noncompliance events are identified individually by Unit and will receive the appropriate score for each Unit cited with an event. The Unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by Unit; however, the building is scored rather than the Unit and the building will receive the noncompliance score if one or more of the Units in that building are in noncompliance.

(h) Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value." Corrected noncompliance will no longer be included in the Development score three (3) years after the date the noncompliance was reported corrected by the Department.

(i) Each noncompliance event is assigned a point value. The possible events of noncompliance and associated "corrected" and "uncorrected" points are listed in subsections (j) and (k) of this section.

(j) Figure: 10 TAC §10.621(j) lists events of noncompliance that affect the entire Development rather than an individual Unit. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC and Exchange Developments is 30 points. The Material Noncompliance threshold for a non-HTC Development with 1-50 Low Income Units is 30 points. The Material Noncompliance threshold for a non-HTC Development with 51-200 Low Income Units is 50 points. The Material Noncompliance threshold for non-HTC Developments with 201 or more Low Income Units is 80 points. The third column lists the number of points assigned to the event from the date the issue is corrected until three (3) years after correction. The fourth column indicates which programs the noncompliance event applies. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure: 10 TAC §10.621(j)

(k) Figure 10 TAC §10.621(k) lists ten events of noncompliance associated with individual Units. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC or Exchange Development is 30 points. The Material Noncompliance threshold for a non-HTC property with 1-50 Low Income Units is 30 points. The Material Noncompliance threshold for a non-HTC Development with 51-200 Low Income Units is 50 points. The Material Noncompliance threshold for non-HTC properties with 201 or more Low Income Units is 80 points. The third column lists the number of points assigned to the event from the date the issue is corrected until three (3) years after the event is corrected. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure: 10 TAC §10.621(k)

§10.622. Alternative Dispute Resolution.

(a) It is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution (ADR) procedures to assist in resolving disputes under the Department's jurisdiction. If at any time an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

(b) In all phases of monitoring (construction and throughout the entire Affordability Period), if a potential issue of noncompliance has been identified, Owners will be provided a written notice of noncompliance. In general, the Department will provide up to a ninety (90) day corrective action period which can and will be extended for an additional ninety (90) days if there is good cause and the Owner requests an extension during the corrective action period.

(c) Owners must respond to the Department's notice of noncompliance. If an Owner does not respond, this ADR process which is explained in this section cannot be initiated.

(d) If an Owner does not agree with the Department's assessment of compliance, they should clearly explain their position and provide as much supporting documentation as possible. If the position is reasonable and well supported, the issue of noncompliance will be cleared with no further action taken, i.e., for HTC properties, Form 8823 will not be filed with the IRS and the issue will not be scored in the Department's compliance status system.

(e) If an Owner's response indicates disagreement with the Department's assessment of noncompliance, but does not appear to be a valid concern to the Department, staff will notify the Owner in writing of their right to engage in ADR. The Owner must respond in five (5) days and request ADR. In addition, the Owner must request an extension of the corrective action deadline, if one is still available. If the Owner does not respond to the staff's invitation to engage in ADR, the Department's assessment of the violation is final.

(f) The Department must meet the Treasury Regulation requirement found in §1.42-5 and file Form 8823 within forty-five (45) days after the end of the corrective action period. Therefore, it is possible that the Owner and Department may still be engaged in ADR. In this circumstance, the Form 8823 will be filed. However, it will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. All Owner supplied documentation supporting their position will be supplied to the IRS. Although the violation will be reported to the IRS within the required timeframes, it will not be scored in the Department's compliance status system pending outcome of ADR.

(g) ADR is not an appropriate format for matters regarding interpretations of laws, regulations and rules. ADR can only be used when parties could reach consensus.

§10.623. Liability.

Compliance with the program requirements, including compliance with §42 of the Code, is the sole responsibility of the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the Code, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME program regulations, BOND program requirements, and all other programs monitored by the Department.

§10.624. Applicability.

Unless otherwise noted, this subchapter applies to all Developments administered by the Department.

§10.625. Temporary Suspension of Other Sections of this Subchapter.

(a) Temporary suspensions of other sections of this subchapter may be granted by the Executive Director if there are extenuating circumstances which make it not possible or an undue administrative burden to comply with a requirement of this subchapter as long as substantial compliance is still in effect. For example, the Executive Director could suspend the requirement to report online or use Department approved forms, or alter the sample size for calculating a utility allowance using the actual use method.

(b) Under no circumstances can the Executive Director or the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD when required by federal law.

(c) Under no circumstances can the Executive Director or the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of Form 8823, or any sections of 26 U.S.C. §42.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204679
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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SUBCHAPTER G. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§10.901 - 10.904

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter G, §§10.901 - 10.904, concerning Fee Schedule, Appeals, and Other Provisions. The purpose of the proposed new sections is to provide for fees paid to the Department in order to cover the

administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections will have some implications related to revenues of the state government. The new sections propose two new $500 fees, one for challenging an application and another for ownership transfer requests. Although it is difficult to forecast the number of fees that will be collected in a given year, Department staff estimates approximately 40 challenges and 80 ownership transfers requests will be received in one year, for a total of $60,000 in additional fees. These fees will be used to cover administrative costs, including staff time, associated with processing these requests. There will be no fiscal implications for local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be adequate revenue to cover the cost of administering the program and a mechanism for formal communication between the Department and its awardees. There is new direct cost impact as a result of the proposed adoption of the new rule due to additional fees, more particularly those associated with challenges of applications and ownership transfer requests. The amount of change in economic cost to any individual required to comply with the proposed new subchapter is expected to be minimal and would only be incurred if the individual engages in actions that are at their option.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that any new economic impact on small or micro-businesses is expected to be minimal and would only be incurred if the business engages in actions that are at its option. There is no anticipated difference in cost of compliance between small and large businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; or by fax to (512) 475-0764, ATTN: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §§2306.144, 2306.147, and 2306.6716.

The proposed new sections affect Texas Government Code, Chapter 2306, including Subchapter DD, concerning Low Income Housing Tax Credit Program.

§10.901. Fee Schedule.

Any fees, as stated in this section, not paid 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 are available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee.

(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, 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 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, will receive a discount of 10 percent off the calculated pre-application fee. (§2306.6716(d))

(2) Refunds of 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 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. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be $30 per Unit based on the total number of Units. 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. 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, will receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application. Pursuant to Texas Government Code, §2306.147(b) the Department is required to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. 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. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department and construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME 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 amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a De-

velopment by an independent external underwriter in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission) 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 (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter shall incur a late fee in the amount of $500 for each business day the deficiency remains unresolved.

(7) Challenge Processing Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to $500 for challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent 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 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent 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 within ninety (90) days of the issuance date of the Determination Notice then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of $750 must be submitted. Building inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements that are submitted after the applicable deadline must be accompanied by an extension fee of $2,500. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. An extension fee will not be required for extensions requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve U.S. Department of Agriculture (USDA) as a lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request to be considered non-material that has not been implemented will not be required to pay an amendment fee. Material or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500. Amendment fees are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests to offer a property for sale under a Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(15) 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.

(16) 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 in an amount equal to the lesser of $3,000 or one-fourth (1/4) of 1 percent of the Qualified Contract Price determined by the Certified Public Accountant.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $500.

(18) Unused Credit or Penalty Fee. 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. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent 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 one hundred eighty (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 Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will 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 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 fourteen (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. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. (HTC Developments Only.) Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit Unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of IRS Form 8609. 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. For Tax-Exempt Bond Developments with the Department as the issuer, the tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to $40/Unit beginning two (2) years from the first payment date of the bonds. Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of the Texas Government 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.

(21) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. 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.

§10.902. Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, pre-application or Application threshold criteria, 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 change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the erroneous termination of an Application unless the termination is based on Material Noncompliance.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application or filed by or 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 seven (7) calendar days 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 signed by the 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 fourteen (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 additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director make a fully informed decision based on a complete analysis of the circumstances and verification any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application. The Board may not review any information not contained in or filed with the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) 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))

§10.903. Adherence to Obligations (§2306.6720).

Compliance with representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, selection criteria or otherwise, including the timely submittal and completion of cost certification for housing tax credit allocations (except for Department approved extensions), shall be deemed to be a condition to any Commitment, Determination Notice, Contract, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment, Determination Notice, Contract or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:

(1) the Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and

(2) the Board will opt either to terminate the Application and rescind the Commitment, Determination Notice, Contract or Carryover Allocation Agreement as applicable or the Department must:

(A) reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to 10 points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board;

(B) prohibit eligibility to apply for Housing Tax Credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to twenty-four (24) months from the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department;

(C) in addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.

§10.904. Alternative Dispute Resolution (ADR) Policy.

In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204701
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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CHAPTER 11. HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN

10 TAC §§11.1 - 11.10

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 11, §§11.1 - 11.10, concerning the Housing Tax Credit Program Qualified Allocation Plan. The purpose of the proposed new sections is to replace the current Qualified Allocation Plan (QAP) with a new QAP applicable to the 2013 cycle.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There will not be any new economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, ATTN: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Texas Government Code, Chapter 2306, including subchapter DD, concerning the Low Income Housing Tax Credit Program.

§11.1. General.

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

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

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

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

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided, however, that the Applicant has requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.
Figure: 10 TAC §11.2

§11.3. Housing De-Concentration Factors.

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

(b) Twice the State Average Per Capita. (§2306.6703(a)(4)) If the Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, referencing Texas Government Code, §2306.6703(A)(4), and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent

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

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an amount greater than $3 million in a single Application Round. All entities that share a Principal are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments) to be paid or $150,000, whichever is greater.

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

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

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

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

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

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

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

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

§11.5. Competitive HTC Set-Asides (§2306.111(d)).

This section identifies the statutorily-mandated set-asides which the Department is required to allocate. An Applicant may elect to compete in as many of the set-asides described in this section for which the proposed Development qualifies.

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

(2) USDA Set-Aside. (§2306.111(d)(2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d)(2).

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

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

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

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702 will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site.

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments retaining public housing operating subsidies to qualify under the At-Risk Set-Aside, only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units.

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

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

§11.6. Competitive HTC Allocation Process.

This section identifies the general allocation process and the methodology by which awards are made.

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

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

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

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

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

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

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

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

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

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

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

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

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

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

§11.7. Tie Breaker Factors.

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

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

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

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

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

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

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

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

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

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

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

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

(B) Funding request;

(C) Target Population;

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

(E) Total Number of Units proposed;

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

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

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

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

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

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

(i) No later than the Pre-application Neighborhood Organization Request Date identified in §11.2 of this chapter, the Applicant must e-mail, fax or mail with registered receipt a completed Neighborhood Organization Request letter as provided in the pre-application to the local elected official, as applicable, based on where the Development is proposed to be located. If the Development is located in an area that has district based locally elected officials, or both at-large and district based locally elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or it's ETJ, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the date of pre-application submission.

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

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

(ii) Superintendent of the school district;

(iii) Presiding officer of the board of trustees of the school district;

(iv) Mayor of the municipality;

(v) All elected members of the Governing Body of the municipality;

(vi) Presiding officer of the Governing Body of the county;

(vii) All elected members of the Governing Body of the county; and

(viii) State Senator and State Representative;

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

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

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

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

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

(v) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and

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

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

§11.9. Competitive HTC Selection Criteria.

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

(b) Criteria promoting development of high quality housing.

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

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

(i) five-hundred-fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred-fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

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

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

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

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

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

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

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

(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph, and each must have a Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection. (2 points)

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

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

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

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

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

(i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (15 points);

(ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (13 points); or

(iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (11 points).

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

(i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (15 points);

(ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (13 points); or

(iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (11 points).

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

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

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

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

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside may qualify to receive up to nine (9) points and all other Developments may receive up to eight (8) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

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

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

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

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

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

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

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zone of a public school with an academic rating of recognized or exemplary (or comparable rating) by the Texas Education Agency, as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary, middle or high school (as applicable) are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.

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

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

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

(A) A Colonia;

(B) An Economically Distressed Area;

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

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

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

(F) Qualified Elderly Developments (1 point).

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points for Developments in which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities,

victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

(d) Criteria promoting community support and engagement.

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

(A) Statement Requirements.

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

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

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

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

(i) Technical assistance is limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

mentation of its tax exempt status and its existence and participation in the community in which the Development is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities. Should an Applicant elect this option and the Application receives letters in opposition, then two (2) points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this subparagraph.

(B) An Application may receive (2) points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (1) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

(6) Community Revitalization Plan.

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

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

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

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

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

(-b-) presence of blighted structures;

(-c-) presence of inadequate transportation;

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

(-e-) the presence of significant crime;

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

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

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

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

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

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

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

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

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

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

(ii) Points will be awarded based on:

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

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

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

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

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

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

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

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

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

(II) the plan affirmatively addresses Fair Housing;

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

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

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

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to six (6) points if the city, county, or state has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) - (IV) of this clause, or improvements to areas within a quarter mile of the Development Site, unless a different distance is otherwise identified. The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure. The project or infrastructure must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for four (4) points for one of the items described in subclauses (I) - (IV) of this clause or six (6) points for at least two (2) of the items described in subclauses (I) - (IV) of this clause:

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

(II) Water and/or wastewater service;

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

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

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

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

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

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

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

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost that is not included in Eligible Basis) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types. Structured parking costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking. The square footage used will be the Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors (Elevator Served Development) the NRA will include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA will include elevator served interior corridors and 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application.

(A) Each Application will be categorized as:

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

(ii) All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse; or

(iii) All other Applications proposing Rehabilitation.

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

(i) Within 8 percent and equal to or less than the mean cost per square foot (10 points);

(ii) Within 5 percent and greater than the mean cost per square foot (10 points);

(iii) Within 13 percent and equal to or less than the mean cost per square foot (9 points);

(iv) Within 10 percent and greater than the mean cost per square foot (8 points);

(v) Within 18 percent and equal to or less than the mean cost per square foot (7 points);

(vi) Within 15 percent and greater than the mean cost per square foot (6 points); or

(vii) Within 20 percent of the mean cost per square foot (5 points)

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

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

and meets the requirements described in subparagraphs (A) - (I) of this paragraph:

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

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

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

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

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

(F) All necessary waivers and pre-clearance were requested in the pre-application;

(G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

(H) The pre-application met all applicable requirements; and

(I) The community revitalization plan the Applicant used for points under subsection (d)(6) of this section was submitted at the time of pre-application.

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

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

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

(ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

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

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

(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive two (2) points for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive the two (2) points; or

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

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

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

(f) Point Deductions.

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

(2) Staff will recommend to the Board a penalty of up to (5 points) for any of the items listed in subparagraph (A) of this paragraph, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of penalties by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant penalties. (§2306.6710(b)(2))

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

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

(C) No penalty points will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve USDA as a lender if the Applicant is not determined to be at fault for not meeting the deadline.

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

§11.10. Challenges of Competitive HTC Applications.

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

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

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

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

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

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

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

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

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

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

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

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

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204695
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 12, §§12.1 - 12.10, concerning the Multifamily Housing Revenue Bond Rules. The purpose of the proposed new sections is to implement changes that will improve the 2013 Private Activity Bond Program.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections will be in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections will be in effect, the public benefit anticipated as a result of the new sections will be the adoption of new rules for multifamily housing revenue bonds; thereby enhancing the state's ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period begins September 21, 2012, and ends on October 22, 2012. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect no other code, article, or statute.

§12.1. General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds (Bonds) by the Texas Department of Housing and Community Affairs (the "Department"). The Department is authorized to issue such Bonds pursuant to Texas Government Code, Chapter 2306. Notwithstanding anything in this chapter to the

contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Texas Government Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (the "Code"), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicant's seeking a Housing Tax Credit Allocation should consult the Department's Qualified Allocation Plan (QAP) and the Uniform Multifamily Rules for the current program year. In general, the Applicant will be required to satisfy the requirements of the QAP in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter. The Department encourages participation in the Bond program by working directly with Applicants, lenders, Bond Trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs associated with the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis.

(e) Waivers. Requests for waivers of program rules must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications) and must be requested at the time the pre-application is submitted.

§12.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 10 of this title (relating to Uniform Multifamily Rules).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR Texas Government Code, §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(A), promulgated under the Securities Act of 1935, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Texas Government Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

§12.3. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.

(b) Investment Letters. Bonds rated less than "A," or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall sign and deliver to the Department an investor letter in a form acceptable to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars ($100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investor letter in a form acceptable to the Department.

§12.4. Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can get a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call. Prior to the submission of a pre-application, it is important that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department for any formal action regarding an inducement resolution.

(b) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as prescribed by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department. Department review at of the pre-application is limited and not all issues of eligibility and documentation submission requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(c) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Texas Government Code, §1372.0321. All Priority 1 pre-applications will

be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Texas Government Code, §2306.359. In the event two or more pre-applications receive the same score, the Department will use the following tie breaker factors in the order they are presented to determine which pre-application will receive preference in consideration of an inducement resolution.

(1) Applications that meet any of the criteria under §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria).

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

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application and proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Because each Development is unique, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is presented to the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (10) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §10.204(9) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §10.204(9) of this title at the time of Application;

(4) Zoning evidenced by the documentation required under §10.204(10) of this title;

(5) Boundary Survey or Plat clearly identifying the location and boundaries of the subject Property;

(6) Current market information (must support affordable rents);

(7) Local area map that shows the location of the Development Site and the location of at least six (6) services within a one mile radius (two miles if in a Rural Area). The mandatory site characteristics are identified in §10.101(a)(2) of this title (relating to Site and Development Requirements and Restrictions);

(8) Organization Chart showing the structure of the Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable;

(9) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(10) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications (§2306.5705(9))). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent.

§12.6. Pre-Application Scoring Criteria.

The section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Texas Government Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Submission Procedures Manual. Applicant's proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) Set aside 50 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of units rents capped at 60 percent AMGI; or

(ii) Set aside 15 percent of units rent capped at 30 percent AMGI and the remaining 85percent of units rent capped at 60 percent AMGI; or

(iii) Set aside 100 percent of units rent capped at 60 percent AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80 percent of the Units capped at 60 percent AMGI. (7 points)

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate units can be included under this priority. (5 points)

(2) Cost of the Development by Square Foot. (1 point) For this item, costs shall be defined as construction costs, including Site Work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. Pre-applications that do not exceed $95 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation will automatically receive.

(3) Unit Sizes. (5 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).

(A) five-hundred-fifty (550) square feet for an Efficiency Unit;

(B) six-hundred-fifty (650) square feet for a one Bedroom Unit;

(C) eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the Affordability Period for a Development to a total of thirty-five (35) years.

(5) Unit Amenities. A minimum of (7 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The amenities selected at pre-application may change at Application so long as the overall point structure remains the same. The points selected at pre-application and/or Application and corresponding list of amenities will be required to be identified in the LURA and the points selected must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to receive points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. Pre-applications must select at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (G) of this paragraph. The amenities must be for the benefit of all tenants and made available throughout normal business hours. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the threshold requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Some amenities may be restricted to a specific Target Population. An amenity can only receive points once; therefore combined functions (a library which is part of a community room) only receive points under one category. The common amenities include those listed in §10.101(b)(5) of this title. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the threshold test applied based on the number of Units per individual site, and will have to identify in the LURA which amenities are at each individual site.

(A) total Units equal 16 shall have (1 point);

(B) total Units are 17 to 40 shall have (4 points);

(C) total Units are 41 to 76 shall have (7 points);

(D) total Units are 77 to 99 shall have (10 points);

(E) total Units are 100 to 149 shall have (14 points);

(F) total Units are 150 to 199 shall have (18 points); or

(G) total Units are 200 or more shall have (22 points).

(7) Tenant Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(8) Underserved Area. An Application may qualify to receive up to (2 points) for Developments located in a colonia, economically distressed area, or municipality, or if outside of the boundaries of any municipality, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation.

(A) General Developments (2 points); or

(B) Qualified Elderly Developments (1 point).

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 and must be received ten (10) business days prior to the date of the Board meeting at which the pre-application will be considered. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, letters that do not specifically refer to the Development or do not explicitly state support will receive (zero (0) points). A letter that does not directly express support but expresses it indirectly by inference (i.e. a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction" will be treated as a neutral letter).

(A) State Senator and State Representative;

(B) Mayor of the municipality;

(C) All elected members of the Governing Body of the municipality;

(D) Presiding officer of the Governing Body of the county;

(E) All elected members of the Governing Body of the county;

(F) Superintendent of the school district; and

(G) Presiding officer of the board of trustees of the school district.

(10) Preservation Initiative. (10 points) Preservation Developments, including rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two (2) years or for which there has been a rent restriction requirement in the past ten (10) years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) If at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster under Texas Government Code, §418.014. This includes federal, state, and Governor declared disaster areas.

§12.7. Full Application Process.

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §10.201 of this title (relating to Procedural Requirements for Application Submission).

(b) Bond Trustee and Investment Banking Firm Selection. The Applicant must select a Bond Trustee from the approved list on the Department's website and must also select from the approved list on the

Department's website, an investment banking firm to serve as senior managing underwriter, co-managing underwriter or placement agent, as applicable.

(c) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and return the Certificate of Reservation to the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) in addition to Texas Government Code, Chapter 1372 and the proposed Development must meet the applicable requirements of Texas Government Code, Chapter 2306, and the Code.

(d) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay costs, the Department's bond counsel shall draft Bond documents.

(e) Public Hearings. For every Bond issuance, the Department will hold a public hearing in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation then the presentation should include the proposed scope of work that is planned for the Development. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant.

(f) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Staff Appeals Process) and §1.8 of this title (relating to Board Appeals Process). To the extent applicable to each specific bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Rules) and Texas Government Code, Chapter 1372.

(g) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be submitted to the Department.

§12.8. Refunding Application Process.

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay costs, the Department's bond counsel will drafting the required Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(e) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) with the exception of criteria stated therein specific to the Competitive Housing Tax Credit Program. At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §10.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

§12.9. Regulatory and Land Use Restrictions.

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development;

(2) the end of the remaining term of the existing federal government assistance pursuant to Texas Government Code, §2306.185; or

(3) the period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph:

(A) at least 20 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50 percent of the area median income; or

(B) at least 40 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60 percent of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in

accordance with Texas Government Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that should a tenant's income, as of the most recent determination thereof, exceed 140 percent of the applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

§12.10. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: $1,000 (payable to TDHCA), $2,500 (payable to Bracewell & Guiliani, the Department's bond counsel) and $5,000 (payable to the Texas Bond Review Board (BRB) pursuant to Texas Government Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees to the BRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of $30/unit and $10,000 for the bond application fee (for multiple site Applications the application fee shall be $10,000 or $30/unit, whichever is greater). Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as part of a portfolio such application fees may be reduced on a case by case basis at the discretion of the Executive Director.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds is equal to 50 basis points (0.005) of the issued principal amount of the Bonds. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds and a Bond compliance fee equal to $25/unit.

(d) Application and Issuance Fees for Refunding Applications. For refunding Applications the application fee will be $10,000 unless the refunding is not required to have a public hearing, in which case the fee will be $5,000. The closing fee for Refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the Refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.

(e) Administration Fee. The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount on its date of calculation and is paid as long as the Bonds are outstanding.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to $25/Unit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204689

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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CHAPTER 33. 2012 MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§33.1 - 33.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 33, §§33.1 - 33.9, concerning the 2012 Multifamily Housing Revenue Bond Rules. The purpose of this proposed repeal is to enact new sections. The proposed new Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, is published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the adoption of new rules for multifamily housing revenue bonds; thereby enhancing the state's ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§33.1. Introduction.

§33.2. Authority.

§33.3. Definitions.

§33.4. Bond Rating and Investment Letter.

§33.5. Application Procedures, Evaluation and Approval.

§33.6. Regulatory and Land Use Restrictions.

§33.7. Fees.

§33.8. Waiver of Rules.

§33.9. No Discrimination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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CHAPTER 35. 2011 MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§35.1 - 35.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes to repeal 10 TAC Chapter 35, §§35.1 - 35.9, concerning the 2011 Multifamily Housing Revenue Bond Rules. The purpose of the repeal is to enact new sections. The proposed new Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, is published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be the adoption of new rules for multifamily housing revenue bonds; thereby enhancing the state's ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Shannon Roth. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§35.1. Introduction.

§35.2. Authority.

§35.3. Definitions.

§35.4. Bond Rating and Investment Letter.

§35.5. Application Procedures, Evaluation and Approval.

§35.6. Regulatory and Land Use Restrictions.

§35.7. Fees.

§35.8. Waiver of Rules.

§35.9. No Discrimination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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CHAPTER 49. 2011 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§49.1 - 49.17

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 49, §§49.1 - 49.17, concerning the 2011 Housing Tax Credit Program Qualified Allocation Plan and Rules. The purpose of the repeal is to replace the sections with a new Qualified Allocation Plan (QAP) applicable to the 2013 cycle. The proposed new Chapter 10, Subchapters A, B, C, and G, and Chapter 11 are published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to revenues of the state government.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the

public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code, Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§49.1. General Program Information.
§49.2. Definitions.
§49.3. Program Calendar.
§49.4. Ineligible Applicants, Applications and Developments.
§49.5. Site and Development Restrictions.
§49.6. Allocation Process.
§49.7. Application Process.
§49.8. Threshold Criteria.
§49.9. Selection Criteria.
§49.10. Board Decisions.
§49.11. Tax-Exempt Bond Developments.
§49.12. Post Award Activities.
§49.13. Board Reevaluation (§2306.6731(b)).
§49.14. Program Related Fees.
§49.15. Manner and Place of Filing All Required Documentation.
§49.16. Waiver and Amendment of Rules.
§49.17. Department Responsibilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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CHAPTER 50. 2012 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN

10 TAC §§50.1 - 50.17

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 50, §§50.1 - 50.17, concerning the 2012 Housing Tax Credit Program Qualified Allocation Plan. The purpose of the repeal is to replace the sections with new rules that encompass all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs. The proposed new Chapter 10, Subchapters A, B, C, and G, and Chapter 11 are published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to revenues of the state government.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no change in economic cost to any individual required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code, Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program.

§50.1. General Program Information.
§50.2. Definitions.
§50.3. Program Calendar.
§50.4. Ineligible Applicants, Applications and Developments.
§50.5. Site and Development Restrictions.
§50.6. Allocation and Award Process.
§50.7. Application Process.
§50.8. Threshold Criteria.
§50.9. Selection Criteria.
§50.10. Board Decisions.
§50.11. Tax-Exempt Bond Developments.
§50.12. Post Award Activities.

§50.13. Application Reevaluation (§2306.6731(b)).

§50.14. Program Related Fees.

§50.15. Manner and Place of Filing All Required Documentation.

§50.16. Waiver and Amendment of Rules.

§50.17. Department Responsibilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Timothy K. Irvine
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Texas Department of Housing and Community Affairs
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CHAPTER 53. HOME PROGRAM RULE
SUBCHAPTER A. GENERAL

10 TAC §53.1, §53.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 53, Subchapter A, §53.1 and §53.2, concerning HOME Program Rule, General. The purpose of the repeal is to replace the sections with new rules that encompass all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs. The proposed new Chapter 10, concerning the Uniform Multifamily Rules, is published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rules. It is not anticipated that the repeal will result in an economic cost to any individual required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects no other code, article, or statute.

§53.1. Purpose.

§53.2. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Timothy K. Irvine
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Texas Department of Housing and Community Affairs
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SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, AND REVIEW AND AWARD PROCEDURES

10 TAC §§53.20 - 53.28

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 53, Subchapter B, §§53.20 - 53.28, concerning Availability of Funds, Application Requirements, and Review and Award Procedures. The purpose of the repeal is to replace the sections with new rules that encompass all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs. The proposed new Chapter 10, concerning the Uniform Multifamily Rules, is published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a

more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rules. It is not anticipated that the repeal will result in an economic cost to any individual required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects no other code, article, or statute.

§53.20. Availability of Funds.

§53.21. Application Forms and Materials and Deadlines.

§53.22. Contract Award Application Review Process.

§53.23. Reservation System Participant Review Process.

§53.24. General Threshold and Selection Criteria.

§53.25. Contract Award Limitations.

§53.26. Reservation System Participant (RSP) Agreements.

§53.27. Procurement of Contractor.

§53.28. General Administrative Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. MULTIFAMILY (RENTAL HOUSING) DEVELOPMENT (MFD) PROGRAM ACTIVITY

10 TAC §§53.80 - 53.82

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 53, Subchapter H, §§53.80 - 53.82, concerning Multifamily (Rental Housing) Development (MFD) Program Activity. The purpose of the repeal is to replace the sections with new rules that encompass all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs. The proposed new Chapter 10, concerning the Uniform Multifamily Rules, is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rules. It is not anticipated that the repeal will result in an economic cost to any individual required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects no other code, article, or statute.

§53.80. Multifamily (Rental Housing) Development (MFD) Threshold and Selection Criteria.

§53.81. Multifamily (Rental Housing) Development (MFD) Program Requirements.

§53.82. Multifamily (Rental Housing) Development (MFD) Administrative Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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SUBCHAPTER I. COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

10 TAC §53.90, §53.91

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 53, Subchapter I, §53.90 and §53.91, concerning Community Housing Development Organization (CHDO). The purpose of the repeal is to replace the sections with new rules that encompass all funding made available to multifamily programs in order to maximize consistency and minimize repetition among the programs. The proposed new Chapter 10, concerning the Uniform Multifamily Rules, is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rules. It is not anticipated that the repeal will result in an economic cost to any individual required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects no other code, article, or statute.

§53.90. Application Procedures for Certification of Community Housing Development Organization (CHDO).

§53.91. Recertification of Community Housing Development Organization (CHDO).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING

10 TAC §§60.101 - 60.130

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 60, Subchapter A, §§60.101 - 60.130, concerning Compliance Administration. The purpose of the repeal is to reorganize the Department's rules in the Texas Administrative Code. The proposed new Chapter 10, concerning the Uniform Multifamily Rules, is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, there will be no change in the public benefit anticipated as a result of the repeal. There will be no economic impact to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359, attn: Patricia Murphy. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§60.101. Purpose and Overview.

§60.102. Definitions.

§60.103. Construction Monitoring.

§60.104. Recording of Land Use Restriction Agreements (HTC Properties).

§60.105. Reporting Requirements.

§60.106. Record Keeping Requirements.

§60.107. Notices to the Department.

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

§60.109. Utility Allowances.

§60.110. Lease Requirements (HTC, NSP and HOME Developments).

§60.111. Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP and BOND Developments.

§60.112. Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments.

§60.113. Household Unit Transfer Requirements for All Programs.

§60.114. Requirements Pertaining to Households with Rental Assistance.

§60.115. Onsite Monitoring.

§60.116. Monitoring for Social Services.

§60.117. Monitoring for Non-Profit Participation or HUB Participation.

§60.118. Property Condition Standards.

§60.119. Notice to Owners.

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

§60.121. Notices to the Internal Revenue Service (HTC Properties).

§60.122. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

§60.123. Material Noncompliance Methodology.

§60.124. Previous Participation Reviews.

§60.125. Alternative Dispute Resolution.

§60.126. Liability.

§60.127. Applicability.

§60.128. Temporary Suspension of Previous Participation Reviews.

§60.129. Temporary Suspension of Other Sections of This Subchapter.

§60.130. Material Amendments to Land Use Restriction Agreements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204680
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 475-3916

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.17

The Texas State Board of Pharmacy proposes amendments to §291.17 concerning Inventory Requirements. The proposed amendments, if adopted, update and clarify the inventory requirements to be consistent and require all controlled substances to be inventoried on a change of pharmacist-in-charge inventory.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to clarify, for all classes of pharmacies, the requirements for inventories. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., October 31, 2012.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.17. Inventory Requirements.

(a) General requirements.

(1) - (4) (No change.)

(5) The inventory shall be in a written, typewritten, or printed form and include all stocks of the following drugs on hand on the date of the inventory (including any which are out-of-date):

(A) all controlled substances; [~~and~~]

(B) all dosage forms containing nalbuphine (e.g., Nubain); and[~~,~~]

(C) for any inventory taken after January 1, 2013, all dosage forms containing tramadol (e.g., Ultram).

(6) - (7) (No change.)

[~~(8) The person(s) taking the inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in~~

paragraph (7) of this subsection) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within 72 hours or three working days of the completed initial, annual, change of ownership, and closing inventory.]

(8) [(9)] The person(s) taking the inventory shall make an exact count or measure of all substances listed in Schedule II.

(9) [(10)] The person(s) taking the inventory shall make an estimated count or measure of all substances listed in Schedule III, IV, or V and dangerous drugs, unless the container holds more than 1,000 tablets or capsules in which case, an exact count of the contents must be made.

(10) [(11)] The inventory of Schedule II controlled substances shall be listed separately from the inventory of Schedule III, IV, and V controlled substances which shall be listed separately from the inventory of dangerous drugs.

(11) [(12)] If the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(b) Initial inventory.

(1) A new Class A (Community) pharmacy, Class C (Institutional) pharmacy, or Class F (Free Standing Emergency Medical Care Center) pharmacy shall take an inventory on the opening day of business. Such inventory shall include all stocks (including any out-of-date drugs) of the drugs specified in subsection (a)(5) of this section. [following:]

[(A) all controlled substances;]

[(B) all dosage forms containing nalbuphine (e.g., Nubain); and]

[(C) for any inventory taken after January 1, 2013, all dosage forms containing tramadol (e.g., Ultram).]

(2) In the event the Class A, C, or F pharmacy commences business with none of the drugs specified in subsection (a)(5) of this section [paragraph (1) of this subsection] on hand, the pharmacy shall record this fact as the initial inventory.

(3) (No change.)

(c) Annual inventory.

(1) A Class A, C, or F pharmacy shall take an inventory on May 1 of each year, or on the pharmacy's regular general physical inventory date. Such inventory may be taken within four days of the specified inventory date and shall include all stocks (including out-of-date drugs) of the drugs specified in subsection (a)(5) of this section. [following:]

[(A) all controlled substances;]

[(B) all dosage forms containing nalbuphine (e.g., Nubain); and]

[(C) for any inventory taken after January 1, 2013, all dosage forms containing tramadol (e.g., Ultram).]

(2) (No change.)

(3) The person(s) taking the annual inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within 72 hours or three working days of the completed inventory.

(d) Change of ownership.

(1) A Class A, C, or F pharmacy that changes ownership shall take an inventory of all of the following drugs on the date of the change of ownership. Such inventory shall include all stocks (including any of-of-date drugs) of the drugs specified in subsection (a)(5) of this section. [hand (including any which are out-of-date) on the date of change of ownership:]

[(A) all controlled substances;]

[(B) all dosage forms containing nalbuphine (e.g., Nubain); and]

[(C) for any inventory taken after January 1, 2013, all dosage forms containing tramadol (e.g., Ultram).]

(2) - (3) (No change.)

(4) The person(s) taking the change of ownership inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within 72 hours or three working days of the completed inventory.

(e) Closed pharmacies.

(1) The pharmacist-in-charge of a Class A, C, or F pharmacy that ceases to operate as a pharmacy shall forward to the board, within 10 days of the cessation of operation, a statement attesting that an inventory of the drugs specified in subsection (a)(5) [(c)] of this section on hand has been conducted, the date of closing, and a statement attesting the manner by which the dangerous drugs and controlled substances possessed by such pharmacy were transferred or disposed.

(2) The person(s) taking the closing inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within 72 hours or three working days of the completed inventory.

(f) Additional requirements [Requirements] for Class C (Institutional) pharmacies.

(1) (No change.)

(2) Annual inventory.

[(A) An inventory shall be conducted on May 1 of each year, or on the pharmacy's regular general physical inventory date. Such inventory may be taken within four days of the specified inventory date and shall be in a written, typewritten, or printed form and include all stocks (including out-of-date drugs) of the following:]

[(i) all controlled substances;]

[(ii) all dosage forms containing nalbuphine (e.g., Nubain); and]

[(iii) for any inventory taken after January 1, 2013, all dosage forms containing tramadol (e.g., Ultram).]

[(B) The annual inventory of the institution shall include all of the drugs specified in subparagraph (A) of this paragraph on hand in the pharmacy.]

[(C)] The inventory of the institution shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory of the pharmacy shall be listed separately, as follows:

(A) [~~(i)~~] the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(B) [~~(ii)~~] the inventory of drugs on hand in all other departments shall be identified by department.

(g) Change of pharmacist-in-charge of a pharmacy.

(1) For an inventory taken after June 1, 2013, on the date of the change of the pharmacist-in-charge of a Class A (Community), Class C (Institutional), or Class F (Free Standing Emergency Medical Care Center) pharmacy, an inventory shall be taken. Such inventory shall include all stocks (including any out-of-date drugs) of the drugs specified in subsection (a)(5) of this section. For an inventory taken prior to June 1, 2013, on [~~On~~] the date of change of the pharmacist-in-charge of a Class A (Community), Class C (Institutional) [~~pharmacy~~], or Class F (Free Standing Emergency Medical Care Center) pharmacy, an inventory of the following drugs shall be taken.

(A) - (M) (No change.)

(2) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204706
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 305-8028

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74

The Texas State Board of Pharmacy proposes amendments to §291.74 concerning Operational Standards. The proposed amendments, if adopted, allow Class C (Institutional) pharmacies to restock automated medication supply systems if the drugs are labeled and verified with a machine readable product identifier, such as a barcode, and the drugs are in tamper evident product packaging, packaged by an FDA registered repackager or manufacturer and shipped to the pharmacy for the automated medication supply system.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure that drugs restocked into automated medication supply systems are restocked accurately. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., October 31, 2012.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.74. Operational Standards.

(a) - (i) (No change.)

(j) Automated devices and systems.

(1) (No change.)

(2) Automated medication supply systems.

(A) - (C) (No change.)

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may restock an automated medication supply system located outside of the pharmacy department with prescription drugs provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system except as specified in §291.73(e)(2)(C)(ii) of this title; or

(ii) all of the following occur:

(I) the prescription drugs to restock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(II) either:

(-a-) the drugs are in tamper evident product packaging, packaged by an FDA registered repackager or manufacturer, that is shipped to the pharmacy; or

(-b-) if any manipulation of the product occurs in the pharmacy prior to restocking, such as repackaging or extemporaneous compounding, the product must be checked by a pharmacist; and

~~*[(II)* any previous manipulation of the product such as repackaging or extemporaneous compounding has been checked by a pharmacist; and]~~

(III) quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) (No change.)

(3) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204707
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 305-8028

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SUBCHAPTER E. CLINIC PHARMACY (CLASS D)

22 TAC §291.93

The Texas State Board of Pharmacy proposes amendments to §291.93 concerning Operational Standards. The proposed amendments, if adopted, clarify the labeling requirements in Class D pharmacies for medications provided to the patient's partner or family member if the drug prescribed is for a sexually transmitted disease or for an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic. The proposed amendments also eliminate Carisoprodol from the formulary, since it is now a controlled substance.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to clarify the labeling requirements for partner therapy in Class D pharmacies. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., October 31, 2012.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.93. Operational Standards.

(a) - (d) (No change.)

(e) Drugs and devices.

(1) Formulary.

(A) - (B) (No change.)

(C) The formulary shall not contain the following drugs or types of drugs:

(i) Nalbuphine (Nubain);

~~*[(ii)* Carisoprodol (Soma);]~~

(ii) [~~(iii)~~] drugs used to treat erectile dysfunction; and

(iii) [~~(iv)~~] Schedule I-V controlled substances.

(D) (No change.)

(2) - (5) (No change.)

(6) Provision.

(A) - (F) (No change.)

(G) Such drugs and/or devices shall be labeled by a pharmacist licensed by the board; however, when drugs and/or devices are provided under the supervision of a physician according to standing delegation orders or standing medical orders, supportive personnel may at the time of provision print on the label the following information:

(i) patient's name; however, the patient's partner or family member is not required to be on the label of a drug prescribed for a partner for a sexually transmitted disease or for a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic;

(ii) - (iv) (No change.)

(H) - (J) (No change.)

(7) (No change.)

(f) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204708
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 305-8028

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SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy proposes amendments to §291.104 concerning Operational Standards in a Non-Resident Pharmacy (Class E). The proposed amendments, if adopted, update the requirements for pharmacists in Class E pharmacies to notify the Texas Department of Public Safety when dispensing Schedule II - V controlled substance prescriptions.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit antici-

pated as a result of enforcing the rule will be to update the requirements for submission of controlled substance prescription information to the Texas Department of Public Safety by Class E Pharmacies. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., October 31, 2012.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.104. Operational Standards.

(a) - (e) (No change.)

(f) Prescriptions for Schedule II - V controlled substances. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, a pharmacist in a Class E pharmacy who dispenses a prescription for a Schedule II - V controlled substance issued by a prescriber registered with the Texas Department of Public Safety [~~on a Texas Official Prescription Form~~] shall:

(1) mail a copy of the prescription [~~form~~] to the Texas Department of Public Safety, Texas Prescription Program [~~Electronic Prescription Section~~], P.O. Box 4087, Austin, Texas 78773 within 7 [~~30~~] days of dispensing; or

(2) electronically send the prescription information to the Texas Department of Public Safety per their requirements for electronic submissions within 7 [~~30~~] days of dispensing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204709
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 305-8028

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER F. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

40 TAC §§101.1307, 101.1309, 101.1311

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes new Chapter 101, Subchapter F, Memoranda of Understanding with Other State Agencies, §101.1307, Memorandum of Understanding Regarding Continuity of Care for Physically Disabled Inmates; §101.1309, Memorandum of Understanding Regarding the Exchange and Distribution of Public Awareness Information; and §101.1311, Memorandum of Understanding Concerning Coordination of Services to Disabled Persons.

In accordance with the four-year rule review, DARS has reviewed §§107.1601, 107.1603, and 107.1605, and found that the reasons for initially adopting these rules continue to exist. However, in this issue of the *Texas Register,* DARS is repealing these rules for renumbering and placement in a more appropriate chapter and subchapter of the DARS rules. DARS is contemporaneously proposing new rules containing the substance of the repealed rules, with revised language to reflect clear and concise language, successor state agency names, and rule and statutory references relating to the duties and responsibilities of the signatory agencies and their successor agencies and the requirement to adopt by rule the underlying memoranda of understanding with other state agencies.

The following statutes and regulations authorize the proposed new rules: Texas Human Resources Code §22.011 and §22.013, and Texas Health and Safety Code §§614.014 - 614.015

Mary Wright, DARS chief financial officer, has determined that for each year of the first five years that the proposed new rules will be in effect, there is no fiscal impact expected on state or local government because of enforcing or administering the new rules.

Ms. Wright also has determined that for each year of the first five years the proposed new rules will be in effect, the public benefit anticipated as a result of enforcing the proposal will be assurances to the public that the necessary rules are in place to provide a clear and concise understanding of the memoranda of understanding with other state agencies. Ms. Wright has also determined that there will be no probable economic cost to persons who are required to comply with this proposal.

Further, in accordance with Texas Government Code §2001.022, Ms. Wright has determined that the proposed new rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the new rules will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposed new rules may be submitted within 30 days of publication of this proposal in the *Texas Register* to Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of HHSC with the authority to promulgate rules for the

operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.1307. Memorandum of Understanding Regarding Continuity of Care for Physically Disabled Inmates.

(a) The Texas Department of Assistive and Rehabilitative Services (DARS) adopts by reference the memorandum of understanding (MOU) between the Texas Department of Criminal Justice, Texas Department of Aging and Disability Services, and Texas Department of State Health Services. The MOU contains the agreement required by Texas Health and Safety Code §§614.014 - 614.015 to establish the respective responsibilities of these agencies to institute a continuity of care and service program for offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill.

(b) The text of the MOU is in rule 37 TAC §159.19 (relating to Continuity of Care and Service Program for Offenders with Physical Disabilities, the Elderly, the Significantly or Terminally Ill and the Mentally Retarded).

§101.1309. Memorandum of Understanding Regarding the Exchange and Distribution of Public Awareness Information.

(a) The Texas Department of Assistive and Rehabilitative Services (DARS) adopts by reference the memorandum of understanding (MOU) between the Texas Rehabilitation Commission (now Texas Department of Assistive and Rehabilitative Services), the Texas Department of Human Services (now Texas Department of Aging and Disability Services), the Texas Department of Health (now Texas Department of State Health Services), the Texas Department of Mental Health and Mental Retardation (now Texas Department of Aging and Disability Services).

(b) The MOU is the agreement required by Texas Human Resources Code §22.013, which authorizes and requires the exchange and distribution among the agencies of public awareness information relating to services provided by or through the agencies.

(c) The text of the MOU is located in §72.301 of this title (relating to Authorization and Requirement to Exchange and Distribute Public Awareness Information).

§101.1311. Memorandum of Understanding Concerning Coordination of Services to Disabled Persons.

(a) The Texas Department of Assistive and Rehabilitative Services (DARS) adopts by reference the memorandum of understanding (MOU) between the Texas Department of Human Services (now Texas Department of Aging and Disability Services), the Texas Department of Health (now Texas Department of State Health Services), the Texas Department of Mental Health and Mental Retardation (now Texas Department of Aging and Disability Services), the Texas Rehabilitation Commission (now Texas Department of Assistive and Rehabilitative Services), the Texas Commission for the Blind (now DARS' Division for Blind Services), the Texas Commission for the Deaf and Hard of Hearing (now DARS' Office for Deaf and Hard of Hearing Services), and the Texas Education Agency.

(b) The MOU is the agreement required by Texas Human Resources Code §22.011, to facilitate the coordination of services to disabled persons by establishing the respective responsibilities of the agencies regarding the coordination of services to persons with disabilities.

(c) The text of the MOU is located in §§72.201 - 72.212 of this title (relating to Memorandum of Understanding Concerning Coordination of Services to Persons With Disabilities).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204742
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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CHAPTER 106. DIVISION FOR BLIND SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes the repeal of DARS rules in the Texas Administrative Code, Title 40, Part 2, Chapter 106, Division for Blind Services, Subchapter B, Criss Cole Rehabilitation Center, §§106.302, 106.303 and 106.305; Subchapter C, Vocational Rehabilitation Program, §§106.503, 106.505, 106.507, 106.509, 106.513, 106.521, 106.523, 106.525, 106.527, 106.529, 106.531, 106.533, 106.535, 106.551, 106.553, 106.555, 106.557, 106.559, 106.561, 106.562, 106.564, 106.566, 106.568, 106.572, 106.574, 106.576, 106.578, 106.580, 106.582, 106.601, 106.603, 106.605, 106.621, 106.623, 106.625, 106.627, 106.629, 106.631, 106.633, 106.651, 106.661, 106.671, 106.673 and 106.675; Subchapter D, Independent Living Program, §§106.851, 106.853, 106.855, 106.859, 106.871, 106.873, 106.875, 106.877, 106.879, 106.881, 106.901, 106.903, 106.931, 106.933, 106.935, 106.937, 106.939, 106.941, 106.943 and 106.965; Subchapter F, Blindness Education, Screening, and Treatment Program, §§106.1101, 106.1103, 106.1105 and 106.1107; Subchapter K, Memoranda of Understanding, §106.1601 and §106.1607; Subchapter L, Advisory Committees and Councils, §106.1703; and Subchapter M, Donations, §§106.1801, 106.1803, 106.1805, 106.1807, 106.1809, 106.1811, 106.1813 and 106.1815.

DARS is also proposing new rules as replacement for the above-referenced repealed rules and/or the subject matter of the repealed rules. Specifically, DARS is proposing the following new subchapters and rules in Chapter 106, Division for Blind Services: Subchapter A, Criss Cole Rehabilitation Center, §§106.101, 106.103, 106.105, 106.107,106.109, 106.111, 106.113; Subchapter B, Vocational Rehabilitation Program; Division 1, Program and Subchapter Purpose, §§106.201, 106.203, 106.205; Division 2, Eligibility, §§106.307, 106.309, 106.311, 106.313, 106.315, 106.317; Division 3, Provision of Vocational Rehabilitation Services, §§106.407, 106.409, 106.411, 106.413, 106.415, 106.417, 106.419, 106.421, 106.423, 106.425, 106.427, 106.429, 106.431, 106.433; Division 4, Consumer Participation, §§106.501, 106.507, 106.509; Division 5, Comparable Benefits, §106.607; Division 6, Methods of Administration of Vocational Rehabilitation; §106.707; Subchapter C, Independent Living Program, Division 1, General Information, §§106.901, 106.903, 106.905, 106.907; Division 2, Program Requirements, §§106.1007, 106.1009, 106.1011, 106.1013, 106.1015, 106.1017; Division 3, Independent Living Services; §106.1107 and §106.1109; Division 4, Consumer

Participation, §§106.1207, 106.1209, 106.1211; 106.1213, 106.1215, 106.1217; Division 5, Maximum Affordable Payment, §106.1307; and Subchapter J, Blindness Education, Screening, and Treatment Program, §§106.1601, 106.1603, 106.1605, 106.1607 and 106.1609.

The repeals and new rules are being proposed as the result of the four-year rule review that DARS conducted on the rules in Chapter 106, Division for Blind Services, in accordance with by Texas Government Code §2001.039. The rule review of Chapter 106 was adopted in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5641). As a result of the rule review, DARS determined that the reasons for initially adopting the rules contained in Chapter 106, Subchapters B, C, D, F, and K continue to exist. However, DARS determined that Subchapters L and M required repeal, as the subject matter of these subchapters currently exists in other DARS rules. DARS further determined that Chapter 106 rules text needed language revisions and reorganization, including extensive renumbering and revision to be consistent with DARS' rules writing style by adding purpose, legal authority, and definitions related to specific new subchapters; to align rules with statutes and current DARS DBS operations; to delete rules that are no longer necessary; to add new rules related to consumer participation, comparable benefits, referral to vocational rehabilitation services, and employment assistance; and to place rules and/or subject matter of the rules into DARS rules, Chapter 101, Administrative Rules and procedures. This required DARS to repeal Subchapters B, C, D, and F, and propose replacement with new Subchapters A, B, C, and J, respectively, and new rules, including new substantive rules with subject matter that was not originally contained in the repealed rules. The repeal of Subchapter K, Memoranda of Understanding with Other State Agencies, is proposed to move the rules and/or subject matter of the rules to DARS, Chapter 101, Administrative Rules and Procedures, new Subchapter F, which is being proposed contemporaneously in this issue of the *Texas Register.*

The following statutes and regulations authorize the proposed repeals and new rules: Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq.; 34 C.F.R. Parts 361, 364, 365, 366, and 367; Texas Government Code, §2001.01 et seq.; and Texas Human Resources Code Chapters 91 and 117.

Mary Wright, DARS chief financial officer, has determined that for each year of the first five years that the repeals and new rules will be in effect, there are no foreseeable fiscal implications to either cost of revenues of state or local governments because of enforcing or administering the rules.

Ms. Wright also has determined that the public benefit anticipated as a result of administering and enforcing the repeals and new rules will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the services provided by the Division for Blind Services. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposal.

Further, in accordance with Texas Government Code §2001.022, Ms. Wright has determined that the proposal will have no affect on local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposal will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Rules Coordinator, Texas Department of Assistive, and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 150A-2, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER B. CRISS COLE REHABILITATION CENTER

DIVISION 1. GENERAL RULES

40 TAC §§106.302, 106.303, 106.305

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.302. Services.

§106.303. Referrals.

§106.305. Payment of Shift Differentials.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204711
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER C. VOCATIONAL REHABILITATION PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §§106.503, 106.505, 106.507, 106.509, 106.513

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.503. Program and Chapter Purposes.

§106.505. Conformity to Federal Requirements.

§106.507. Public Access to Forms and Documents.
§106.509. Definitions.
§106.513. Service Delivery.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 2. BASIC PROGRAM REQUIREMENTS

40 TAC §§106.521, 106.523, 106.525, 106.527, 106.529, 106.531, 106.533, 106.535

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.521. Application.
§106.523. Eligibility.
§106.525. Presumption of Benefit.
§106.527. Eligibility Determination Time Frame.
§106.529. Data for Eligibility Determination.
§106.531. Ineligibility Determination.
§106.533. Case Closure.
§106.535. Individualized Plan for Employment (IPE).
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 3. VOCATIONAL REHABILITATION SERVICES

40 TAC §§106.551, 106.553, 106.555, 106.557, 106.559, 106.561, 106.562, 106.564, 106.566, 106.568, 106.572, 106.574, 106.576, 106.578, 106.580, 106.582

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.551. Goods and Services.
§106.553. Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Assessment for Rehabilitation Technology.
§106.555. Physical and Mental Restoration Services.
§106.557. Vocational and Other Training Services.
§106.559. Maintenance.
§106.561. Transportation.
§106.562. Services to Family Members.
§106.564. Interpreter Services and Note-taking Services for Individuals Who Are Deaf and Tactile Interpreting for Individuals Who Are Deaf-Blind.
§106.566. Reader Services, Rehabilitation Teaching Services, and Orientation and Mobility Services.
§106.568. Post-Employment Services.
§106.572. Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies.
§106.574. Personal Assistance Services.
§106.576. Transition Services.
§106.578. Supported Employment Services.
§106.580. Rehabilitation Technology Services.
§106.582. Establishing a Small Business as an Employment Outcome.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 4. ORDER OF SELECTION FOR SERVICES

40 TAC §§106.601, 106.603, 106.605

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.601. Authority.
§106.603. Application.
§106.605. Order of Selection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 5. CONSUMER PARTICIPATION IN COST OF SERVICES

40 TAC §§106.621, 106.623, 106.625, 106.627, 106.629, 106.631, 106.633

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.621. Purpose of Division 5.
§106.623. Scope of Division 5.
§106.625. Definitions.
§106.627. General Procedures.
§106.629. Maximum Allowable Amount.
§106.631. Allowed Adjustments to Calculate Net Monthly Income.
§106.633. Refusal to Disclose Economic Resources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 6. MAXIMUM AFFORDABLE PAYMENT

40 TAC §106.651

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.651. Scope of Division 6.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 7. SERVICE PROVIDERS

40 TAC §106.661

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.661. Supported Employment Services Agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 8. CONFIDENTIALITY OF RECORDS

40 TAC §§106.671, 106.673, 106.675

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.671. Confidentiality of Personal Information.
§106.673. Conditions for the Release of Personal Information.
§106.675. Access to Records by Applicants and Consumers.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER D. INDEPENDENT LIVING PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §§106.851, 106.853, 106.855, 106.859

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.851. Program Purpose.
§106.853. Conformity to Federal Requirements.
§106.855. Definitions.
§106.859. Service Delivery.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 2. BASIC PROGRAM REQUIREMENTS

40 TAC §§106.871, 106.873, 106.875, 106.877, 106.879, 106.881

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.871. Application.
§106.873. Eligibility.
§106.875. Data for Eligibility Determination.
§106.877. Ineligibility Determination.
§106.879. Case Closure.
§106.881. Independent Living (IL) Plan.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 3. INDEPENDENT LIVING SERVICES

40 TAC §106.901, §106.903

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.901. Goods and Services.

§106.903. Transportation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201204722
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 5. CONSUMER PARTICIPATION IN COST OF SERVICES

40 TAC §§106.931, 106.933, 106.935, 106.937, 106.939, 106.941, 106.943

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.931. Purpose.

§106.933. Scope.

§106.935. Definitions.

§106.937. General Procedures.

§106.939. Maximum Allowable Amount.

§106.941. Allowed Adjustments to Calculate Net Monthly Income.

§106.943. Refusal to Disclose Economic Resources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201204723
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 6. MAXIMUM AFFORDABLE PAYMENT

40 TAC §106.965

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.965. Scope of Subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201204724
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER F. BLINDNESS EDUCATION, SCREENING, AND TREATMENT PROGRAM

40 TAC §§106.1101, 106.1103, 106.1105, 106.1107

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter

531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1101. Purpose and Authority.

§106.1103. Definitions.

§106.1105. Vision Screening Services.

§106.1107. Treatment Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER K. MEMORANDA OF UNDERSTANDING

40 TAC §106.1601, §106.1607

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1601. Coordination of Services to Disabled Persons.

§106.1607. Continuity of Care System for Offenders with Physical Disabilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204726
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER L. ADVISORY COMMITTEES AND COUNCILS

40 TAC §106.1703

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1703. Mandated Advisory Committees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204727
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER M. DONATIONS

40 TAC §§106.1801, 106.1803, 106.1805, 106.1807, 106.1809, 106.1811, 106.1813, 106.1815

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1801. Purpose.

§106.1803. Definitions.

§106.1805. Acceptance of Donations.

§106.1807. Solicitation.

§106.1809. Investing.

§106.1811. Restricted/Unrestricted.

§106.1813. Transfer.

§106.1815. Standards of Conduct between Employees and Officers and Private Donors.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
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SUBCHAPTER A. CRISS COLE REHABILITATION CENTER

40 TAC §§106.101, 106.103, 106.105, 106.107, 106.109, 106.111, 106.113

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.101. Purpose.

The Criss Cole Rehabilitation Center (CCRC) is a comprehensive rehabilitation facility operated by the Division for Blind Services (DBS), Department of Assistive and Rehabilitative Services, in Austin, Texas. CCRC provides evaluation, training, and related services in a residential and community setting to help consumers who are blind accomplish their employment and independent living goals.

§106.103. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, §91.021;

(2) Texas Human Resources Code, §117;

(3) The Rehabilitation Act of 1973 as amended (29 United States Code §§701 et seq); and

(4) implementing federal regulations (34 Code of Federal Regulations, Part 361).

§106.105. Definitions.

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

(1) Blind (person who is)--A person whose visual acuity with best correction is 20/200 or less in the better eye; or a person with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, which means a visual field of no greater than 20 degrees in the better eye.

(2) Consumer--An individual with a disability who has applied for, or who is receiving vocational rehabilitation services.

§106.107. Eligibility.

(a) A person residing in Texas must be a current vocational rehabilitation or independent living consumer and must be referred to CCRC by one of DBS' vocational rehabilitation counselors or independent living caseworkers. A person residing outside Texas who is receiving rehabilitation services from an agency in another state is considered for admission and training on a space-available basis, subject to an agreement between the state agency and DBS on payment of cost of services provided to the person.

(b) All consumers who are referred to CCRC must be blind. Priority is for consumers who are receiving services from the DBS Vocational Rehabilitation Program.

§106.109. Services.

CCRC provides services such as functional evaluations, and individualized and small-group training in communication, home and personal management, orientation and mobility, braille, low vision, health management, nutrition, physical conditioning, social skills, technology awareness, and career guidance. This list should not be interpreted as comprehensive; ancillary services may also be available. Services are provided in accordance with DBS' Vocational Rehabilitation Program as listed on the consumer's individualized plan for employment or independent living plan.

§106.111. Consumer Participation and Comparable Services and Benefits.

For information about consumer participation and comparable benefits, refer to §106.507 of this chapter (relating to Scope of Consumer Participation) and §106.607 of this chapter (relating to Comparable Services and Benefits).

§106.113. Payment of Shift Differentials.

(a) The assistant commissioner is authorized to pay a shift differential to eligible employees in the Vocational Rehabilitation Program. The shift differential is paid in addition to the employee's regular base pay, exclusive of longevity and benefit replacement pay.

(b) The assistant commissioner is authorized to determine the DBS positions that are eligible to receive shift differential payments. The rate of payment is a percentage of the employee's monthly regular base pay, not to exceed the maximum allowed by state law, in relation to the number of hours the employee regularly works outside the work hours of Monday through Friday, 8:00 a.m. to 5:00 p.m.

(c) This section does not apply to employees whose work hours have been adjusted according to DARS policies concerning staggered work hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. VOCATIONAL REHABILITATION PROGRAM

DIVISION 1. PROGRAM AND SUBCHAPTER PURPOSE

40 TAC §§106.201, 106.203, 106.205

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.201. Purpose.

The Vocational Rehabilitation Program is a joint state- and federal-funded program administered by the Department of Assistive and Rehabilitative Services (DARS), Division for Blind Services (DBS) to assess, plan, develop, and provide vocational rehabilitation services for eligible persons with visual impairments, consistent with their strengths, resources, priorities, concerns, abilities, and capabilities, so that these persons may prepare for and engage in gainful employment.

§106.203. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) The Texas Human Resources Code §91.021(d);

(2) The Texas Human Resources Code §117;

(3) The Rehabilitation Act of 1973 as amended (29 United States Code §§701 et seq);

(4) Implementing federal regulations (34 Code of Federal Regulations, Part 361); and

(5) The DBS state plan submitted to and approved by the federal government, which is effective in all political subdivisions of the state.

§106.205. Definitions.

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

(1) Applicant--A person who has submitted an application to DBS for vocational rehabilitation services.

(2) Blind (person who is)--A person whose visual acuity with best correction is 20/200 or less in the better eye, or a person with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, which means a visual field of no greater than 20 degrees in the better eye.

(3) Consumer--An individual with a disability who has applied for, or who is receiving vocational rehabilitation services.

(4) Visual impairment--A visual acuity, with best correction, of 20/70 or less in the better eye; or a visual field of 30 degrees or less in the better eye; or a combination of both.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. ELIGIBILITY

40 TAC §§106.307, 106.309, 106.311, 106.313, 106.315, 106.317

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.307. Application.

(a) A person is considered to have submitted an application when the person or the person's representative, as appropriate:

(1) has completed and signed the DBS application form or has otherwise requested services;

(2) has provided information necessary to initiate an assessment to determine eligibility and priority for services; and

(3) is available to complete the assessment process.

(b) Persons residing in institutions, such as state hospitals or prisons, may apply for services when their release is expected within 60 days.

§106.309. Eligibility.

(a) To establish an applicant's eligibility for vocational rehabilitation services, DBS must:

(1) determine that the applicant has a visual impairment;

(2) determine that the applicant's visual impairment constitutes or results in a substantial impediment to employment for the applicant;

(3) establish that the applicant requires vocational rehabilitation (VR) services to prepare for, enter, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(4) presume that the applicant is capable of achieving an employment outcome, unless there is a demonstration by clear and convincing evidence that the applicant is incapable of achieving an employment outcome because of the severity of the applicant's disability.

(b) When DBS has received appropriate evidence that the applicant is eligible for benefits under Titles II or XVI of the Social Security Act because of blindness and the applicant has indicated a willingness to work, DBS presumes that the applicant meets the basic eligibility requirements in subsection (a) of this section.

§106.311. Prohibited Factors.

(a) DBS does not impose, as part of determining eligibility under this subchapter, a duration-of-residence requirement that excludes from services any applicant who is present in the state.

(b) In determining eligibility under this subchapter, DBS ensures that:

(1) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(2) The eligibility requirements are applied without regard to the:

(A) age, gender, race, color, or national origin of the applicant;

(B) type of expected employment outcome;

(C) source of referral for vocational rehabilitation services; and

(D) particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

§106.313. Eligibility Determination Time Frame.

(a) Eligibility or ineligibility must be determined no later than 60 days after the applicant, or the applicant's representative, as appropriate, has signed and submitted an application for vocational rehabilitation services in accordance with provisions of §106.307 of this subchapter (relating to Application).

(b) Exceptions to the 60-day time frame for determining eligibility or ineligibility may occur only when:

(1) DBS notifies the applicant that unforeseen circumstances beyond the control of DBS preclude it from completing the determination in 60 days; and

(2) the applicant, or the applicant's representative, as appropriate, agrees to a specific extension of time; or

(3) DBS is exploring an applicant's abilities, capabilities, and capacity to perform in work situations.

(c) Eligibility must be determined before applying Division 6 of this subchapter, if appropriate (relating to Methods of Administration of Vocational Rehabilitation) and Division 4 of this subchapter (relating to Consumer Participation).

§106.315. Determination of Ineligibility.

(a) If an individual who applies for services is determined not to be eligible for the services or if an eligible individual receiving services under an individualized plan for employment is determined to be no longer eligible for the services then:

(1) DBS must make a determination of ineligibility only after providing an opportunity for full consultation with the individual, or as appropriate, with the individual's representative.

(2) DBS must inform the individual in writing of the ineligibility determination. The written determination must be supplemented by special modes of communication consistent with the informed choice of the individual, if necessary, and must include the reasons for the determination, the requirements under this chapter, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the counselor.

(3) DBS shall provide the individual with a description of services available from the client assistance program established under 34 CFR Part 370 and information on how to contact that program.

(b) DBS reviews any ineligibility determination based on a finding that the individual is incapable of achieving an employment outcome. The review must occur within 12 months, and annually thereafter if requested by the individual or the individual's representative, unless the individual has refused the review, the individual is no longer present in Texas, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

§106.317. Case Closure.

DBS closes a case when the consumer's rehabilitation plan has been completed, and the consumer has achieved and maintained continuous employment commensurate with the established employment goal for a minimum of 90 days. DBS closes the case sooner if:

(1) DBS is unable to locate or contact the person;

(2) the person's disability is so severely limiting that there is little chance the person can be vocationally rehabilitated or the person's medical condition is expected to progress to such a severely limiting degree in a fairly short period of time that rehabilitation services will be of little or no help;

(3) the person has refused services or further services;

(4) the person has died;

(5) the person has been institutionalized;

(6) the person has been determined to have no disabling condition;

(7) the person has refused to cooperate with DBS;

(8) transportation is not feasible or available;

(9) the person has been determined to have no impediment to employment;

(10) extended services for supported employment are not available;

(11) the person has chosen extended employment (for example, sheltered workshop); or

(12) the person's case has been transferred to another agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §§106.407, 106.409, 106.411, 106.413, 106.415, 106.417, 106.419, 106.421, 106.423, 106.425, 106.427, 106.429, 106.431, 106.433

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.407. Provision of Services.

(a) DBS, as appropriate to the vocational rehabilitation needs of each eligible person, provides goods and services necessary to render the consumer employable, subject to certain limitations prescribed in this subchapter and application of Division 4 of this subchapter (relating to Consumer Participation), and Division 5 of this subchapter (relating to Comparable Benefits).

(b) Services are provided only when planned in advance and contained in the consumer's individualized plan of employment (IPE).

§106.409. Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Rehabilitation Technology Needs.

(a) DBS conducts assessments to determine eligibility, vocational rehabilitation needs, and, if necessary, rehabilitation technology needs for the consumer in order to develop an IPE that is designed to achieve the consumer's vocational goal. The vocational goal must be an employment outcome that is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, and career interests.

(b) If more information is needed to prepare an IPE, DBS conducts a comprehensive assessment of the consumer's unique strengths, resources, priorities, interests, and needs, including the need for supported employment services, in the most integrated setting possible, consistent with the informed choice of the consumer.

(c) A comprehensive assessment is limited to information that is necessary to identify the rehabilitation needs and to develop the rehabilitation program for the consumer.

§106.411. Physical and Mental Restoration Services.

DBS provides physical and mental restoration services that are necessary to correct or substantially modify the consumer's physical or mental condition within a reasonable period. The conditions for which the services are rendered must be stable or slowly progressive.

§106.413. Vocational and Other Training Services.

(a) All equipment purchased by DBS for training remains the property of DBS.

(b) Academic training in institutions of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) is subject to the following:

(1) Academic training in vocational schools and technical institutes must be provided only in schools that are certified by the State of Texas.

(2) No vocational rehabilitation funds may be used to pay for academic training unless DBS and the consumer have made maximum efforts to secure grant assistance in whole or in part from other sources to pay for the training.

(3) The consumer must contact the college or university and apply for any available financial aid.

(4) The PELL grant, like any other comparable services and benefits, must be applied to the educational process before the expenditure of DBS funds for services under this section. Services must not be denied pending receipt of a PELL grant, but must be contingent upon the consumer's making application if eligible.

(5) Academic training must be provided through public, tax-supported colleges and universities in Texas unless:

(A) a specific curriculum related to the consumer's academic major is not available at a Texas public institution;

(B) academic training elsewhere is determined to be more economical; or

(C) academic training elsewhere provides specialized services needed by the consumer, such as services provided at Gallaudet University for students who are deaf.

(6) If the consumer chooses to obtain academic training at a private university or outside Texas and the provisions in paragraph (5) of this subsection do not apply, academic support must be limited to that which the consumer would receive if he or she attended a state-supported college or university in Texas.

(7) A consumer who is blind, does not meet the residency requirements of a particular institution, and is not eligible for tuition exemption under the Education Code, §54.364 may receive tuition assistance from DBS based on economic need of the consumer, but the payments must not exceed the tuition paid for a student who does meet the residency requirements.

(8) Tuition and fee exemption is an exemption from payment of tuition and/or required fees normally charged by a state-supported college or university. Required fees include student services, building use, health center, lab fees, and property deposits not reimbursable to the student. Required fees do not include optional fees.

(9) Any equipment purchased for the consumer during academic training must be needed by the consumer to help maintain academic success so the vocational goal can be met.

(10) Academic training does not include continuing education required for maintaining certification in a field in which the consumer is already gainfully employed.

(11) Once admitted to academic training:

(A) the consumer must maintain and complete a full-time course load as defined by the college or university. This requirement may be waived if:

(i) the consumer is a graduating senior;

(ii) the consumer is an incoming freshman (first two semesters or quarters);

(iii) the consumer is a returning adult (first academic year only);

(iv) the consumer is in summer school; or

(v) other extenuating circumstances prevent the consumer from participating in a full-time course load; and

(B) the consumer is required to meet with the counselor at least once each semester, to submit add or drop slips as changes occur, and to provide grade slips or transcripts to the counselor at the end of each semester.

§106.415. Maintenance.

DBS may pay maintenance to the consumer. Maintenance is a payment to the consumer made during any stage of the rehabilitation process to cover basic living expenses, such as food, shelter, clothing, and other subsistence expenses that are in excess of the normal expenses of the consumer, and are necessary for the consumer to derive the full benefit of other vocational rehabilitation services.

§106.417. Transportation.

DBS may pay for transportation services for the consumer in connection with other vocational rehabilitation services.

§106.419. Services to Family Members.

(a) Vocational rehabilitation services are provided to family members only if without the services the applicant or consumer would

be unable to begin or to continue the rehabilitation program, and the consumer's employment would be unnecessarily delayed or could not be achieved.

(b) Only family members whose receipt of services would further the applicant's or consumer's vocational adjustment or rehabilitation may receive services.

(c) Family member, for purposes of receiving vocational rehabilitation services in accordance with this section, means a person:

(1) who either is a relative or guardian of the applicant or consumer or lives in the same household as the applicant or consumer;

(2) who has a substantial interest in the well-being of the applicant or consumer; and

(3) whose receipt of services is necessary to enable the applicant or consumer to achieve an employment outcome.

§106.421. Interpreter Services and Note-Taking Services for Consumers Who Are Deaf and Tactile Interpreting for Consumers Who Are Deafblind.

When delivering interpreter services, note-taking services, or tactile interpreting to persons who are deaf or deafblind, DBS uses interpreters, if available, who are certified by one of the following:

(1) DARS, Division for Rehabilitation Services, Office for Deaf and Hard of Hearing Services; or

(2) The Registry of Interpreters for the Deaf.

§106.423. Reader Services and Rehabilitation Teaching Services.

(a) Reader services are available only to consumers who are blind and who are receiving vocational or academic training.

(b) The consumer must use all other available reading sources to the greatest extent possible before seeking reimbursement from DBS for reader services.

(c) The maximum amount allowed per month for reader services is calculated according to the number of semester hours the consumer is taking, whether during a fall, spring, or summer semester, and whether the consumer is an undergraduate or graduate student. The rate of reimbursement is available from any DBS office during business hours.

(d) DBS does not pay for reader services rendered by a member of the consumer's family.

(e) To receive reimbursement for reader services, the consumer must submit the information required by DBS on a prescribed form.

§106.425. Employment Assistance.

(a) The principal objective of vocational rehabilitation services is a competitive employment outcome for the consumer that is consistent with the consumer's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) Employment outcomes include entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership.

§106.427. Post-Employment Services.

(a) The consumer may be considered for post-employment services if he or she has been determined to be rehabilitated, is in need of help in maintaining employment, and has an employment-related problem that does not entail a complex rehabilitation effort or address a new and distinct substantial impediment to employment.

(b) Post-employment services must be incidental to the original impediment to employment, ancillary to the services provided through the consumer's IPE, and related to the previously planned vocational goal.

§106.429. Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies.

(a) DBS may engage in or contract for activities to provide the consumer with occupational licenses, including any license, permit, or other written authority that a state, city, or other governmental unit requires a person to obtain before entering an occupation or self-employment.

(b) DBS may provide the consumer with tools, equipment, initial stocks, goods, and supplies necessary to enter an occupation or self-employment.

(c) The consumer must safeguard and maintain in a serviceable condition tools and equipment and must not sell, give away, or otherwise wrongfully dispose of them.

(d) The consumer must sign a prescribed agreement form at the time the consumer receives tools and equipment.

(e) The consumer may not sell, give away, or otherwise voluntarily relinquish possession of any tools, equipment, or nonconsumable supplies issued to the consumer during the rehabilitation process.

§106.431. Assistive Technology Devices.

(a) Assistive technology devices are purchased only after evaluation of the consumer's need and the cost. Simple and less expensive alternatives must be considered first.

(b) The consumer must return to DBS any assistive technology device no longer needed for training, employment, or pursuit of employment.

§106.433. Individualized Plan for Employment (IPE).

(a) All IPEs must be written on the form prescribed by DBS for this purpose.

(b) DBS advises the consumer or, as appropriate, the consumer's representative, of the consumer's options and all DBS procedures and requirements affecting the development and review of an IPE, including the availability of special modes of communication.

(c) In developing an IPE for a student with a disability who is receiving special education services, DBS must consider the student's individualized education program.

(d) The IPE is reviewed with the consumer, or as appropriate, the consumer's representative, as often as necessary, but at least once each year, to assess the consumer's progress in meeting the objectives identified in the IPE.

(e) All substantive revisions necessary to reflect changes in the consumer's employment outcome, specific vocational rehabilitation services, service providers, and the methods used to procure services must be incorporated into the consumer's IPE.

(f) The counselor must provide the consumer or, as appropriate, the consumer's representative with a copy of the IPE and its amendments, in the mode of communication specified by the consumer or representative.

(g) The data used to prepare the IPE must include the information necessary to satisfy federal requirements and to adequately document the consumer's plan of services. Regardless of the approach selected by the consumer to develop the IPE, the IPE must, at a minimum, contain the following mandatory components:

(1) a description of the consumer's specific employment outcome;

(2) a description of the specific vocational rehabilitation services that are needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services; personal assistance services, including training in the management of those services; and timelines for initiating the services and for achieving the employment outcome;

(3) a description of the entity chosen by the consumer or, as appropriate, the consumer's representative, that will provide the vocational rehabilitation services, and the methods used to procure the services;

(4) a description of criteria to evaluate progress toward achievement of the employment outcome;

(5) the terms and conditions of the IPE, including, as appropriate, information describing:

(A) the responsibilities of DBS;

(B) the responsibilities of the consumer, including:

(i) the consumer's responsibilities related to his or her employment outcome;

(ii) if applicable, the consumer's participation in paying for the costs of the plan;

(iii) the consumer's responsibility to apply for and secure comparable benefits; and

(iv) the responsibilities of other entities resulting from arrangements made under comparable services or benefits;

(6) for a consumer with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying:

(A) the extended services needed by the consumer; and

(B) the source of extended services or, if the source of the extended services cannot be identified at the time of the IPE is developed, a description of the basis for a reasonable expectation that a source will become available; and

(7) as determined to be necessary, a statement of projected need for post-employment services.

(h) Prior to suspending, reducing, or terminating any planned service in the IPE, DBS shall send written notification of intent to the consumer's last known address.

(i) DBS must suspend, reduce, or terminate the consumer's planned services no sooner than 10 working days after written notice has been mailed to the consumer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. CONSUMER PARTICIPATION

40 TAC §§106.501, 106.507, 106.509

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.501. Purpose of Consumer Participation.

Consumer participation establishes participation by the consumer in service costs to encourage the consumer's commitment to a vocational rehabilitation goal, to create a cooperative relationship between the consumer and DBS, and to maximize DBS' limited funds.

§106.507. Scope of Consumer Participation.

(a) DBS may not apply a financial needs test or basic living requirements (BLR) nor require financial participation of the consumer as a condition for furnishing the following vocational rehabilitation services:

(1) assessment for determining eligibility and priority for services, except for vocational rehabilitation services other than those of a diagnostic nature provided under an extended evaluation;

(2) assessment for determining vocational rehabilitation needs, including visits to Criss Cole Rehabilitation Center for assessments;

(3) vocational rehabilitation counseling, guidance, and referral services by DBS;

(4) employment assistance services by DBS;

(5) diabetes education training;

(6) vocational rehabilitation teacher services (including consumable supplies);

(7) any auxiliary aid or service (for example, interpreter services, reader services) that the consumer needs in order to participate in the VR program;

(8) orientation and mobility services;

(9) personal assistance services; and

(10) services paid for or reimbursed by a source other than DBS.

(b) DBS may not apply a financial needs test, or require financial participation, as a condition for furnishing vocational rehabilitation services to consumers receiving Social Security benefits under Titles II or XVI of the Social Security Act.

§106.509. Refusal to Disclose Economic Resources.

Applicants, and members of the family, as defined in §106.419 of this subchapter (relating to Services to Family Members), have the right not to disclose their economic resources. When this information is not disclosed, economic resources are determined by DBS to be in excess of the allowable amounts.

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DIVISION 5. COMPARABLE BENEFITS

40 TAC §106.607

The new rule is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.607. Comparable Services and Benefits.

(a) If comparable services or benefits exist under any other program and are available to the consumer at the time needed to achieve the rehabilitation objectives in the consumer's IPE, DBS must use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.

(b) If comparable services or benefits exist under any other program, but are not available to the consumer at the time needed to satisfy the rehabilitation objectives in the consumer's IPE, DBS must provide vocational rehabilitation services until those comparable services and benefits become available.

(c) The following services are exempt from a determination of the availability of comparable services and benefits:

(1) assessment for determining eligibility and priority for services;

(2) assessment for determining vocational rehabilitation needs;

(3) vocational rehabilitation counseling, guidance, and referral services;

(4) placement services;

(5) rehabilitation technology services; and

(6) post-employment services consisting of the services listed under paragraphs (1) - (5) of this subsection.

(d) The requirements of subsection (b) of this section also do not apply if:

(1) determining the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any consumer whom DBS has determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; or

(2) an immediate job placement would be lost because of a delay in the provision of comparable services and benefits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §106.707

The new rule is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.707. Application of an Order of Selection.

(a) An order of selection is authorized in §101(a)(5)(A) of the Rehabilitation Act of 1973, as amended to ensure that consumers with the most severe disabilities are selected for service before other consumers in times of limited funding.

(b) In determining whether to invoke an order of selection, the assistant commissioner for blind services applies the criteria set out in 29 U.S.C. §709, as amended; in 34 Code of Federal Regulations §361.36; and in the state plan.

(c) The order of selection is applied after eligibility for services is determined.

(d) To inquire if DBS is operating under the order of selection, a person may contact any DBS office, including the Central Office at 4800 North Lamar Boulevard, Austin, Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER C. INDEPENDENT LIVING PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §§106.901, 106.903, 106.905, 106.907

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chap-

ter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.901. Purpose.

The Independent Living Program is a joint state- and federal-funded program administered by the Department of Assistive and Rehabilitative Services (DARS), Division for Blind Services (DBS) to assess, plan, develop, and provide independent living services to persons eligible under federal and state guidelines.

§106.903. Legal Authority.

(a) The following statutes and regulations authorize or require the rules in this subchapter:

(1) the Texas Human Resources Code, §117;

(2) the Rehabilitation Act of 1973 as amended (29 United States Code, §§701 et seq.);

(3) implementing federal regulations (34 Code of Federal Regulations, Parts 364, 365, 366, and 367); and

(4) the state plan for independent living submitted to and approved by the federal government.

(b) In case of any conflict, federal regulations prevail.

§106.905. Definitions.

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

(1) Act--The Rehabilitation Act of 1973, as amended.

(2) Blind (person who is)--A person whose visual acuity with best correction is 20/200 or less in the better eye, or a person with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, which means a visual field of no greater than 20 degrees in the better eye.

(3) Comparable services and benefits--Services and benefits that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; available to the consumer; and commensurate in quality and nature to the services that the consumer would otherwise receive from DBS.

(4) Consumer--An individual with a disability who has applied for, or who is receiving independent living services.

(5) Dependent--A person carried as a dependent for income tax purposes during the current tax year by his or her parent(s), foster parent(s), legal guardian(s), or conservator. The term includes a consumer who is a minor, a consumer under 18 years of age and married but not living with his or her spouse and whose major source of income is from parents or legal guardians, and a consumer adjudged legally incompetent.

(6) Disability--A physical or mental impairment that substantially limits one or more major life activities.

(7) Economic Resources--Net monthly income.

(8) Family--The consumer, parents, legal guardians, and all persons residing in the household for whom the consumer, parents, or legal guardians have legal and financial responsibility.

(9) Independent Living Plan (IL Plan)--A written record that documents all phases of the consumer's rehabilitation process as developed by the independent living worker and the consumer.

(10) Individual with a disability--An individual with a visual impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

(11) Minor--A person who is under 18 years of age and who is not and has not been married or who has not had his or her disabilities of minority removed for general purposes. In the context of child support, "child" includes a person over 18 years of age who is fully enrolled in an accredited secondary school in a program leading toward a high school diploma. "Adult" means any other person.

(12) Monthly income--Income derived from:

(A) wages and salaries, after deductions for:

(i) income tax;

(ii) social security tax;

(iii) one qualified retirement program;

(iv) health insurance premiums; and

(v) trade or professional dues and assessments;

(B) contributions received on a regular basis from family, persons, or organizations;

(C) net rentals from property;

(D) scholarships and fellowships;

(E) public assistance payments;

(F) assistance from private welfare agencies;

(G) income from stock dividends and bond interest;

(H) income from child support payments;

(I) income from self-employment, which is defined as gross receipts, minus allowable Internal Revenue Service expenses, from one's own business that results in income. Gross receipts include the value of all goods sold and services rendered. Expenses include the cost of goods purchased, rent, utilities, wages and salaries paid, and business taxes (not personal income taxes or self-employment social security taxes);

(J) any available pension or insurance, including Social Security Disability Income (SSDI); health/hospitalization insurance plans; workers' compensation; veterans' benefits; Old Age and Survivors Insurance (OASI) from the Social Security Administration; labor union insurance and/or health and welfare benefits; and unemployment compensation; and

(K) participation in savings plans.

(13) Net monthly income--Monthly income, less allowed adjustments described in §106.1215 of this subchapter (relating to Allowed Adjustments to Calculate Net Monthly Income).

(14) Person with a disability--A person with a visual impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

(15) Person with a significant disability--A person with a disability as defined in paragraph (10) of this section:

(A) who has a severe visual impairment that seriously limits one or more functional capacities needed for independent living (such as mobility, communication, self-care, self-direction, or interpersonal skills);

(B) whose independent living program can be expected to require multiple independent living rehabilitation services over an extended period; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and independent living needs to cause comparable substantial functional limitation.

(16) Representative--A parent, legal guardian, or other representative appointed by the court to represent the consumer or an advocate or other family member designated in writing by the consumer to represent the consumer.

(17) Transportation--Travel and related expenses that are necessary to enable the consumer to benefit from another independent living service, and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable the consumer with a significant disability to benefit from that independent living service.

(18) Visual impairment--A visual acuity with best correction of 20/70 or less in the better eye, a visual field of 30 degrees or less in the better eye, or a combination of both.

§106.907. Service Delivery.

(a) Oversight and monitoring of service delivery. Service delivery is monitored by trained personnel through the use of onsite visits and standard case review checklists. The checklist must contain sufficient information to evaluate case documentation, timely service delivery, and consumer progress towards goals.

(b) Guidance to the service delivery staff. The service delivery staff must be provided with written guidelines and training on developing consumer service plans, measuring and documenting consumer progress toward an expected outcome, and the timely authorization of services. The guidelines must include the following:

(1) An eligibility decision is normally made within 60 days from the time an application for services has been completed unless exceptional and unforeseen circumstances beyond the control of DBS precludes a determination.

(2) Once a person is determined eligible, a plan of services is normally developed and agreed to within 90 days.

(3) The consumer normally completes all planned services within 18 months.

(4) Post-closure services normally do not exceed 6 months.

(c) Reasonable time frames for service delivery. The following time frames serve as benchmarks to the service delivery staff and the monitoring staff in evaluating the consumer's progress toward the expected outcome in the service plan.

(d) Financial planning information. Quarterly budget information must be provided to DBS field directors. Field directors disseminate this information to all caseload carrying staff members for financial planning purposes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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DIVISION 2. PROGRAM REQUIREMENTS

40 TAC §§106.1007, 106.1009, 106.1011, 106.1013, 106.1015, 106.1017

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1007. Application.

(a) To apply for independent living services, a person or the person's representative may contact the closest DBS office and provide the name of the person seeking services, an address where the person resides, and a telephone number, if the person has a telephone.

(b) Persons residing in institutions, such as state schools, state hospitals, or prisons, may apply for services when their release is expected within 60 days.

§106.1009. Eligibility.

(a) Independent living services are available to persons with a significant disability as the term is defined in §106.905 of this subchapter, (relating to Definitions).

(b) DBS applies eligibility requirements without regard to the person's age, color, creed, gender, national origin, race, religion, or length of time present in Texas.

§106.1011. Data for Eligibility Determination.

DBS must, if possible, base its determination of eligibility on existing data, including information provided by the applicant or the applicant's family, education records, information used by the Social Security Administration and, to the extent appropriate and available, determinations made by officials of other agencies.

§106.1013. Ineligibility Determination.

(a) Before making a determination of ineligibility, DBS must consult with or provide a clear opportunity for consultation with the applicant or, in appropriate cases, the applicant's representative.

(b) DBS must notify the applicant, or the applicant's representative in appropriate cases, an ineligibility determination. The notice

must be provided in writing or by special modes of communication if designated by the applicant, and must include the reasons for the determination, the requirements under this chapter, and the means by which the applicant may appeal the decision. The notice must also include information on how to contact the Client Assistance Program in Texas. If appropriate, DBS refers the applicant to other agencies and facilities.

(c) DBS reviews an ineligibility determination within 12 months unless the person has refused the review, the person is no longer present in Texas, the person's whereabouts are unknown, or the person's medical condition is rapidly progressive or terminal.

§106.1015. Case Closure.

(a) DBS closes a case when the consumer's independent living plan has been completed, or sooner if:

(1) the person does not meet eligibility criteria;

(2) the person is unavailable during an extended period of time to complete an assessment of independent living needs and DBS has made repeated efforts to contact and encourage the applicant to participate;

(3) the person has refused services or further services;

(4) the person is no longer present in Texas;

(5) the person's whereabouts are unknown;

(6) the person's medical condition is rapidly progressive or terminal;

(7) the person has refused to cooperate with DBS; or

(8) the person's case has been transferred to another agency.

(b) Case closure is made with the full knowledge of the consumer when the consumer's whereabouts are known.

(c) DBS informs the consumer or the consumer's representative, in appropriate cases, in writing, or by special mode of communication if designated by the consumer, of DBS' intent to close the case and the means by which the consumer may appeal the decision.

§106.1017. Independent Living (IL) Plan.

(a) Unless the consumer knowingly and voluntarily signs a waiver stating that an independent living (IL) plan is unnecessary, an IL plan and all subsequent amendments must be developed jointly by the independent living worker and the consumer.

(b) DBS advises the consumer of DBS procedures and requirements affecting the development and review of an IL plan, including the availability of special modes of communication.

(c) The IL plan is reviewed with the consumer at least once each year to assess the consumer's progress in meeting the objectives identified in the IL plan.

(d) The independent living worker incorporates into the IL plan any revisions that are necessary to reflect changes in the consumer's goal, intermediate objectives, or needs.

(e) To receive a copy of the IL plan and its amendments in a medium other than print, the consumer must inform the independent living worker of the preferred medium.

(f) The consumer must inform the DBS of changes that will affect the provision of services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. INDEPENDENT LIVING SERVICES

40 TAC §106.1107, §106.1109

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1107. Goods and Services.

(a) Goods and services provided under this subchapter must be necessary to assist the consumer to achieve a greater level of independence.

(b) Goods and services provided under this subchapter shall be subject to application of Division 4 of this subchapter (relating to Consumer Participation).

(c) Goods and services must be provided only when planned in advance.

(d) The agency is required to use, to the maximum extent possible and allowed, comparable services and benefits from other sources for all goods and services to be provided under this subchapter.

§106.1109. Transportation.

(a) Transportation that is available to the consumer without cost to DBS must be used first.

(b) Transportation provided by the consumer is reimbursed at a rate no greater than the rate for state employees traveling on state business.

(c) To seek reimbursement for transportation, the consumer must submit a statement to DBS noting, at a minimum, the starting point, destination, the number of miles traveled, and any other information that may be required by DBS to satisfy state requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. CONSUMER PARTICIPATION

40 TAC §§106.1207, 106.1209, 106.1211, 106.1213, 106.1215, 106.1217

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1207. Consumer Participation.

Consumer participation establishes participation by the consumer in service costs to encourage the consumer's commitment to an independent living goal, to create a cooperative relationship between the consumer and DBS, and to maximize DBS' limited funds.

§106.1209. Scope.

All goods and services provided under this chapter are subject to this subchapter except the following:

(1) diagnostics and evaluation services (includes maintenance and transportation);

(2) counseling, guidance, and referral services provided by DBS staff members;

(3) independent living worker services;

(4) orientation and mobility training;

(5) low vision evaluations;

(6) adaptive aids, appliances, and supplies under $50;

(7) interpreter services;

(8) Criss Cole Rehabilitation Center training (includes transportation to and from the center);

(9) services paid for or reimbursed by a source other than DBS; and

(10) training in management of secondary disabilities or related health conditions.

§106.1211. General Procedures.

(a) DBS must inform applicants of the rules on consumer participation in the cost of services upon application.

(b) All applicants and consumers, regardless of their economic resources, may be asked if they can pay for any part of their rehabilitation program.

(c) Participation in the cost of services must be determined after eligibility requirements contained in §106.1009 of this subchapter (relating to Eligibility) have been applied and approved.

(d) Participation in the cost of services is determined by the economic resources of all persons meeting the definition of family who have a legal obligation of support for the consumer.

(e) Economic resources are evaluated at least annually or at any time DBS is purchasing a service and/or DBS has reason to believe the family's economic status has changed.

§106.1213. Maximum Allowable Amount.

(a) Economic resources in excess of the amount allowed by DBS must be used by the consumer to pay for the cost of independent living services. Maximum allowable amounts are contained in an Economic Resources Table available at any DBS office.

(b) The maximum allowable amount may fluctuate according to relevant factors, such as established federal and state poverty levels, the funds available to DBS for services, and the number of persons meeting the definition of family.

§106.1215. Allowed Adjustments to Calculate Net Monthly Income.

It is not the intent of DBS to impose a financial hardship upon a family; therefore, monthly income may be adjusted to net monthly income by subtracting the following:

(1) disability-related expenses paid by the family, including medical payments as a result of disability or illness of a family member;

(2) prescribed family medications and diets;

(3) rent or home mortgage payments; and

(4) family obligations imposed by court order.

§106.1217. Refusal to Disclose Economic Resources.

Applicants and persons included in the definition of family have the right to not disclose their economic resources. When this information is not disclosed, economic resources are determined by DBS to be in excess of the allowable amounts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. MAXIMUM AFFORDABLE PAYMENT

40 TAC §106.1307

The new rule is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1307. Scope of Subchapter.

(a) The maximum affordable payment is the maximum amount DBS pays for a medical or medically related service and interpreter services. However, the payment:

(1) must not be so low as to effectively deny a person a necessary service; and

(2) must permit exceptions so that individual needs can be addressed.

(b) The current schedule of maximum affordable payments is maintained for public view and inspection in all offices.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. BLINDNESS EDUCATION, SCREENING, AND TREATMENT PROGRAM

40 TAC §§106.1601, 106.1603, 106.1605, 106.1607, 106.1609

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1601. Purpose.

The Blindness Education, Screening, and Treatment (BEST) Program is administered by the Department of Assistive and Rehabilitative Services (DARS), Division for Blind Services (DBS). The BEST program provides blindness prevention education, screening, and treatment to prevent blindness for Texas residents who are not covered under an adequate health benefit plan.

§106.1603. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, §91.027, which authorizes DBS to operate the program to the extent that funds are available under the Transportation Code §521.421(j) and §521.422(b); and

(2) Texas Human Resources Code §117.074.

§106.1605. Definitions.

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

(1) Blind (person who is)--A person whose visual acuity with best correction is 20/200 or less in the better eye; or a person with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, which means a visual field of no greater than 20 degrees in the better eye.

(2) DBS--Department of Assistive and Rehabilitative Services, Division for Blind Services.

(3) MAPS--The Maximum Affordable Payment Schedule (MAPS) is a payment system used to purchase physical and mental restoration services for DARS-Division for Blind Services consumers. DBS uses MAPS codes that are based on the American Medical Association's Current Procedural Terminology (CPT) codes, the Healthcare Common Procedure Coding System (HCPCS), and reimbursement rates that are established by Medicare to pay for medical and psychological services for DARS-DBS consumers.

(4) Medically urgent eye conditions--Conditions that include, but are not limited to, glaucoma, diabetic retinopathy, and detached retina. Any other medical condition, to qualify, must be determined to be medically urgent by both the referring physician and the DARS Division for Blind Services' medical/ophthalmologic consultant or his or her designee.

(5) Program--Blindness Education, Screening, and Treatment Program (BEST).

(6) Resident--A person who is present in Texas and intends to remain in the state, either permanently or for an indefinite period.

(7) Vision screening--A nondiagnostic procedure that uses uniform testing techniques to assess a person's risk of vision loss and eye disease.

§106.1607. Vision Screening Services.

(a) The purpose of vision screening services is to identify persons in need of comprehensive professional vision examinations, and to detect problems that could limit a person's educational or vocational opportunities.

(b) To be eligible to receive BEST vision screening services, a person must be an adult resident of the state.

(c) Vision screening services may be provided through a contractor.

(d) For information about the training and certification of vision screeners, contact the BEST program specialist at DBS, 4800 North Lamar Boulevard, Austin, Texas.

(e) Persons receiving vision screenings receive the screening results and, if necessary, a recommendation regarding the need for a follow-up examination by an eye care professional.

(f) When a referral is made for an eye examination to another organization, the referring organization's rules shall apply. A referral by the BEST program is not an endorsement of another agency, organization or eye care professional by DBS.

§106.1609. Treatment Services.

(a) The purpose of treatment services is to prevent blindness by providing medical or surgical intervention to persons at risk who are not covered under an adequate health benefit plan.

(b) To be eligible to receive treatment services from BEST, a person must be an adult resident of the state who:

(1) has been referred to the BEST program by the person's treating physician or optometrist;

(2) has certified to the physician or optometrist that the person does not have health insurance or other available resources with which to pay for prescribed treatment to prevent blindness; and

(3) has been certified by the physician or optometrist as having a medically urgent eye condition that poses an imminent risk of permanent and significant visual loss if not treated with surgery or medical intervention.

(c) The BEST program is funded with voluntary donations. It is expected that service demand will exceed program resources. Therefore, funds may not be available for treatment services at the time a person is referred for assistance.

(d) If an eligible person is denied services by the BEST program based on the inadequacy of donations to cover the cost of services,

the physician may request that the person be placed on a waiting list pending DBS receipt of adequate funds. Persons on the waiting list are served in order by referral date and time.

(e) All treatment services, including prescription drugs, must be approved in advance by the BEST program to qualify for payment. All prescribed treatment services and requested payments must be itemized on the program's application form.

(f) Over-the-counter and nonprescription drugs are not covered by the BEST program. Program assistance with the cost of eye-related drugs prescribed by a physician to prevent blindness is limited to the time the drugs are prescribed by the treating physician or optometrist or one year, whichever is less. The following are the procedures for payment for prescription drugs:

(1) Payments for approved prescription drugs are made only to the person's pharmacy of choice.

(2) DBS pays for the prescription upon receiving an invoice.

(g) When the BEST Program pays for a medical or surgical treatment prescribed by a physician as medically necessary for a chronic eye condition such as glaucoma or diabetic retinopathy, the program may pay for no more than two follow-up examinations within the 12 months after the prescribed medical or surgical treatment.

(h) Payments for treatment services are based on DBS' adopted rate schedule for eye-related medical services as specified in Texas Human Resources Code, §117.074, (also known as DBS's Maximum Affordable Payment Schedule).

(i) Claims for payment must be received within 90 days from the date of each service. Claims received by the BEST program that lack the information necessary for processing are denied as incomplete claims. The resubmission of the claim containing the necessary information must be received by the program within 60 days from the last denial date, or payment will be declined. Excepted from this requirement is the payment for refills of drugs prescribed during the allowed period of one year.

(j) The BEST program does not pay cancellation charges, charges for missed appointments, or any other charge incurred other than for the actual provision of services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 107. DIVISION FOR REHABILITATION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes the repeal of Chapter 107, Division for Rehabilitation Services, Subchapter B, Vocational Rehabilitation Services Program, §§107.101, 107.105, 107.107, 107.109, 107.111, 107.113, 107.115, 107.117, 107.119, 107.121, 107.123, 107.125, 107.127, 107.129, 107.131, 107.133, 107.135, 107.137, 107.139, 107.151, 107.153, 107.171, 107.173, 107.175, 107.191, 107.193, 107.195, 107.197, 107.199, 107.215, 107.217, 107.219, 107.221, 107.223, and 107.225; Subchapter F, Independent Living Services Program, §§107.801, 107.803, 107.805 - 107.807, 107.809, and 107.811; and Subchapter N, Memoranda of Understanding with Other State Agencies, §§107.1601, 107.1603, and 107.1605; and proposes new Chapter 107, Division for Rehabilitation Services, Subchapter A, Vocational Rehabilitation Services Program, Division 1, Program and Subchapter Purpose, §§107.101, 107.103, 107.105, 107.107, and 107.109; Division 2, Eligibility, §§107.207, 107.209, 107.211, 107.213, and 107.215; Division 3, Provision of Vocational Rehabilitation Services, §§107.307, 107.309, 107.311, 107.313, 107.315, 107.317, 107.319, 107.321, 107.323, 107.325, 107.327, 107.329, 107.331, and 107.333; Division 4, Consumer Participation, §107.407; Division 5, Comparable Benefits, §107.507 and §107.509; Division 6, Methods of Administration of Vocational Rehabilitation, §§107.607, 107.609, and 107.611; and Subchapter E, Independent Living Services Program, Division 1, General Information, §§107.801, 107.803, and 107.805; Division 2, Program Requirements, §§107.907, 107.909, and 107.911; Division 3, Independent Living Services, §107.1007 and §107.1009; and Division 4, Consumer Participation, §107.1107.

The repeal and new rules are proposed as the result of the four-year rule review that DARS conducted on the rules in Chapter 107, Division for Rehabilitation Services, in accordance with the Texas Government Code §2001.039. As a result of the review, DARS has determined that the reasons for originally adopting these rules continue to exist. However, DARS determined that Chapter 107 needed language revisions, as well as reorganization, including extensive renumbering and revision to be consistent with DARS' rules writing style. This required DARS to repeal Subchapters B and F, and propose replacement Subchapters A and E with new rules. Additionally, with respect to new Subchapter A, proposed new §107.103, adds legal authority for the subchapter; and §107.307, addresses certain limitations to provide goods and services necessary to render a consumer employable. With respect to new Subchapter E, proposed new §107.803, adds legal authority for the subchapter; and §107.805, adds definitions specific to the subchapter.

Further, the repeal of Subchapter N, Memoranda of Understanding with Other State Agencies, is proposed to move the rules and/or the subject matter of the rules to DARS, Chapter 101, Administrative Rules and Procedures, new Subchapter F, which is proposed contemporaneously in this issue of the *Texas Register.*

The rule review of Chapter 107 was adopted in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6100).

The following statutes and regulations authorize the proposed repeals and new rules: Rehabilitation Act of 1973, as amended, 29 USC §§701 et seq. and Texas Human Resources Code, Chapters 111 and 117.

Mary Wright, DARS chief financial officer, has determined that for each year of the first five years that the proposed repeal and new rules will be in effect, there are no foreseeable fiscal implications to either cost or revenue of state or local governments because of enforcing or administering the proposed repeal and new rules.

Ms. Wright also has determined that the public benefit anticipated as a result of administering and enforcing the repeal and new rules will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the Division for Rehabilitation Services. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposal.

Further, in accordance with Texas Government Code §2001.022, Ms. Wright has determined that the proposal will have no affect on local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposal will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 150A-2, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER B. VOCATIONAL REHABILITATION SERVICES PROGRAM

DIVISION 1. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §§107.101, 107.105, 107.107, 107.109, 107.111, 107.113, 107.115, 107.117, 107.119, 107.121, 107.123, 107.125, 107.127, 107.129, 107.131, 107.133, 107.135, 107.137, 107.139

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.101. Basic Criteria.

§107.105. Statewideness.

§107.107. Preliminary and Comprehensive Assessment.

§107.109. Counseling, Guidance, and Referral.

§107.111. Physical Restoration Services.

§107.113. Mental Restoration Services.

§107.115. Vocational and Other Training Services.

§107.117. Maintenance.

§107.119. Transportation.

§107.121. Interpreter Services for the Deaf and Hard of Hearing.

§107.123. Job Placement.

§107.125. Postemployment Services.

§107.127. Occupational Licenses, Tools, Equipment, and Training Supplies.

§107.129. Extended Evaluation.

§107.131. Individualized Plan for Employment.

§107.133. Cooperative Programs Utilizing Third-Party Funds.

§107.135. Participation in Political Activity.

§107.137. Consultation Regarding the Administration of the State Plan.

§107.139. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204743
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 2. CLIENT PARTICIPATION

40 TAC §107.151, §107.153

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.151. Basic Living Requirements (BLR).

§107.153. Equitable Treatment and Notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
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For further information, please call: (512) 424-4050

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DIVISION 3. COMPARABLE BENEFITS

40 TAC §§107.171, 107.173, 107.175

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.171. Comparable Services and Benefits.

§107.173. Availability of Comparable Services and Benefits.

§107.175. Maximum Utilization of Community Resources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. ELIGIBILITY AND INELIGIBILITY

40 TAC §§107.191, 107.193, 107.195, 107.197, 107.199

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.191. Basic Requirements for Eligibility.

§107.193. Prohibited Factors.

§107.195. Ineligibility.

§107.197. Determination of Ineligibility.

§107.199. Case Closure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §§107.215, 107.217, 107.219, 107.221, 107.223, 107.225

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.215. Statewide Studies and Program Evaluation.

§107.217. Annual Evaluation.

§107.219. Order of Selection.

§107.221. Periodic Reevaluation of Extended Employment.

§107.223. Individuals Determined to have Achieved an Employment Outcome.

§107.225. Training and Supervision of Counselors.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. INDEPENDENT LIVING SERVICES PROGRAM

40 TAC §§107.801, 107.803, 107.805 - 107.807, 107.809, 107.811

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.801. Purpose.

§107.803. Eligibility.

§107.805. Review of Ineligibility Determination.

§107.806. Independent Living Plan.

§107.807. Services Provided.

§107.809. Availability of Services.

§107.811. Consumer Participation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
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SUBCHAPTER N. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

40 TAC §§107.1601, 107.1603, 107.1605

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.1601. Memorandum of Understanding Regarding Continuity of Care for Physically Disabled Inmates.

§107.1603. Memorandum of Understanding Regarding the Exchange and Distribution of Public Awareness Information.

§107.1605. Memorandum of Understanding Concerning Coordination of Services to Disabled Persons.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
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SUBCHAPTER A. VOCATIONAL REHABILITATION SERVICES PROGRAM
DIVISION 1. PROGRAM AND SUBCHAPTER PURPOSE

40 TAC §§107.101, 107.103, 107.105, 107.107, 107.109

The new rules are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.101. Purpose.

The Vocational Rehabilitation Services Program is a joint state- and federal-funded program administered by the Texas Department of Assistive and Rehabilitative Services (DARS), Division for Rehabilitation Services (DRS) to assess, plan, develop, and provide vocational rehabilitation services for eligible persons with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, and capabilities, so that these persons may prepare for and engage in gainful employment.

§107.103. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) The Texas Human Resources Code §111.053.

(2) The Texas Human Resources Code, Chapter 117.

(3) The Rehabilitation Act of 1973 as amended (29 USC §§701 et seq.), referred to as "the Act."

(4) Implementing federal regulations (34 CFR §§361.51 et seq., as amended).

(5) The DRS state plan submitted to and approved by the federal government, which is effective in all political subdivisions of the state.

§107.105. Definitions.

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

(1) Applicant--An individual who applies to DRS for vocational rehabilitation services.

(2) Consumer--An individual with a disability who has applied for, or is receiving vocational rehabilitation services.

§107.107. Statewideness.

The state plan for vocational rehabilitation services is effective in all political subdivisions of the state.

§107.109. Consultation Regarding the Administration of the State Plan.

(a) The state plan must ensure that, in connection with developing and administering general policy in the administration of the state plan, DRS seeks and takes into account the views of:

(1) individuals who receive vocational rehabilitation services or, as appropriate, the individuals' representatives;

(2) personnel working in the field of vocational rehabilitation;

(3) providers of vocational rehabilitation services;

(4) the Client Assistance Program (CAP) director; and

(5) the Rehabilitation Council of Texas.

(b) The state plan must specifically describe the manner in which DRS will take into account the views regarding state policy and administration of the state plan that are expressed in the consumer satisfaction surveys conducted by the Rehabilitation Council of Texas under 34 CFR §361.17(h)(4) or by DRS.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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DIVISION 2. ELIGIBILITY

40 TAC §§107.207, 107.209, 107.211, 107.213, 107.215

The new rules are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.207. Eligibility.

(a) DRS bases eligibility for vocational rehabilitation (VR) services on the following requirements only.

(b) Within 60 days of application, DRS must:

(1) determine that the applicant has a physical or mental impairment;

(2) determine that the impairment constitutes or results in a substantial impediment to employment for the applicant;

(3) establish that the applicant requires VR services to prepare for, enter, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(4) presume that the applicant is capable of achieving an employment outcome, unless there is a demonstration by clear and convincing evidence in extended evaluation that the applicant is incapable of achieving an employment outcome because of the severity of the applicant's disability.

(c) Social Security disability recipients and beneficiaries are presumed eligible for VR services, unless there is a demonstration by clear and convincing evidence in extended evaluation that the applicant is incapable of achieving an employment outcome because of the severity of the applicant's disability.

§107.209. Prohibited Factors.

(a) DRS does not impose, as part of determining eligibility under this subchapter, a duration-of-residence requirement that excludes from services any applicant who is present in the state.

(b) In determining eligibility under this subchapter, DRS ensures that:

(1) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(2) The eligibility requirements are applied without regard to the:

(A) age, gender, race, color, or national origin of the applicant;

(B) type of expected employment outcome;

(C) source of referral for vocational rehabilitation services; and

(D) particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

§107.211. Extended Evaluation.

(a) Extended evaluation is used only to determine whether an applicant with a significant disability is capable of achieving an employment outcome.

(b) DRS provides only the vocational rehabilitation services necessary to determine if the applicant is capable of achieving an employment outcome. Services are provided in the most integrated setting possible, consistent with the informed choice of the applicant.

(c) DRS may terminate extended evaluation services at any time when:

(1) there is sufficient evidence to conclude that the applicant can achieve an employment outcome;

(2) the applicant is found ineligible for any additional vocational rehabilitation services on the basis of clear and convincing evidence that the applicant cannot be expected to benefit in terms of an employment outcome from vocational rehabilitation services; or

(3) the applicant is unavailable for services.

(d) When an applicant is determined ineligible for vocational rehabilitation services after extended evaluation, DRS conducts a periodic review at least annually of the ineligibility decision in which the applicant is afforded a clear opportunity for full consultation in the reconsideration of the decision. A periodic review is not required when the applicant has refused services, the applicant has refused a periodic review, the applicant is no longer present in the state, the applicant's whereabouts are unknown, or the applicant's medical condition is rapidly progressive or terminal.

§107.213. Determination of Ineligibility.

When an applicant is determined ineligible for vocational rehabilitation services or a consumer receiving services under an individualized plan of employment (IPE) is no longer eligible for services, DRS must:

(1) make the determination only after providing an opportunity for full consultation with the person or, as appropriate, the person's representative;

(2) inform the person in writing of the ineligibility determination. The written determination must be supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the person and must include the reasons for that determination and the means by which the person may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the rehabilitation counselor;

(3) provide the person with a description of services available from the Client Assistance Program established under 34 CFR Part 370 and information on how to contact that program;

(4) refer the person to:

(A) other programs that are part of the One-Stop service delivery system under the Workforce Investment Act that can address the person's training or employment-related needs; or

(B) local extended employment providers if the ineligibility determination is based on a finding that the person is incapable of achieving an employment outcome; and

(5) review within 12 months and annually thereafter, if requested by the person or, if appropriate, by the person's representative, any ineligibility determination that is based on a finding that the person is incapable of achieving an employment outcome. This review need not be conducted in situations where the person has refused it, the person is no longer present in the state, the person's whereabouts are unknown, or the person's medical condition is rapidly progressive.

§107.215. Case Closure.

(a) DRS closes a case when the consumer's rehabilitation plan has been completed and the consumer has achieved and maintained continuous employment commensurate with the established employment goal for a minimum of 90 days. DRS closes the case sooner if:

(1) DRS is unable to locate or contact the consumer;

(2) the consumer's disability is so severely limiting that there is little chance the consumer can be vocationally rehabilitated, or the consumer's medical condition is expected to progress to such a severely limiting degree in a fairly short period that rehabilitation services will be of little or no help;

(3) the consumer has refused services or further services;

(4) the consumer has died;

(5) the consumer has been institutionalized;

(6) the consumer has been determined to have no disabling condition;

(7) the consumer has refused to cooperate with DRS;

(8) transportation is not feasible or available;

(9) the consumer has been determined to have no impediment to employment;

(10) Extended services for supported employment are not available;

(11) the consumer has chosen extended employment (for example, sheltered workshop); or

(12) the consumer's case has been transferred to another agency.

(b) Case closure is made with the full knowledge of the consumer when the consumer is available.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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DIVISION 3. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §§107.307, 107.309, 107.311, 107.313, 107.315, 107.317, 107.319, 107.321, 107.323, 107.325, 107.327, 107.329, 107.331, 107.333

The new rules are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.307. Provision of Services.

(a) DRS, as appropriate to the vocational rehabilitation needs of each eligible person, provides goods and services necessary to render a consumer employable, subject to certain limitations prescribed in this subchapter and application of Divisions 4 and 5 of this subchapter (relating to Consumer Participation; and Comparable Benefits).

(b) Services are provided only when planned in advance and contained in the consumer's individualized plan of employment (IPE).

§107.309. Assessment.

(a) After a consumer has been found eligible, DRS conducts assessments for vocational rehabilitation needs and, if necessary, rehabilitation technology needs for each consumer in order to develop an IPE that is designed to achieve the consumer's vocational goal.

(b) If more information is needed to determine the appropriate employment outcome and services required to achieve it, DRS, as appropriate in each case, conducts an assessment of the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and needs, including the need for supported employment services, in the most integrated setting possible, consistent with the informed choice of the consumer.

(c) The assessment is limited to information that is necessary to identify the rehabilitation needs of the consumer and develop the IPE and may, to the extent needed, include:

(1) an analysis of medical, psychological, vocational, educational, and other related factors that bear on the consumer's imped-

iment to employment and rehabilitation needs. Additional examinations are authorized after services are initiated when conditions arise that jeopardize the consumer's plan for employment;

(2) an analysis of the consumer's personality, career interest, interpersonal skills, intelligence and related functional capacities, educational achievement, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;

(3) an appraisal of the consumer's patterns of work behavior and services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavioral patterns suitable for successful job performance; and

(4) an assessment, through provision of rehabilitation technology services, of the consumer's capacities to perform in a work environment, including in an integrated setting, to the maximum extent feasible and consistent with the consumer's informed choice.

(d) DRS uses, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, including information that is provided by the consumer, the family of the consumer, and education agencies.

§107.311. Counseling, Guidance, and Referral.

DRS provides counseling, guidance, and referral services as necessary for the vocational rehabilitation of the consumer. Counseling is a process in which a vocational rehabilitation counselor works with the consumer in order to help the consumer understand both problems and vocational potential. Counseling is a continuous process throughout the rehabilitation program to help the consumer make the best possible vocational, personal, and social adjustment. Referral means referral of the consumer to other agencies for assistance not available from DRS.

§107.313. Physical Restoration Services.

DRS provides physical restoration services that are necessary to correct or substantially modify the consumer's physical condition within a reasonable period. The physical conditions for which the services are rendered must be stable or slowly progressive.

§107.315. Mental Restoration Services.

(a) DRS provides mental restoration services for mental conditions that are stable or slowly progressive.

(b) DRS provides psychiatric treatment as a limited service on a short-term basis only to support achievement of the employment goal.

(c) DRS provides psychotherapy as a limited service on a short-term basis only to support achievement of the employment goal.

§107.317. Vocational and Other Training Services.

(a) DRS purchases vocational and other training services for consumers who require additional knowledge or skills to enter employment consistent with their aptitudes and ability, and compatible with their physical or mental impairments.

(b) DRS purchases vocational and other training through an appropriate facility. These facilities include accredited colleges and universities, certified public or private businesses, technical and vocational schools, on-the-job training, correspondence course training, tutorial training, and community rehabilitation program training.

(c) DRS requires that each consumer who is provided with vocational or other training services by DRS apply for financial assistance where reasonably available. This assistance can include federal, state, or local grants-in-aid and private scholarships where applicable. If the consumer has not done so before the time of application for vocational rehabilitation services, the counselor assists the consumer in doing so.

(d) DRS does not pay the nonresident fee to a college or university outside Texas if the course is available at a school within Texas, but does pay tuition at the same rate as would have been paid to a comparable college in Texas.

(e) DRS does not pay tuition and fees to a business, technical, or vocational school in excess of the published fees.

§107.319. Maintenance.

DRS may pay maintenance to the consumer. Maintenance is a payment to the consumer made during any stage of the rehabilitation process to cover basic living expenses, such as food, shelter, clothing, and other subsistence expenses that are in excess of the normal expenses of the consumer, and are necessary for the consumer to derive the full benefit of other vocational rehabilitation services.

§107.321. Transportation.

DRS may pay for transportation services for the consumer in connection with other vocational rehabilitation services.

§107.323. Interpreter Services for the Deaf and Hard of Hearing.

(a) DRS may provide interpreter services for a consumer who is deaf or hard of hearing when the services will help the consumer to attain the rehabilitation objective.

(b) DRS may provide telecommunications, sensory, and other technological aids and devices to facilitate training, employability, and job opportunities for consumers with significant disabilities, particularly consumers who are deaf and consumers with profound hearing or speech impairments.

§107.325. Job Development, Placement and Retention.

(a) The principal objective of vocational rehabilitation services is a competitive integrated employment outcome for each consumer that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) Employment outcomes include entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership.

§107.327. Post-Employment Services.

(a) DRS may provide post-employment services to consumers who have been determined rehabilitated in order to maintain or strengthen the consumer's employment.

(b) Post-employment services are services that are necessary for the consumer to maintain, regain, or advance in an employment outcome that is consistent with the consumer's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

§107.329. Occupational Licenses, Tools, Equipment, and Training Supplies.

(a) DRS may engage in or contract for activities to provide the consumer with occupational licenses, including any license, permit, or other written authority that a state, city, or other governmental unit requires a person to obtain before entering an occupation or self-employment.

(b) DRS may provide the consumer with tools, equipment, initial stocks, goods, and supplies necessary to enter an occupation or self-employment.

(c) The consumers must safeguard and maintain in a serviceable condition tools and equipment and will not sell, give away, or otherwise wrongfully dispose of them.

(d) The consumers must sign a prescribed form agreeing to the terms of subsection (c) of this section at the time the consumer receives tools and equipment.

§107.331. Individualized Plan for Employment (IPE).

(a) DRS initiates and continuously develops an individualized plan for employment for each individual eligible for vocational rehabilitation services and for each individual being provided such services in extended evaluation.

(b) The counselor and consumer or, as appropriate, the consumer's parent, guardian, or other representative uses information obtained during the assessment to help the consumer make informed choices about vocational rehabilitation needs, employment goal, intermediate rehabilitation objectives, and the nature and scope of vocational rehabilitation services and the service providers to be included in the IPE.

(c) The consumer may develop all or part of the IPE with or without assistance from a DRS counselor, a qualified vocational rehabilitation counselor not employed by DRS, or another resource outside DRS. DRS does not pay for non-DRS assistance with IPE development. The IPE is not final until approved by the DRS counselor. A copy of the plan and any amendments are provided to the consumer or, as appropriate, the consumer's parent, guardian, or other representative.

(d) In developing an IPE for a student with a disability who is receiving special education services, DRS must consider the student's individualized education program.

(e) The counselor must advise the consumer of the consumer's rights and the means by which the consumer may express and seek remedy for dissatisfaction with the plan, including the opportunity for an administrative review of DRS action and a fair hearing in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001, and the rules in Chapter 101 of this title (relating to Administrative Rules and Procedures).

(f) The counselor reviews the IPE as often as necessary, but at least on an annual basis, at which time the consumer, or as appropriate, the consumer's parent, guardian, or other representative, is afforded an opportunity to review the plan and, if necessary, jointly redevelop its terms.

(g) The IPE is a joint commitment that must be signed by both the counselor and the consumer.

(h) DRS may provide only goods and services that can reasonably be expected to benefit a person with a disability in terms of employment.

§107.333. Consumers Determined to Have Achieved Employment Outcome.

(a) DRS determines a consumer to have achieved an employment outcome when the following requirements are met:

(1) the provision of services under the consumer's IPE has contributed to the achievement of the employment outcome;

(2) the consumer has achieved the employment outcome that is described in the consumer's IPE and that is consistent with the consumer's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(3) the employment outcome is in an integrated setting;

(4) the consumer has maintained the employment outcome for at least 90 days; and

(5) the consumer and the rehabilitation counselor consider the employment outcome to be satisfactory and agree that the consumer is performing well on the job.

(b) After a consumer has been determined to have achieved an employment outcome, DRS may provide post-employment services as required to maintain, regain, or advance in employment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204752
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 4. CONSUMER PARTICIPATION

40 TAC §107.407

The new rule is proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.407. Basic Living Requirements (BLR).

(a) The purpose of the table of basic living requirements (BLR) is to establish a framework for determining whether the consumer should pay any of the service cost. DRS does not consider BLR in determining eligibility for vocational rehabilitation services, but DRS does apply BLR to determine whether the consumer must contribute to the cost of certain services. DRS applies BLR uniformly to ensure that all consumers in similar circumstances receive equitable treatment.

(b) All services are subject to required consumer participation except for the following:

(1) services paid for, or reimbursed by, a source other than DRS;

(2) counseling, guidance, and referral provided by DARS;

(3) assessment services, to determine eligibility and rehabilitation needs;

(4) interpreter services;

(5) reader services;

(6) translator services;

(7) personal assistant services; and/or

(8) job-related services: job placement, services leading to supported employment, and job coach services.

(c) Consumers who are recipients of Social Security disability benefits, either SSI or SSDI, are not required to participate in the cost of services.

(d) The counselor informs each consumer of the services that require consumer participation in the cost of services and the services that do not require consumer participation.

(e) If a consumer declines to provide financial information to determine BLR, it is assumed that the consumer has resources that exceed the BLR and therefore must fully participate in the cost of planned services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204753
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 5. COMPARABLE BENEFITS

40 TAC §107.507, §107.509

The new rules are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.507. Comparable Services and Benefits.

If comparable services or benefits exist under any other program and are available to the consumer at the time needed to achieve the rehabilitation objective in the consumer's IPE, DRS must use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.

§107.509. Availability of Comparable Services and Benefits.

DARS determines whether comparable services or benefits are available to the consumer under any other program or law to meet, in whole or in part, the cost of any VR services. DARS does not make this determination in cases where:

(1) determining the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any consumer whom DRS has determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional;

(2) an immediate job placement would be lost because of a delay in the provision of comparable services and benefits; or

(3) the determination would interrupt or delay progress toward achieving the employment outcome on the IPE.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204754
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 6. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §§107.607, 107.609, 107.611

The new rules are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.607. Statewide Studies and Program Evaluation.

(a) DRS conducts continuing statewide studies of the needs of persons with disabilities within the state and the methods by which these needs may be most effectively met.

(b) The studies are directed toward:

(1) assessing the rehabilitation needs of persons with significant disabilities who reside in the state;

(2) reviewing the effectiveness of outreach procedures used to identify and serve persons with disabilities who are minorities and persons with disabilities who are unserved and underserved by the vocational rehabilitation system;

(3) reviewing a broad variety of methods to provide, expand, and improve vocational rehabilitation services to persons with the most significant disabilities, including persons receiving supported employment services;

(4) ensuring the orderly and effective development of vocational rehabilitation services; and

(5) reviewing the efficacy of the criteria employed by DRS in making ineligibility decisions with respect to applicants for vocational rehabilitation services.

(c) Reports of the studies are available to the public for review.

§107.609. Annual Evaluation.

(a) DRS conducts an annual comprehensive evaluation of the effectiveness of the state's vocational rehabilitation program in achieving:

(1) service goals and priorities established in the state plan and annual amendments to the state plan; and

(2) compliance with the evaluation standards and performance indicators established by the Act.

(b) The evaluation measures the adequacy of DRS performance in providing vocational rehabilitation services, especially to

persons with the most significant disabilities, in light of the state's vocational rehabilitation program financial resources. The evaluation has the following minimum objectives:

(1) to ensure that the rehabilitation program is serving the target population and that the services are provided in an equitable manner;

(2) to ensure that consumers are placed in gainful employment suitable to their capabilities, interest, and informed choice;

(3) to measure the extent to which undue delays are avoided in providing consumers with services;

(4) to ensure that available resources are used effectively to achieve maximum efficiency;

(5) to ensure that counselors maintain manageable-sized caseloads and provide timely and adequate services to individual consumers;

(6) to ensure that consumers retain the benefits obtained from the rehabilitation process;

(7) to ensure that the need for post-employment services is satisfied;

(8) to identify reasons why consumers are not successfully rehabilitated; and

(9) to ensure that the consumer is satisfied with the individualized plan for employment.

§107.611. Order of Selection.

(a) In determining whether to invoke an order of selection, the assistant commissioner for rehabilitation services applies the criteria set out in 29 USC §709, in 34 CFR §361.36 as amended, and in the state plan.

(b) The order of selection, if invoked, is applied after eligibility for services is determined.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204755
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER E. INDEPENDENT LIVING SERVICES PROGRAM
DIVISION 1. GENERAL INFORMATION

40 TAC §§107.801, 107.803, 107.805

The new rules are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.801. Purpose.

(a) The purpose of the Independent Living Services (ILS) Program is to provide rehabilitation services to persons with significant disabilities whose ability to function independently in the home, family, or community is substantially limited and for whom the delivery of independent living services will substantially improve the ability to function, continue functioning, or move towards functioning independently in the home, family or community.

(b) The ILS Program is a joint state- and federal-funded program administered by the Texas Department of Assistive and Rehabilitative Services (DARS), Division for Rehabilitation Services (DRS). All federal laws, regulations and conditions required by the acceptance of these funds by the state apply to this subchapter.

§107.803. Legal Authority.

(a) The following statutes and regulations authorize or require the rules in this subchapter:

(1) Title VII of the Rehabilitation Act of 1973 as amended (29 USC §701 et seq.);

(2) regulations of the Department of Education, Rehabilitation Services Administration (34 CFR §§364.1 - 364.59 et seq., as amended);

(3) Texas Human Resources Code, Chapter 111;

(4) Texas Human Resources Code, Chapter 117; and

(5) the state plan for independent living submitted to and approved by the federal government.

(b) In case of any conflict, federal regulations prevail.

§107.805. Definitions.

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

(1) Applicant--A person who applies to DRS for independent living services.

(2) Consumer--An individual with a disability who has applied for or is receiving vocational rehabilitation services.

(3) Dependent--A person carried as a dependent for income tax purposes during the current tax year by his or her parents, foster parents, legal guardians, or conservator. The term includes a consumer who is a minor supported by parents or legal guardians; or a consumer under 18 years of age and married but not living with his or her spouse and whose major source of income is from parents or legal guardians; and a consumer adjudged legally incompetent.

(4) Independent Living Plan (ILP)--A written plan in which the consumer and counselor have collaboratively identified the significant life achievements needed for the consumer to become or remain independent in the home, family, or community and the steps, goods, and services needed to achieve them. Also known as an Individualized Written Rehabilitation Plan (IWRP).

(5) Significant disability--A severe physical, mental, cognitive, or sensory impairment that substantially limits the person's ability to function independently in the home, family, or community.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204756
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 2. PROGRAM REQUIREMENTS

40 TAC §§107.907, 107.909, 107.911

The new rules are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.907. Eligibility.

A person eligible for Independent Living Services is a person:

(1) with a significant disability as defined in §107.805 of this subchapter (relating to Definitions); and

(2) for whom the delivery of IL services will improve the ability to function, continue functioning, or move toward functioning independently in the home, family, or community.

§107.909. Review of Ineligibility Determination.

(a) If an applicant for IL services has been found ineligible, the Independent Living Services (ILS) counselor reviews the applicant's ineligibility at least once within 12 months after the ineligibility determination has been made and whenever the ILS counselor determines that the applicant's status has materially changed.

(b) The review need not be conducted in situations in which the applicant has refused the review, the applicant is no longer present in the state, or the applicant's whereabouts are unknown.

§107.911. Independent Living Plan.

Unless the consumer signs a waiver stating that it is unnecessary, an Independent Living Plan (ILP) is developed indicating the goals or objectives established, the services to be provided, and the anticipated duration of the service program. The ILP must be developed jointly and signed by the ILS counselor and the consumer or the consumer's representative. The ILP must be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204757
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 3. INDEPENDENT LIVING SERVICES

40 TAC §107.1007, §107.1009

The new rules are proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.1007. Services Provided.

Independent Living Services may include:

(1) counseling and guidance;

(2) advocacy and self services;

(3) independent living skills training;

(4) information and referral;

(5) peer counseling;

(6) provision of and training in the use of assistive devices and equipment;

(7) provision of training to family members in helping the IL consumer live more independently;

(8) mobility training;

(9) personal assistance services;

(10) preventive services;

(11) prostheses, orthotics, and other appliances;

(12) access to public transportation;

(13) adult basic education;

(14) youth-to-adult transition services;

(15) therapeutic treatment;

(16) restoration services;

(17) interpreter services;

(18) modification of vehicles and residences; and

(19) other services that are not listed in paragraphs (1) - (18) of this section but that may be necessary to improve the ability of the consumer to function, continue functioning, or move toward functioning independently.

§107.1009. Availability of Services.

(a) As case service funds become available, each Independent Living Services (ILS) counselor provides services to consumers whose plan or Waiver has been signed and who are ready for services, in order of their initial contact date.

(b) When case service funds are not available, each ILS counselor maintains a Waiting List of consumers for whom services have not yet been purchased.

(c) When necessary to avoid inequities, the assistant commissioner may transfer case service funds between service areas or counselors and may authorize DARS staff members to serve consumers on a waiting list with services from a different counselor.

(d) DRS must use, to the maximum extent possible and allowed, comparable services and benefits from other sources for services to be provided under this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204758
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 4. CONSUMER PARTICIPATION

40 TAC §107.1107

The new rule is proposed in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.1107. Consumer Participation.

(a) The purpose of the table of basic living requirements (BLR) is to establish a framework for determining whether the consumer should pay any of the service cost. DRS does not consider BLR in determining eligibility for independent living services, but DRS does apply BLR to determine whether the consumer must contribute to the cost of certain services. DRS applies BLR uniformly to ensure that all consumers in similar circumstances receive equitable treatment.

(b) All services are subject to required consumer participation except for the following:

(1) assessment for determining eligibility;

(2) assessment for determining independent living needs, including associated maintenance and transportation;

(3) counseling, guidance, and referral provided by DARS;

(4) personal assistance services while participating in assessments to determine eligibility and independent living needs; and

(5) any auxiliary aid or service (for example, interpreter services) that a consumer with a disability requires in order to achieve IL goals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204759
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: October 21, 2012
For further information, please call: (512) 424-4050

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER J. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §5.1007

The Texas Department of Housing and Community Affairs withdraws the proposed new §5.1007 which appeared in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5532).

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204652
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: September 10, 2012
For further information, please call: (512) 475-3916

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.102, 13.104, 13.106

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §§13.102, 13.104, and 13.106 which appeared in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5961).

Filed with the Office of the Secretary of State on September 6, 2012.

TRD-201204640
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: September 6, 2012
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

22 TAC §192.1, §192.2

The Texas Medical Board withdraws the proposed amendments to §192.1 and §192.2, which appeared in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5548).

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204662
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 10, 2012
For further information, please call: (512) 305-7016

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.13

The Texas Medical Board withdraws proposed new §193.13, which appeared in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5550).

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204663
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 10, 2012
For further information, please call: (512) 305-7016

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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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §12.51

The Texas Ethics Commission (the commission) adopts new §12.51, relating to the processing of non-compliant sworn complaints. The new §12.51 is adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4483).

Complaints are required to comply with certain requirements. These requirements are meant to guarantee fairness and due process to all persons involved. If a complaint does not comply with the requirements, the complaint is rejected and by law the complainant is given 21 days to re-file a complying complaint.

One of the requirements is that a complaint must describe facts that, if true, would constitute a violation of a law under the commission's enforcement jurisdiction. Currently, a complaint is rejected if none of the allegations raised in a complaint comply with this requirement. A complaint is not rejected if it includes both allegations that comply with the requirement and allegations that do not comply with the requirement. In such instances, the notice of complaint identifies the allegations that do not comply.

Under the new §12.51, a complaint (that includes an allegation that does not comply with the requirement to provide facts that, if true, would constitute a violation of the law) would be rejected as a whole if the complainant has been previously notified that the alleged conduct is an invalid basis for an allegation. Additionally, in those instances, a complaint that is determined to be non-complying under the new §12.51 would be presumed to be a frivolous or bad faith complaint.

The aim of the new §12.51 is to reduce the amount of staff time necessary to process such complaints and to more quickly process complaints in which complainants have an incentive to take care to raise only valid allegations. The new §12.51 will also result in a more concise complaint for the respondent to address.

No comments were received regarding the proposed rule during the comment period.

The new §12.51 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 6, 2012.

TRD-201204641
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Effective date: September 26, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
SUBCHAPTER A. GENERAL RULES

1 TAC §20.16

The Texas Ethics Commission (the commission) adopts new §20.16, relating to notices sent by electronic mail. The new §20.16 is adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4484).

Section 20.16 applies to persons required to file campaign finance reports with the commission. The campaign finance law requires the commission to notify commission filers of certain filing deadlines. By law, the notifications may be sent by electronic mail. Additionally, the law provides that if the commission is unable to notify a person of a deadline after two attempts, the commission is not required to make any further attempts to notify the person of that deadline or any future deadlines until the person has notified the commission of the person's current address or electronic mail address.

Under the new §20.16, a person required to file reports electronically must provide an e-mail address to which notices may be sent. A person not required to file reports electronically will have the option of participating in the e-mail notification program. If they do not participate, they will continue to receive paper notices.

No comments were received regarding the proposed rule during the comment period.

The new §20.16 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 6, 2012.

TRD-201204642
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Effective date: September 26, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS
SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.19

The Texas Ethics Commission (the commission) adopts new §34.19, relating to notices sent by electronic mail. The new §34.19 is adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4484).

Section 34.19 applies to persons required to register as a lobbyist. Unlike the campaign finance law, the lobby law does not require the commission to notify each person required to register as a lobbyist of notices regarding filing requirements under the lobby law. The commission, however, sends courtesy notices regarding these requirements.

Under the new §34.19, a person required to register as a lobbyist may provide an e-mail address to which courtesy notices may be sent. The commission will not be obligated to send notices to a person who does not provide an e-mail address.

No comments were received regarding the proposed rule during the comment period.

The new §34.19 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 6, 2012.

TRD-201204643
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Effective date: September 26, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 463-5800

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.6

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal 10 TAC Chapter 1, §1.6, concerning Historically Underutilized Businesses, without changes to the proposal as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5531) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will alleviate any outdated information. Accordingly, the repeal provides the Department the ability to update and properly reflect new information.

The Department accepted public comments between July 27, 2012 and August 27, 2012. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on September 6, 2012.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204653
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: September 30, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 475-3916

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10 TAC §1.6

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, §1.6, concerning Historically Underutilized Businesses, without changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5532) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the new section will alleviate any outdated information concerning historically underutilized businesses. Accordingly, the new section provides the Department the ability to reflect current information.

The Department accepted public comments between July 27, 2012 and August 27, 2012. Comments regarding the new section were accepted in writing and by fax. No comments were received concerning the new section.

The Board approved the final order adopting the new section on September 6, 2012.

STATUTORY AUTHORITY. The new section is adopted pursuant to the authority of Texas Government Code §2306.053 which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204654
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: September 30, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 475-3916

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CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §5.2, §5.3

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 5, Subchapter A, §5.2, concerning Cost Principles and Administrative Requirements, and §5.3, concerning Definitions, without changes to the proposal as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4764) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the numbering of these sections is inconsistent with other Department rules. Accordingly, the repeal and renumbering of these sections will provide consistency with Department rules.

The Department accepted public comments from June 29, 2012 to July 30, 2012. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on September 6, 2012.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of §2306.053 of the Texas Government Code which authorizes the Department to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204655
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: September 30, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 475-3916

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10 TAC §5.2, §5.3

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, Subchapter A, §5.2, concerning Definitions, and §5.3, concerning Cost Principles and Administrative Requirements. Section 5.2 is adopted with changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4765) and will be republished. Section 5.3 is adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that references are needed to reflect definitions and policies and procedures for the new Emergency Solutions Grants Program (ESG) and the Homeless Housing and Services Program (HHSP). Further, the Department finds that due to the additional definition, §5.2 needed to be renumbered for consistency. Accordingly, the adopted new sections will set forth requirements for the distribution and administration of ESG and HHSP. In addition, the adopted new sections will be renumbered to provide consistency with Department rules.

Comments were accepted from June 29, 2012 to July 30, 2012, with one comment received from Ms. Stella Rodriguez of the Texas Association of Community Action Agencies (TACAA).

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

§5.2. Definitions.

COMMENT SUMMARY. The commenter brought to the attention of the Department that, in the definition section, the definition for Community Action Plan was omitted.

STAFF RESPONSE. The Department finds that the omission of the definition for Community Action Plan was an oversight by the Department. Accordingly, the section will be revised to include the definition. As a result, subsequent definitions listed in §5.2 will be renumbered appropriately. The Department thanks the commenter and recommended the change.

The Board approved the final order adopting the new sections on September 6, 2012.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically §§2306.2585, 2306.053, 2306.092, 2306.094, and 2306.097 which authorize the Department to adopt rules to govern the administration of the CEAP, ESG, HHSP, and LIHEAP WAP.

§5.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the Community Affairs Programs, a list of terms and definitions has been compiled as a reference.

(b) The following words and terms in this chapter shall have the following meaning unless the context clearly indicates otherwise.

(1) CAA--Community Action Agency.

(2) CFR--Code of Federal Regulations.

(3) Children--Household dependents not exceeding eighteen (18) years of age.

(4) Collaborative Application--An application from two or more organizations to provide services to the target population. If a unit of general local government applies for only one organization, this will not be considered a Collaborative Application. Partners in the Collaborative Application must coordinate services and prevent duplication of services.

(5) Community Action Agencies (CAAs)--Local private and public non-profit organizations that carry out the Community Action Program (CAP), which was founded by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. Each CAA must have a board consisting of at least one-third elected public officials, not fewer than one-third representatives of low-income individuals and families, chosen in accordance with democratic selection procedures, and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.

(6) Community Action Plan--A plan required by the Community Services Block Grant (CSBG) Act which describes the local (Subrecipient) service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.

(7) Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESGP, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

(8) The Community Services Block Grant (CSBG)--A grant which provides U.S. federal funding for CAAs and other eligible entities that seek to address poverty at the community level. Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.

(9) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(10) Cooling--Modifications including, but not limited to, the repair or replacement of air conditioning units, evaporative coolers, and refrigerators.

(11) CSBG Subrecipient--Includes CSBG eligible entities and other organizations that are awarded CSBG funds.

(12) Department--The Texas Department of Housing and Community Affairs.

(13) Discretionary Funds--Those CSBG funds maintained in reserve by a State, at its discretion, for CSBG allowable uses as authorized by §675C of the CSBG Act, and not designated for distribution on a statewide basis to CSBG eligible entities and not held in reserve for state administrative purposes.

(14) DOE--The United States Department of Energy.

(15) DOE WAP Rules--10 CFR Part 440 describes the Weatherization Assistance for Low Income Persons as administered through the Department of Energy.

(16) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

(17) Equipment--A tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of $5,000 or more per unit. For CSBG, CEAP, and WAP, if the unit acquisition cost exceeds $5,000, approval from the Department's Community Affairs Division must be obtained before the purchase takes place. For ESGP, if the unit acquisition cost exceeds $500, approval from the Department's Community Affairs Division must be obtained before the purchase is made.

(18) Elderly Person--A person who is sixty (60) years of age or older.

(19) Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(20) Eligible Entity--Those local organizations in existence and designated by the federal government to administer programs created under the federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the State and that has a tripartite board or other mechanism for local governance.

(21) Emergency--Defined by the LIHEAP Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. §8622):

(A) natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a State regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the State temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, at the discretion of the Secretary, may determine to be appropriate.

(H) This definition does not apply to ESGP, ESG, or HHSP.

(22) Emergency Shelter Grants Program (ESGP)--A federal grant program established by the Homeless Housing Act of 1986 and incorporated into Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) and funded through HUD.

(23) Emergency Solutions Grants (ESG)--A federal grant program authorized in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act). ESG is funded through HUD.

(24) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a dwelling unit.

(25) Energy Repairs--Weatherization related repairs necessary to protect or complete regular weatherization energy efficiency measures.

(26) Families with Young Children--A family that includes a child age five (5) or younger.

(27) High Energy Burden--Determined by dividing a household's annual home energy costs by the household's annual gross income. The percentage at which energy burden is considered high is defined by data gathered from the State Data Center.

(28) High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures expressed in the data collected from the State Data Center.

(29) Homeless or homeless individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.

(30) Homeless and Housing Services Program (HHSP)--A state funded program established by the State Legislature during the 81st Legislative session with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.

(31) Household--Any individual or group of individuals who are living together as one economic unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.

(32) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty households of that county.

(33) Local Units of Government--City, county, council of governments, and housing authorities.

(34) Low Income--Income in relation to family size:

(A) For DOE WAP, at or below 200% of the Income guidelines;

(B) For CEAP, CSBG, and LIHEAP WAP at or below 125% of the Income guidelines;

(C) For ESGP, at or below 100% of the poverty level, determined in accordance with criteria established by the Director of the Office of Management and Budget;

(D) For ESG, 30% of the Area Median Income (AMI) as defined by HUD for persons receiving prevention assistance; and

(E) For HHSP, 50% of the AMI as defined by HUD for persons receiving emergency essential services, essential services, and emergency intervention assistance.

(35) Low Income Home Energy Assistance Program (LIHEAP)--A federally funded block grant program that is implemented to serve low income households who seek assistance for their home energy bills and/or weatherization services.

(36) Migrant Farm worker--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.

(37) Multifamily Dwelling Unit--A structure containing more than one dwelling unit. This definition does not apply to ESGP, ESG, or HHSP.

(38) National Performance Indicator--An individual measure of performance within the Department's reporting system for measuring performance and results of Subrecipients of funds. There are currently twelve indicators of performance which measure self-sufficiency, family stability, and community revitalization.

(39) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds. The assessment is a required part of the Community Action Plan per Assurance 11 of the CSBG Act.

(40) OMB--Office of Management and Budget, a federal agency.

(41) OMB Circulars--OMB circulars set forth principles and standards for determining costs for federal awards and establishes consistency in the management of grants for federal funds. Cost principles for local governments are set forth in Office of Management and Budget (OMB) Circular A-87, and for non-profit organizations in OMB Circular A-122. Uniform administrative requirements for local governments are set forth in OMB Circular A-102, and for non-profits in OMB Circular A-110. OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations," provides audit standards for governmental organizations and other organizations expending federal funds. The single audit requirements are set forth under OMB Circular A-133.

(42) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(43) Performance Statement--A document which identifies the services to be provided by a CSBG Subrecipient. The document is an attachment to the CSBG contract entered into by the Department and the CSBG Subrecipient.

(44) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;

(B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(45) Population Density--The number of persons residing within a given geographic area of the state.

(46) Poverty Income Guidelines--The official poverty income guidelines as issued by the U.S. Department of Health and Human Services annually.

(47) Private Nonprofit Organization--An organization which has status as a §501(c) tax-exempt entity. Private nonprofit organizations applying for ESGP, ESG and HHSP funds must be established for charitable purposes and have activities that include, but are not limited to, the promotion of social welfare and the prevention

or elimination of homelessness. The entity's net earnings may not inure to the benefit of any individual(s).

(48) Public Organization--A unit of local government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(49) Referral--The process of providing information to a client household about an agency, program, or professional person that can provide the service(s) needed by the client.

(50) Rental Unit--A dwelling unit occupied by a person who pays rent for the use of the dwelling unit. This definition does not apply to ESGP, ESG, or HHSP.

(51) Renter--A person who pays rent for the use of the dwelling unit. This definition does not apply to ESGP, ESG, or HHSP.

(52) Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the household annualized income must be derived from the agricultural labor or related industry.

(53) Secretary--Chief Executive of the U.S. Department of Health and Human Services.

(54) Service--The provision of work or labor that does not produce a tangible commodity.

(55) Shelter--Defined by the Department as a dwelling unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

(56) Single Family Dwelling Unit--A structure containing no more than one dwelling unit. This definition does not apply to ESGP, ESG, or HHSP.

(57) Social Security Act--42 U.S.C. §§601, et seq., CSBG works with activities carried out under Title IV Part A to assist families to transition off of state programs.

(58) State--The State of Texas or the Texas Department of Housing and Community Affairs.

(59) Subcontractor--An organization with whom the Subrecipient contracts with to administer programs.

(60) Subrecipient--According to each program subchapter, Subrecipient may be defined as organizations with whom the Department contracts with and provides CSBG, ESGP, ESG, HHSP, DOE WAP, or LIHEAP funds.

(61) Supplies--All personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(62) TAC--Texas Administrative Code.

(63) Targeting--Focusing assistance to households with the highest program applicable needs.

(64) Terms and Conditions--Binding provisions provided by a funding organization to grantees accepting a grant award for a specified amount of time.

(65) Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

(66) Units of General Local Government--A unit of local government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(67) U.S.C.--United States Code.

(68) USDHHS/HHS--U.S. Department of Health and Human Services.

(69) USHUD/HUD--U.S. Department of Housing and Urban Development.

(70) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(71) WAP--Weatherization Assistance Program.

(72) WAP PAC--Weatherization Assistance Program Policy Advisory Council. The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the WAP program.

(73) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(74) Weatherization Project--A project conducted in a single geographical area which undertakes to reduce heating and cooling demand of dwelling units that are energy inefficient.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204656
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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10 TAC §§5.4, 5.8, 5.10, 5.13, 5.15 - 5.17, 5.19, 5.20

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter A, §§5.4, 5.8, 5.10, 5.13, 5.15 - 5.17, 5.19, and 5.20, concerning references to the Emergency Solutions Grants and the Homeless Housing and Services Program, without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4768) and will not be republished.

REASONED JUSTIFICATION. The Department finds that revisions are necessary for the administration of the new Emergency Shelter Grants Program (ESG) and Homeless Housing and Services Program (HHSP); the closing of the Homelessness Pre-

vention Rapid Re-Housing Program (HHSP); and updates in federal poverty income guidelines and requirements for OMB circulars and income documentation of the Community Affairs programs.

Accordingly, the amended sections provide reference to ESG, HHSP and remove reference to HPRP. Further, the amended sections provide revisions to poverty income levels for Department of Energy Weatherization Assistance Program (WAP), Low Income Home Energy Assistance Program WAP and the Comprehensive Energy Assistance Program, remove the audit threshold of $500,000, state the requirements to adhere to the threshold requirements of Office of Management and Budget Circular A-133, and revise the declaration of income statement documentation term to income documentation.

Comments were accepted from June 29, 2012 to July 30, 2012, with one comment received from Ms. Stella Rodriguez of the Texas Association of Community Action Agencies (TACAA).

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

§5.10(a). Procurement Standards.

COMMENT SUMMARY. The commenter suggested that the term entity be changed to "Subrecipient" for consistency purposes.

STAFF RESPONSE. The Department believes that the use of the word "entity" in §5.10 reflects the various legal configurations that the Community Affairs Division contracts with and does not imply or confer a specific federal status. No change is recommended.

The Board approved the final order adopting the amended sections on September 6, 2012.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically Texas Government Code, §§2306.2585, 2306.053, 2306.092, 2306.094, and 2306.097, which authorize the Department to adopt rules to govern the administration of the CEAP, ESG, HHSP, and LIHEAP WAP.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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SUBCHAPTER J. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §5.1006

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, Subchapter J, §5.1006, concerning Performance and Expenditure Benchmarks without changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5532) and will not be republished. Section 5.1007 is withdrawn to provide uniformity and a more generalized use of Department funds as described in proposed §1.19, concerning Reobligation of Deobligated Funds and Other Related Sources of Funds, which will be published concurrently in this issue of the *Texas Register.*

REASONED JUSTIFICATION. The Department finds that the establishment of performance and expenditure benchmarks for HHSP contracts will ensure timely expenditure of funds, acceptable performance targets and a process for deobligation and recapture of funds. The adopted new section will set forth policies and procedures for Performance and Expenditure Benchmarks governing the administration of HHSP funds within the State of Texas.

The Department accepted public comments between July 27, 2012 and August 24, 2012. Comments regarding the new section were accepted in writing and by fax. No comments were received concerning the new section.

The Board approved the final order adopting the new section on September 6, 2012.

STATUTORY AUTHORITY. The new section is adopted pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically Texas Government Code, §2306.2585, which authorizes the Department to adopt rules to govern the administration of the Homeless Housing and Services Program. To the extent that funding sources other than unrestricted funds are utilized, such as housing trust fund balances, any HHSP activities conducted with such funds may be subject to additional restrictions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204659
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: September 30, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 475-3916

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SUBCHAPTER K. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§5.2001 - 5.2012

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, Subchapter K, §§5.2001 - 5.2012, concerning the Emergency Solutions Grants (ESG), without changes to the proposed text as published in the

June 29, 2012, issue of the *Texas Register* (37 TexReg 4774) and will not be republished.

REASONED JUSTIFICATION. The Department finds that funds will be provided to the Department by the U.S. Department of Housing and Urban Development (HUD) to administer the Emergency Solutions Grants (ESG) program. Accordingly, the new sections set forth policies and procedures governing the administration of ESG funds within the state of Texas.

The Department accepted public comments between June 29, 2012 and July 30, 2012. Comments regarding the new sections were accepted in writing and by fax. No comments were received concerning the new sections.

The Board approved the final order adopting the new sections on September 6, 2012.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules and pursuant to Texas Government Code, §2306.094 which authorizes the Department to administer the state's allocation of federal funds provided under the Emergency Shelter Grants Program (42 U.S.C. §§11371 et seq.), as amended, or its successor program, and any other federal funds provided for the benefit of homeless individuals and families.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204658
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

The Texas Board of Architectural Examiners adopts amendments to §1.5, concerning Terms Defined Herein, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4312) and will not be republished.

The amendment creates a definition of the term "sole practitioner" as used in the board's rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 5, 2012.

TRD-201204616
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 25, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER K. PRACTICE; ARCHITECT REQUIRED

22 TAC §§1.210 - 1.212

The Texas Board of Architectural Examiners adopts amendments to §1.210, concerning Architectural Plans and Specifications; §1.211, concerning Privately Owned Buildings; and §1.212, concerning Publicly Owned Buildings. Section §1.210 is adopted with changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4315). The text of the rule will be republished. The amendments to §1.211 and §1.212 are adopted without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4315) and will not be republished.

Section 1.210 is adopted with changes to insert the word "registered" before the term "interior designer", to clarify that only registered interior designers are not subject to the restrictions of §1.210. The proposed text is also amended by clarifying the engineers who are exempt from §1.210 are only those engineers whose names appear on a list approved by the board.

Section 1.210 defines the term "architectural plans and specifications" by reference to certain building plan sheets which are architectural and lists certain architectural plans and specifications which are also coincidently engineering. The 82nd legislature enacted §1051.0016, Texas Occupations Code, which defines the term "architectural plans and specifications" in a manner similar to §1.210, subject to certain exceptions. The legislature also enacted §1051.607 which creates a procedure by which certain engineers who have requisite building design experience may apply for an exempt status which will allow them to engage in the practice of architecture without becoming licensed as an architect or being prosecuted for the unlawful practice of architecture. The adopted amendments conform §§1.210, 1.211, and 1.212 to the new laws.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rules are also adopted

pursuant to §1051.001(7), defining the practice of architecture, §1051.0016, defining the term "architectural plans and specifications" and specifying circumstances in which architectural design work coincides with the work of engineers, and §1051.607, which requires the board to list certain engineers who are exempt from the Architectural Practice Act upon establishing the ability to design safe and adequate buildings.

§1.210. Architectural Plans and Specifications.

(a) Architectural education, training and experience as described in §1.21 and §1.191 of this title (relating to Registration by Examination and Description of Experience Required for Registration by Examination) are necessary prerequisites for the design of the architectural elements as specified in subsection (b) of this section and the preparation of those architectural plans and specifications for the construction, enlargement, or alteration of a building intended for human use and occupancy. Generally, architectural plans and specifications document the design of architectural elements of buildings and also serve as instructions that integrate and coordinate the design of all building systems and related site components necessary for constructing a building and its environs intended for human use and occupancy. Architectural plans and specifications detail the design of architectural elements of a building, including the form, function, construction, habitability, and appearance of the building and the manner in which humans enter, exit, circulate, and use the interior space of the building and its external environs. An Architect shall coordinate with consultants in the design of a building intended for human use and occupancy in order to integrate all components and systems of the building and its environs.

(b) In accordance with §1051.0016 of the Texas Occupations Code, for purposes of Chapter 1051, Texas Occupations Code, the term "architectural plans or specifications" means a Construction Document that depicts in detail the design of the spatial relationships and the quality of materials and systems required for the construction of a building and its environs. The term includes:

(1) Floor plans and details:

(A) depicting the design of:

(i) internal and external walls and simple foundations;

(ii) the design of the internal spaces of the building; and

(iii) vertical circulation systems including accessibility ramps, stair systems, elevators and escalators; and

(B) implementing programming, regulatory, and accessibility requirements for a building.

(2) General cross sections and detailed wall sections depicting building components from a hypothetical cut line through a building to include the building's mechanical, electrical, plumbing or structural systems;

(3) Reflected ceiling plans and details depicting:

(A) the design of the location, materials, and connections of the ceiling to the structure; and

(B) the integration of the ceiling with electrical, mechanical, lighting, sprinkler and other building systems.

(4) Finish plans or schedules depicting surface materials on the interior and exterior of the building;

(5) Interior and exterior elevations depicting the design of materials, locations and relationships of components and surfaces;

(6) Partition, door, window, lighting, hardware and fixture schedules;

(7) Manufacturer or fabricator drawings that are integrated into and become part of the Construction Documents; and

(8) Specifications describing the nature, quality, and execution of materials for construction of the elements of the building design depicted in the Construction Documents prepared by the Architect.

(c) Notwithstanding the thresholds within Chapters 1001 and 1051, Texas Occupations Code, the following architectural plans and specifications may be prepared by a person who is registered as an Architect or licensed as a professional engineer in the State of Texas:

(1) Site plans depicting the location and orientation of the building on the site based upon:

(A) a determination of the relationship of the intended use with the environment, topography, vegetation, climate, geographic aspects; and

(B) the legal aspects of site development, including setback requirements, zoning and other legal restrictions; and

(2) The depiction of the building systems, including structural, mechanical, electrical, and plumbing systems, in:

(A) plan views;

(B) cross sections depicting building components from a hypothetical cut line through a building; and

(C) the design of details of components and assemblies, including any part of a building exposed to water infiltration or fire-spread considerations;

(3) Life safety plans and sheets, including accessibility ramps and related code analyses; and

(4) Roof plans and details depicting the design of roof system materials, components, drainage, slopes, and direction and location of roof accessories and equipment not involving structural engineering calculations.

(d) This section does not address the services or work that may otherwise be offered or rendered by Registered Interior Designers or Landscape Architects.

(e) Licensed professional engineers who are listed as permitted to engage in the practice of architecture pursuant to §1051.607, Texas Occupations Code, are not restricted from preparing any architectural plans and specifications described in this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 5, 2012.

TRD-201204617
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 25, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-9040

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22 TAC §1.214

The Texas Board of Architectural Examiners adopts amendments to §1.214, concerning Institutional Residential Facilities, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4317) and will not be republished.

The amendment pertains to the requirement that an architect design the architectural plans and specifications for the construction or modification of a building intended to be used as a institutional residential facility.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to §1051.202 and §1051.703(a)(1), Texas Occupations Code, which requires the Texas Board of Architectural Examiners to promulgate rules to implement Chapter 1051 and which requires an architect to design institutional residential facilities, respectively. The rule is also adopted pursuant to §1051.001(7), defining the practice of architecture, §1051.0016, defining the term "architectural plans and specifications" and specifying circumstances in which architectural design work coincides with the work of engineers, and §1051.607, which requires the board to list certain engineers who are exempt from the Architectural Practice Act upon establishing the ability to design safe and adequate buildings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 5, 2012.

TRD-201204618
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 25, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-9040

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22 TAC §1.217

The Texas Board of Architectural Examiners adopts amendments to §1.217, concerning Construction Observation, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4318) and will not be republished.

The amendments pertain to the requirement that an architect or a person under the supervision and control of an architect must be engaged to observe the construction or alteration of certain buildings. The amendments implement §1051.607, Texas Occupations Code, which create a process for engineers to obtain a categorical exemption from the Architectural Practice Act. The amendments implement statutory exemptions for certain engineers who are exempted by the Board and recent legislation, which specifies certain plans and specifications as both architectural and engineering plans and specifications.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to §1051.202 and §1051.801(a)(2), Texas Occupations Code, which provide the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051 and which designate it an offense for a person other than an architect to observe or supervise the construction or alteration of a building for another person. The rule is also adopted pursuant to §1051.001(7), defining the practice of architecture, §1051.0016, defining the term "architectural plans and specifications" and specifying certain of those plans and specifications as engineering plans and specifications and §1051.607, which requires the board to list certain engineers who are categorically exempt from the Architectural Practice Act upon establishing the ability to design safe and adequate buildings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 5, 2012.

TRD-201204619
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 25, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-9040

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

The Texas Board of Architectural Examiners adopts amendments to §3.5, concerning Terms Defined Herein, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4319) and will not be republished.

The amendment inserts a definition of the term "sole practitioner" as that term is used in the rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051 and 1052, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 5, 2012.

TRD-201204620
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 25, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.69

The Texas Board of Architectural Examiners adopts amendments to §3.69, concerning Continuing Education Requirements, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4322) and will not be republished.

The adopted rule increases from 8 to 12 the minimum mandatory continuing education hours each landscape architect must obtain per year. The adopted rule makes corresponding increases to the number of hours a landscape architect may carry forward to a subsequent year, as well as the number of hours that may be completed by self-study and the number that must be completed through structured course study.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subtitle B, Texas Occupations Code. The amendments are also adopted pursuant to §1051.356, Texas Occupations Code, which requires the Board to recognize, prepare or administer continuing education programs for its certificate holders.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 5, 2012.

TRD-201204621
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 25, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-9040

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

The Texas Board of Architectural Examiners adopts amendments to §5.5, concerning Terms Defined Herein, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4324) and will not be republished.

The amendment inserts a definition of the term "sole practitioner" as that term is used in the rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051 and 1052, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 5, 2012.

TRD-201204622
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: September 25, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-9040

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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.8

The State Board of Dental Examiners (SBDE) adopts an amendment to §101.8, concerning Persons with Criminal Backgrounds, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4512) and will not be republished. The amendment does not affect subsections (a) and (b). The amendment affects subsections (c) through (j).

The section establishes requirements regarding the effect of criminal offenses on licensure and registration with SBDE.

The amendment addresses SBDE's discretion when considering criminal offenses as the basis for the revocation or suspension of a license or registration and the denial of an application for a license or registration. The amendment clarifies which criminal offenses directly relate to the practice of dentistry and establishes a process for determining the appropriate disciplinary action following a criminal offense. It also requires written disclosure of criminal convictions or deferred adjudications.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq. and Texas Occupations Code §254.001, which authorize the Board to adopt and enforce rules necessary for it to perform its duties.

The adoption of the amendment affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204676

Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: September 30, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 475-0977

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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.19

The State Board of Dental Examiners (SBDE) adopts new §107.19, concerning Denial of a License, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4515) and will not be republished.

The new rule is adopted to clarify an applicant's rights and obligations following the denial of his or her application for licensure or registration.

The new rule grants the applicant twenty (20) days from the date of the denial, during which he or she may request a hearing to appeal the denial.

No comments were received regarding adoption of the new rule.

The new rule is adopted pursuant to Texas Government Code §2001.021 et seq. and Texas Occupations Code §254.001, which authorize the SBDE to adopt and enforce rules necessary for it to perform its duties.

The adoption of the new rule affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204674
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: September 30, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 475-0977

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22 TAC §§107.24, 107.25, 107.69

The State Board of Dental Examiners (SBDE) adopts amendments to §107.24, concerning Respondent's Answer in a Disciplinary Matter, §107.25, concerning Formal Proceedings, and §107.69, concerning Alternative Informal Assessment of Administrative Penalty, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4516) and will not be republished.

The provisions of §107.24 and §107.25 address the formal hearing process at the State Office of Administrative Hearings (SOAH). Section 107.69 addresses the process that allows an Informal Assessment of an Administrative Penalty for certain violations.

The adopted amendment to §107.24 simplifies the default process by eliminating filings and considerations that impede the resolution of a case. The adopted amendment to §107.25 requires pagination of exhibits entered into evidence by any party at a hearing before the State Office of Administrative Hearings. The prior rule suggested pagination, but did not mandate it. These amendments are for the purpose of streamlining the hearing process.

Section 107.69 addresses the process that allows an Informal Assessment of an Administrative Penalty for certain violations. This informal process was initiated in the 2009 legislative session. The amendment modifies the process to allow the final appeal that initiated the informal assessment process be heard at the State Office of Administrative Hearings for a possible sanction.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code §2001.021 et seq. and Texas Occupations Code §254.001, which authorize the Board to adopt and enforce rules necessary for it to perform its duties.

The adoption of the amendments affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204677
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: September 30, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 475-0977

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22 TAC §107.26

The State Board of Dental Examiners (SBDE) adopts new §107.26, concerning Failure to Attend Hearing and Default, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4518) and will not be republished.

The new rule is adopted to clarify the outcome should a party to a matter before the State Office of Administrative Hearings fail to appear.

The new rule directs the State Office of Administrative Hearings to issue a default proposal for decision if a party who does not have the burden of proof fails to appear at a contested case hearing at the State Office of Administrative Hearings. The new rule directs the State Office of Administrative Hearings to dismiss a

case for want of prosecution if a party who does hold the burden of proof fails to appear at a contested case hearing. In addition, the new rule indicates that if a party who has the burden of proof fails to appear, the relevant application will be withdrawn from consideration and a future application may not be considered by the board until a year has passed following the date of the dismissal of the case before the State Office of Administrative Hearings.

No comments were received regarding adoption of the new rule.

The new rule is adopted pursuant to Texas Government Code §2001.021 et seq. and Texas Occupations Code §254.001, which authorize the SBDE to adopt and enforce rules necessary for it to perform its duties.

The adoption of the new rule affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204675
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: September 30, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 475-0977

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CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.9

The State Board of Dental Examiners (SBDE) adopts an amendment to §110.9, concerning Anesthesia Permit Renewal, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4518) and will not be republished. The amendment affects subsection (c). Subsections (a) and (b) are not affected by the adoption of the amendment.

The section addresses required fees and continuing education for anesthesia permit renewal. The amended subsection establishes requirements regarding continuing education for and renewal of minimal, moderate and deep/general sedation anesthesia permits.

The adopted amendment clarifies the frequency at which renewals must occur by specifying that renewals must occur every two years.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq. and Texas Occupations Code §254.001, which authorize the Board to adopt and enforce rules necessary for it to perform its duties.

The adoption of the amendment affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204678
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: September 30, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 475-0977

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.2, §163.5

The Texas Medical Board (Board) adopts amendments to §163.2, concerning Full Texas Medical License, and §163.5, concerning Licensure Documentation, without changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5537) and will not be republished.

The amendment to §163.2 establishes employment requirements for licensure applicants who are not U.S. citizens or permanent residents, in accordance with Senate Bill 189 that was adopted during the 82nd Legislative Session.

The amendment to §163.5 establishes what documentation the Board will accept from applicants to establish U.S. or permanent residency.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.0045, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204664
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 30, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 305-7016

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CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts amendments to §187.18, concerning Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance, and §187.83, concerning Proceedings for Cease and Desist Orders, without changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5541) and will not be republished.

The amendment to §187.18 deletes language relating to deadline requirements for submission of rebuttal materials that is in conflict with other provisions of the rule and the Medical Practice Act.

The amendment to §187.83 deletes language requiring a panel member to sign cease and desist order, as rule already provides for executive director to sign order.

No comments were received regarding adoption of the amendments.

SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.18

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §165.052, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204665
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 30, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 305-7016

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SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS

22 TAC §187.83

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §165.052, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204666
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 30, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 305-7016

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CHAPTER 189. COMPLIANCE PROGRAM

22 TAC §§189.1 - 189.3, 189.5 - 189.9, 189.11

The Texas Medical Board (Board) adopts amendments to §§189.1 - 189.3, 189.5 - 189.9 and 189.11, concerning Compliance Program, without changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5544) and will not be republished.

The amendments to §§189.1 - 189.3, 189.5, 189.6, 189.8 and 189.11 add language related to remedial plans to be consistent with provisions under Chapter 187.

The amendment to §189.7 adds language related to remedial plans to be consistent with provisions under Chapter 187, including that probationers may not request modification or termination of remedial plans unless specifically allowed under the terms of the probationer's remedial plan.

The amendment to §189.9 adds language related to remedial plans to be consistent with provisions under Chapter 187, including that automatic suspensions are permitted for violating terms of a remedial plan to include failure to pass SPEX or JP examinations.

Elsewhere in this issue of the *Texas Register,* the Board contemporaneously adopts the rule review for Chapter 189.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §164.0015, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204667

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 30, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 305-7016

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TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §§601.2, 601.3, 601.6, 601.9

The Texas Medical Disclosure Panel (panel) adopts amendments to §§601.2, 601.3, 601.6, and 601.9, concerning informed consent, without changes to the proposed text as published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2157), and the sections will not be republished. The rules will be effective 90 days after filing with the Texas Register Division.

BACKGROUND AND PURPOSE

These amendments are in accordance with the Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. The sections cover procedures requiring full disclosure of specific risks and hazards in list A, procedures requiring no disclosure of specific risks and hazards in list B, history, and disclosure and consent form for anesthesia and/or perioperative pain management.

SECTION-BY-SECTION SUMMARY

Amendments to §601.2 add, delete, and update the risks and hazards to be disclosed for certain procedures in the following areas: anesthesia, the cardiovascular system, the musculoskeletal system and radiology. Amendments to §601.3 add, delete, and update those procedures that do not require disclosure of specific risks and hazards in the following areas: the cardiovascular system, the musculoskeletal system, and radiology. The amendment to §601.6 sets out the history of the rule amendments adopted January 16, 2012. The amendment to §601.9 adds a Spanish language version of the anesthesia and/or perioperative pain management (analgesia) consent form.

COMMENTS

The panel has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were associations and/or groups, including the following: Texas Medical Association and Texas Radiological Society. The commenters did not oppose the rule amendments; however, the commenters made requests regarding the comment period and effective date, as discussed in the summary of comments.

Comment: Concerning the effective date of the rules, the Texas Medical Association requested that the effective date of the rule amendments be extended to January 1, 2013, to ensure that all healthcare providers and facilities are aware of the changes and are prepared to comply with these changes.

Response: The panel agrees that additional time may be helpful and has determined that the effective date of the rule amendments is 90 days from the date of filing with the Texas Register Division.

Comment: Concerning the comment period for the rules, the Texas Radiological Society requested that when future rule changes are proposed that affect radiology, that the Society be notified as soon as possible to have sufficient time to query its members for input before the comment deadline.

Response: The panel notes this request and will endeavor to provide the Texas Radiological Society, as well as other stakeholders, with sufficient time to provide comments to any proposed changes that affect radiology.

STATUTORY AUTHORITY

The amendments are authorized under the Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 6, 2012.

TRD-201204645
Noah Appel, M.D.
Chair
Texas Medical Disclosure Panel
Effective date: December 5, 2012
Proposal publication date: March 30, 2012
For further information, please call: (512) 776-6972

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.587

The Comptroller of Public Accounts adopts an amendment to §3.587, concerning margin: total revenue, with changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1675).

Subsection (e)(1) is amended to clarify that only taxes that are imposed by law on a third party, collected by a taxable entity and remitted to the taxing authority qualify as flow-through funds. Taxes imposed on the taxable entity itself do not qualify as flow-through funds and are not allowed as a revenue exclusion. Nonsubstantive changes are made to subsection (b)(1) and (3) to improve clarity and readability.

We received one comment on the proposed text.

The Texas Oil & Gas Association recommended that motor fuels taxes be included in the example of taxes that can be excluded from total revenue as a flow-through fund. The comptroller has declined to add motor fuels taxes to the list of taxes that includes the state sales tax and Texas hotel occupancy tax. Unlike sales tax and hotel occupancy tax, the motor fuels tax is an excise tax. Not every entity that collects motor fuels taxes remits the tax to the taxing authority.

However, the comptroller determined that the exclusion of excise taxes from total revenue needs to be addressed and adds subsection (e)(1)(B) (new subparagraph (B)) on excise taxes. New subparagraph (B) allows an exclusion from total revenue only for entities that collect an excise tax from a third party and remit the excise tax to the taxing authority. Entities that collect an excise tax but do not remit it to the taxing authority may not exclude the excise tax from total revenue. New subparagraph (B) includes motor fuels taxes and tobacco taxes as examples of excise taxes.

The comptroller also adds language to subsection (e)(1)(C) (formerly subparagraph (B)) to clarify that taxes that are imposed on the taxable entity itself and are not allowed as flow-through funds cannot be excluded from total revenue.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.1011.

§3.587. Margin: Total Revenue.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Actual cost of uncompensated care--The amount determined by multiplying Operating Expenses by the Uncompensated Care Ratio where:

(A) operating expenses are the amounts reported on line 2 and line 21, Internal Revenue Service Form 1065 or the amounts reported on line 2 and line 20, Internal Revenue Service Form 1120S or the corresponding line items from any other federal form filed, less any items that have already been subtracted from total revenue (e.g., bad debts);

(B) uncompensated care ratio means uncompensated care charges less partial payments divided by total charges;

(C) uncompensated care charges are the standard charges for health care services where the provider has not received any payment or where the provider has received partial payment that does not cover the cost of the health care provided to the patient. Uncompensated care charges do not include any portion of a charge that the health care provider has no right to collect under a private health care plan, under an agreement with an individual for a specific amount or under the charge limitations imposed by the programs described in subsection (e)(10)(A)(i) - (iii) of this section;

(D) standard charges must be comparable to the charges applied to services provided to all patients of the health care provider;

(E) partial payment is an amount that has been received toward uncompensated care charges that does not cover the cost of the services provided;

(F) total charges are charges for all health care services, including uncompensated care;

(G) records that clearly identify each patient, the procedure performed, and the standard charge for such a service, as well as payments received from each patient must be maintained by the health care provider for all uncompensated care;

(H) a corresponding adjustment must be made to reduce the cost of goods sold deduction or the compensation deduction for the portion of the cost of goods sold or compensation that has been excluded from revenue:

(i) the cost of goods sold deduction is reduced by subtracting the product of the cost of goods sold under §3.588 of this title (relating to Margin: Cost of Goods Sold) multiplied by the uncompensated care ratio;

(ii) the compensation deduction is reduced by subtracting the product of the compensation and benefits amounts under §3.589 of this title (relating to Margin: Compensation) multiplied by the uncompensated care ratio.

(2) Federal obligations--

(A) stocks and other direct obligations of, and obligations unconditionally guaranteed by, the United States government and United States government agencies; and

(B) direct obligations of a United States government-sponsored agency.

(3) Health care institution--An ambulatory surgical center; an assisted living facility licensed under Health and Safety Code, Chapter 247; an emergency medical services provider; a home and community support services agency; a hospice; a hospital; a hospital system; an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with the federal Social Security Act, §1915(c) (42 U.S.C. §1396n); a birthing center; a nursing home; an end stage renal disease facility licensed under Health and Safety Code, §251.011; or a pharmacy.

(4) Health care provider--Any taxable entity that participates in the Medicaid program, Medicare program, Children's Health Insurance Program (CHIP), state workers' compensation program, or TRICARE military health system as a provider of health care services.

(5) Lending institution--An entity that makes loans; and

(A) is regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, the Office of Thrift Supervision, the Texas Department of Banking, the Office of Consumer Credit Commissioner, the Credit Union Department, or any comparable regulatory body;

(B) is licensed by, registered with, or otherwise regulated by the Department of Savings and Mortgage Lending;

(C) is a "broker" or "dealer" as defined by the Securities Exchange Act of 1934 at 15 U.S.C. §78c; or

(D) provides financing to unrelated parties solely for agricultural production.

(6) Management company--A corporation, limited liability company, or other limited liability entity that conducts all or part of

the active trade or business of another entity ("the managed entity") in exchange for a management fee and reimbursement of specified costs incurred in the conduct of the active trade or business of the managed entity, including wages and cash compensation as determined under Tax Code, §171.1013(a) and (b). To qualify as a management company:

(A) the entity must perform active and substantial management and operational functions, control and direct the daily operations and provide services such as accounting, general administration, legal, financial or similar services; or

(B) if the entity does not conduct all of the active trade or business of an entity, the entity must conduct all operations, as provided in subparagraph (A) of this paragraph, for a distinct revenue-producing component of the entity.

(7) Net distributive income--The net amount of income, gain, deduction, or loss relating to a pass-through entity or disregarded entity reportable to the owners for the tax year of the entity.

(8) Obligation--Any bond, debenture, security, mortgage-backed security, pass-through certificate, or other evidence of indebtedness of the issuing entity. The term does not include a deposit, a repurchase agreement, a loan, a lease, a participation in a loan or pool of loans, a loan collateralized by an obligation of a United States government agency, or a loan guaranteed by a United States government agency.

(9) Pro bono services--The direct provision of legal services to the poor, without an expectation of compensation.

(10) Product--Services, tangible personal property, and intangible property.

(11) Sales commission--

(A) any form of compensation paid to a person for engaging in an act for which a license is required by Occupations Code, Chapter 1101; or

(B) compensation paid to a sales representative by a principal in an amount that is based on the amount or level of certain orders for or sales of the principal's product and that the principal is required to report on Internal Revenue Service Form 1099-MISC (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement).

(C) for purposes of defining sales commission, a principal is a person who:

(i) manufactures, produces, imports, distributes, or acts as an independent agent for the distribution of a product for sale;

(ii) uses a sales representative to solicit orders for the product; and

(iii) compensates the sales representative wholly or partly by sales commission.

(12) Security--The meaning assigned by Internal Revenue Code, §475(c)(2), and includes instruments described by Internal Revenue Code, §475(e)(2)(B), (C), and (D).

(13) Staff leasing services company--A business entity that offers staff leasing services, as that term is defined by Labor Code, §91.001, or a temporary employment service, as that term is defined by Labor Code, §93.001.

(14) Tiered partnership arrangement--An ownership structure in which any of the interests in one taxable entity treated as a partnership or an S corporation for federal income tax purposes (a "lower tier entity") are owned by one or more other taxable entities (an "upper tier entity").

(15) United States government--Any department or ministry of the federal government, including a federal reserve bank. The term does not include a state or local government, a commercial enterprise owned wholly or partly by the United States government, or a local governmental entity or commercial enterprise whose obligations are guaranteed by the United States government.

(16) United States government agency--An instrumentality of the United States government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States government. The term includes the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, the Small Business Administration, and any successor agency.

(17) United States government-sponsored agency--An agency originally established or chartered by the United States government to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States government. The term includes the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, and any successor agency.

(c) General rules for reporting total revenue.

(1) Variant of form. Any reference to an Internal Revenue Service form includes a variant of the form. For example, a reference to Form 1120 includes Forms 1120-A, 1120-S, and other variants of Form 1120. A reference to an Internal Revenue Service form also includes any subsequent form with a different number or designation that substantially provides the same information as the original form.

(2) Amount reportable. Any reference to an amount reportable as income on a line number on an Internal Revenue Service form is the amount entered to the extent the amount entered complies with federal income tax law and includes the corresponding amount entered on a variant of the form, or a subsequent form, with a different line number to the extent the amount entered complies with federal income tax law.

(3) Federal consolidated group. A taxable entity that is part of a federal consolidated group or is a disregarded entity shall compute its total revenue as if it had filed a separate return for federal income tax purposes; provided, however, that a disregarded entity may combine its revenue, cost of goods sold, compensation and gross revenue with its parent as provided by §3.590(d)(6) of this title (relating to Margin: Combined Reporting). Further information on combined entities can be found in §3.590 of this title.

(4) Passive entity. A taxable entity will include its share of net distributive income from a passive entity, but only to the extent the net income of the passive entity was not generated by any other taxable entity.

(5) Exclusions from total revenue.

(A) Any expense excluded from total revenue (e.g. flow-through funds or the cost of uncompensated care allowed under subsection (e) of this section) may not be included in the determination of cost of goods sold (see §3.588 of this title) or the determination of compensation (see §3.589 of this title).

(B) Net distributive income that is subtracted from total revenue may not be included in the determination of compensation.

(6) Contract services. Except as provided by subsection (e)(2) of this section, a payment received under an ordinary contract for the provision of services in the ordinary course of business may not be excluded from the calculation of total revenue.

(7) Payment to affiliated group members. If the taxable entity belongs to an affiliated group, the taxable entity may not exclude from the calculation of total revenue any payments described by subsection (e)(1) - (6) of this section that are made to entities that are members of the affiliated group.

(8) Tiered partnership provision. This provision is not mandatory. Subject to the following subparagraphs, a lower tier entity in a tiered partnership arrangement may exclude from total revenue the amount of total revenue reported to an upper tier entity. If a lower tier entity chooses to file under the tiered partnership provision, the lower tier entity may report total revenue to any or all of its upper tier entities. The total revenue reported to an upper tier entity must equal the upper tier entity's ownership percentage of the lower tier entity's entire total revenue.

(A) Reporting requirements. The lower tier entity must submit a report to the comptroller showing the amount of total revenue that each upper tier entity must include with the upper tier entity's own total revenue. Each upper tier entity must submit a report to the comptroller showing the amount of the lower tier entity's total revenue that was passed to the upper tier entity and is included in the total revenue of the upper tier entity.

(B) Nontaxable upper tier entity. This paragraph does not apply to that percentage of the total revenue attributable to an upper tier entity by a lower tier entity if the upper tier entity is not subject to the tax under this chapter. In this case, the lower tier entity cannot report total revenue to the nontaxable upper tier entity and the lower tier entity cannot exclude this total revenue from its franchise tax report.

(C) Eligibility for no tax due, discounts and the E-Z Computation. The no tax due thresholds, discounts and the E-Z Computation do not apply to an upper or lower tier entity if, before the attribution of any total revenue by a lower tier entity to upper tier entities under this section, the lower tier entity does not meet the criteria. See §3.584(d)(8) of this title (relating to Margin: Reports and Payments).

(D) Not a partnership distribution. Total revenue reported from a lower tier entity to an upper tier entity under the provisions of Tax Code, §171.1015(b) is not a distribution from a partnership.

(E) Combined reporting. The tiered partnership provision is not an alternative to combined reporting. Combined reporting is mandatory for taxable entities that meet the ownership and unitary criteria. See §3.590 of this title. Therefore, the tiered partnership provision is not allowed if the lower tier entity is included in a combined group.

(F) Accounting period. If the lower tier entity and an upper tier entity have different accounting periods, the upper tier entity must allocate the revenue reported from the lower tier entity to the accounting period that the upper tier entity's report is based on.

(G) Lower tier entity no tax due. For reports originally due on or after January 1, 2010, if the lower tier entity owes no tax before the attribution of total revenue to the upper tier entities, filing under the tiered partnership provision is not allowed.

(9) Allocated revenue. Revenue that Texas cannot tax because the activities generating that item of revenue do not have sufficient unitary connection with the entity's other activities conducted in Texas under the United States Constitution is not included in total revenue.

(d) Reporting total revenue. The line items in this subsection refer to line items on the 2006 Internal Revenue Service forms. In computing total revenue for a subsequent report year, total revenue should be based on the equivalent line numbers from the corresponding federal report and computed based on the Internal Revenue Code of 1986 in effect for the federal tax year beginning on January 1, 2007.

(1) Corporations. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as a corporation for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1120;

(ii) the amounts reportable as income on lines 4 through 10, Internal Revenue Service Form 1120; and

(iii) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) allowable deductions from Internal Revenue Service Form 1120, Schedule C, to the extent the relating dividend income is included in total revenue;

(v) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(vi) other amounts authorized by subsection (e) of this section.

(2) S corporations. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as an S corporation for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1120S;

(ii) the amounts reportable as income on lines 4 and 5, Internal Revenue Service Form 1120S;

(iii) the amounts reportable as income on lines 3a and 4 through 10, Internal Revenue Service Form 1120S, Schedule K;

(iv) the amounts reportable as income on lines 17 and 19, Internal Revenue Service Form 8825; and

(v) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(3) Partnerships. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as a partnership for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1065;

(ii) the amounts reportable as income on lines 4, 6, and 7, Internal Revenue Service Form 1065;

(iii) the amounts reportable as income on lines 3a and 5 through 11, Internal Revenue Service Form 1065, Schedule K;

(iv) the amounts reportable as income on line 17, Internal Revenue Service Form 8825;

(v) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F; and

(vi) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(4) Trusts. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as a trust for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on lines 1, 2a, 3, 4, 7, and 8 of Internal Revenue Service Form 1041;

(ii) the amount reportable as income on lines 3, 4, 32, and 37 of Internal Revenue Service Form 1040, Schedule E;

(iii) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F; and

(iv) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(5) Single member limited liability company (LLC) filing as a sole proprietorship. For the purpose of computing its taxable margin, the total revenue of a taxable entity registered as a single member limited liability company and filing as a sole proprietorship for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 3 of Internal Revenue Service, Form 1040, Schedule C;

(ii) the amount reportable as income on line 17, Internal Revenue Service Form 4797, to the extent that it relates to the LLC;

(iii) ordinary income or loss from partnerships, S corporations, estates and trusts, Internal Revenue Service Form 1040, Schedule E, to the extent that it relates to the LLC;

(iv) the amount reportable as income on line 16 of Internal Revenue Service Form 1040, Schedule D, to the extent that it relates to the LLC;

(v) the amounts reportable as income on lines 3 and 4, Internal Revenue Service Form 1040, Schedule E, to the extent that it relates to the LLC;

(vi) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F, to the extent that it relates to the LLC;

(vii) the amount reportable as income on line 6 of Internal Revenue Service Form 1040, Schedule C, that has not already been included in this subparagraph; and

(viii) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(6) Other taxable entities. For a taxable entity other than a taxable entity treated for federal income tax purposes as a corporation, S corporation, partnership, trust, or single member limited liability company filing as a sole proprietorship, the total revenue will be an amount determined in a manner substantially equivalent to the amount calculated for the entities listed in this subsection.

(e) Exclusions from total revenue. Except as otherwise provided in this section and only to the extent included in the calculation of total revenue under subsection (d)(1) - (6) of this section, the following items shall be excluded from total revenue:

(1) Flow-through funds mandated by law or fiduciary duty. Flow-through funds that are mandated by law or fiduciary duty to be distributed to other entities or persons, including taxes collected from a third party by the taxable entity and remitted by the taxable entity to a taxing authority;

(A) Allowed exclusions include, but are not limited to, taxes imposed by law on a third party but collected by the taxable entity and remitted by it to a taxing authority. Examples include, but are not limited to, state sales tax and the Texas hotel occupancy tax.

(B) For excise taxes, only those entities that collect and remit the tax to the taxing authority may exclude the tax from total revenue. Excise taxes include, but are not limited to, motor fuels taxes and tobacco taxes.

(C) Taxes imposed by law on the taxable entity itself are not allowed as flow-through funds and cannot be excluded from total revenue. Examples include, but are not limited to, the Texas mixed beverage tax and the Texas franchise tax.

(2) Flow-through funds mandated by contract. Flow-through funds that are mandated by contract to be distributed to other entities or persons, limited to:

(A) sales commissions, as that term is defined by subsection (b)(11) of this section, to non-employees, including split-fee real estate commissions;

(B) the tax basis as determined under the Internal Revenue Code of securities underwritten; and

(C) subcontracting payments handled by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, or repair of improvements on real property or the location of the boundaries of real property;

(3) Principal repayments. A taxable entity that is a lending institution shall exclude the principal repayment of loans;

(4) Tax basis of securities and loans. A taxable entity shall exclude the tax basis, as determined under the Internal Revenue Code, of securities and loans sold;

(5) Legal services. A taxable entity that provides legal services shall exclude:

(A) the following flow-through funds that are mandated by law, contract, or fiduciary duty to be distributed to the claimant by the claimant's attorney or to other entities on behalf of a claimant by the claimant's attorney:

(i) damages due the claimant;

(ii) funds subject to a lien or other contractual obligation arising out of the representation, other than fees owed to the attorney;

(iii) funds subject to a subrogation interest or other third-party contractual claim; and

(iv) fees paid an attorney in the matter who is not a member, partner, shareholder, or employee of the taxable entity;

(B) reimbursement of the taxable entity's expenses incurred in prosecuting a claimant's matter that are specific to the matter and that are not general operating expenses; and

(C) regardless of whether it was included in the calculation of total revenue under subsection (d) of this section, $500 per pro bono services case handled by the attorney, but only if the attorney maintains records of the pro bono services for auditing purposes in accordance with the manner in which those services are reported to the State Bar of Texas;

(6) Pharmacy cooperative. A taxable entity that is a pharmacy cooperative shall exclude flow-through funds from rebates from pharmacy wholesalers that are distributed to the pharmacy cooperative's shareholders;

(7) Staff leasing services company. A taxable entity that is a staff leasing services company shall exclude payments received from a client company for wages, payroll taxes on those wages, employee benefits, and workers' compensation benefits for the employees assigned to the client company. A staff leasing services company cannot exclude payments received from a client company for payments made to independent contractors assigned to the client company and reportable on Internal Revenue Service Form 1099;

(8) Dividends and interest from federal obligations. A taxable entity shall exclude dividends and interest received from federal obligations;

(9) Management company. A taxable entity that is a management company shall exclude reimbursements of specified costs incurred in its conduct of the active trade or business of a managed entity, including wages and cash compensation as determined under Tax Code, §171.1013(a) and (b);

(10) Health care provider. A taxable entity that is a health care provider shall exclude:

(A) the total amount of payments, including co-payments and deductibles from the patient or supplemental insurance, received:

(i) under the Medicaid program, Medicare program, Indigent Health Care and Treatment Act (Health and Safety Code, Chapter 61), and Children's Health Insurance Program (CHIP), including any plans under these programs;

(ii) for professional services provided in relation to a workers' compensation claim under Labor Code, Title 5;

(iii) for professional services provided to a beneficiary rendered under the TRICARE military health system, including any plans under this program;

(iv) from a third-party agent or administrator for revenue earned under clauses (i) - (iii) of this subparagraph; and

(B) the actual costs, regardless of whether it was included in the calculation of total revenue under subsection (d)(1) - (6) of this section, of uncompensated care provided, but only if the provider maintains records of the uncompensated care for auditing purposes and, if the provider later receives payment for all or part of that care, the provider adjusts the amount excluded for the tax year in which the payment is received.

(11) Health care institution. A health care provider that is a health care institution shall exclude 50% of the exclusion described in paragraph (10) of this subsection.

(12) Federal government and armed forces. A taxable entity shall exclude all revenue received that is directly derived from the operation of a facility that is:

(A) located on property owned or leased by the federal government; and

(B) managed or operated primarily to house members of the armed forces of the United States.

(13) Oil and gas. During the dates, certified by the comptroller, in which the monthly average closing price of West Texas Intermediate crude oil is below $40 per barrel and the average closing price of gas is below $5 per MMBtu, as recorded on the New York Mercantile Exchange (NYMEX), a taxable entity shall exclude total revenue received from oil or gas produced from:

(A) an oil well designated by the Railroad Commission of Texas or similar authority of another state whose production averages less than 10 barrels a day over a 90-day period; and

(B) a gas well designated by the Railroad Commission of Texas or similar authority of another state whose production averages less than 250 mcf a day over a 90-day period.

(14) Qualified destination management company. Effective for reports originally due on or after January 1, 2010, a taxable entity that is a qualified destination management company as defined by Tax Code, §151.0565 shall exclude from its total revenue payments made to other entities or persons to provide services, labor, or materials in connection with the provision of destination management services as defined in Tax Code, §151.0565.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204705

Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 30, 2012
Proposal publication date: March 9, 2012
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §376.10

The Texas Board of Occupational Therapy Examiners adopts an amendment to §376.10, concerning Change in Occupational Therapy Facility Ownership, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4403) and will not be republished.

The amendment removes the requirement that the owner return the facility registration and any renewal certificates when the facility is closed or sold.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority of adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2012.

TRD-201204669
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: September 30, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-6900

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners (SBDE) has completed its review and readopts without amendment Chapter 101, relating to Dental Licensure. This review was done pursuant to Texas Government Code §2001.039. The notice of review was published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4649).

Texas Government Code §2001.039 requires agencies to review and consider for readoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The SBDE reviewed each section of Chapter 101 and determined that the original justification for the rules continues to exist.

No comments were received in response to the proposed rule review. This concludes the review of Chapter 101.

TRD-201204670
Glenn Parker
Executive Director
State Board of Dental Examiners
Filed: September 10, 2012

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The State Board of Dental Examiners (SBDE) has completed its review and readopts without amendment Chapter 107, relating to Dental Board Procedures. This review was done pursuant to Texas Government Code §2001.039. The notice of review was published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4649).

Texas Government Code §2001.039 requires agencies to review and consider for readoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The SBDE reviewed each section of Chapter 107 and determined that the original justification for the rules continues to exist.

No comments were received in response to the proposed rule review. This concludes the review of Chapter 107.

TRD-201204671
Glenn Parker
Executive Director
State Board of Dental Examiners
Filed: September 10, 2012

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The State Board of Dental Examiners (SBDE) has completed its review and readopts without amendment Chapter 108, relating to Professional Conduct. This review was done pursuant to Texas Government Code §2001.039. The notice of review was published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4650).

Texas Government Code §2001.039 requires agencies to review and consider for readoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The SBDE reviewed each section of Chapter 108 and determined that the original justification for the rules continues to exist.

No comments were received in response to the proposed rule review. This concludes the review of Chapter 108.

TRD-201204672
Glenn Parker
Executive Director
State Board of Dental Examiners
Filed: September 10, 2012

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The State Board of Dental Examiners (SBDE) has completed its review and readopts without amendment Chapter 114, relating to Extension of Duties of Auxiliary Personnel--Dental Assistants. This review was done pursuant to Texas Government Code §2001.039. The notice of review was published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4651).

Texas Government Code §2001.039 requires agencies to review and consider for readoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The SBDE reviewed each section of Chapter 114 and determined that the original justification for the rules continues to exist.

No comments were received in response to the proposed rule review. This concludes the review of Chapter 114.

TRD-201204673
Glenn Parker
Executive Director
State Board of Dental Examiners
Filed: September 10, 2012

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Texas Medical Board

Title 22, Part 9

The Texas Medical Board adopts the review of Chapter 189, concerning Compliance Program, §§189.1 - 189.14, pursuant to the Texas Government Code, §2001.039.

The proposed review was published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5641).

Elsewhere in this issue of the *Texas Register,* the Texas Medical Board contemporaneously adopts amendments to §§189.1 - 189.3, 189.5 - 189.9, and 189.11.

No comments were received regarding adoption of the rule review.

This concludes the review of Chapter 189, Compliance Program.

TRD-201204668
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: September 10, 2012

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §10.621(j)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Major property condition violations	Material Noncompliance	10	All programs	Yes
Pattern of minor property condition violations	10	5	All programs	Yes
Administrative reporting of property condition violations	0	0	HTC	Yes
Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder	Material Noncompliance	10	See §10.612	Yes
Owner failed to approve and distribute an Affirmative Marketing Plan as required under §10.612 of this chapter	10	3	See §10.612	No
Development failed to comply with requirements limiting minimum income standards for Section 8 residents	10	3	See §10.612	No
Development is not available to general public	10	0	HTC	Yes
HUD or DOJ notification of possible Fair Housing Act violation	0	0	HTC	Yes
Determination of a violation under the Fair Housing Act	Material Noncompliance	10	All programs	Yes
Development is out of compliance and never expected to comply/Foreclosure	Material Noncompliance	NA correction not possible	All programs	Yes
Owner did not allow on-site monitoring review	Material Noncompliance	5	All programs	Yes
LURA not in effect	Material Noncompliance	5	All programs	Yes
Development failed to meet minimum set aside	20	10	HTC Bonds	Yes
No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement	10	3	HTC	Yes

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Development failed to meet additional State required rent and occupancy restrictions	10	3	All programs	No
The Development failed to provide required supportive services as promised at Application	10	3	HTC Bonds	No
The Development failed to provide housing to the elderly as promised at Application	10	3	All programs	No
Failure to provide special needs housing	10	3	All programs	No
Changes in Eligible Basis or Applicable Percentage	3	NA, No correction possible	HTC	Yes
Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department	10	3	All programs	Yes
Utility Allowance not calculated properly	20	10	All programs	Yes
Owner failed to execute required lease provisions, including language required by §10.608 of this subchapter or exclude prohibited lease language	10	3	All programs	No
Failure to provide annual Housing Quality Standards inspection	10	3	HOME	NA
Development has failed to establish and maintain a reserve account in accordance with §10.405 of this chapter	Material Noncompliance	10	All programs	No
Development substantially changed the scope of services as presented at initial Application without prior Department approval	10	3	HTC	No
Failure to provide a notary public as promised at Application	10	3	HTC	No
Violations of the Unit Vacancy Rule	3	1	HTC	Yes
Casualty loss	0	0	All programs	Yes

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Failure to provide pre-onsite documentation as required	10	3	All programs	No
Failure to provide amenity as required by LURA	10	3	HTC	No
Failure to pay compliance monitoring or asset management fee	10	3	HTC, TCAP, Exchange, Bond	No
Change in ownership without Department approval	30	10	All programs	No
Failure to provide Fair Housing Disclosure	10	3	All programs	No

Figure: 10 TAC §10.621(k)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Unit not leased to Low Income Household	5	1	All programs	Yes
Low Income Units occupied by nonqualified full-time students	3	1	HTC during the compliance period and Bond	Yes
Low Income Units used on transient basis	3	1	HTC Bond	Yes
Household income increased above the re-certification limit and an available Unit was rented to a market tenant	3	1	HTC During the compliance period Bonds HOME HTF	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	5	1	All programs	Yes
Failure to maintain or provide tenant income certification and documentation	3	1	All programs	Yes
Unit not available for rent	3	1	All programs	Yes
Failure to maintain or provide Annual Eligibility Certification	3	1	All programs	No
Development evicted or terminated the tenancy of a low income tenant for other than good cause	10	3	HTC, HOME, and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	3	1	HOME	NA

Figure: 10 TAC §11.2

Program Calendar for Competitive Housing Tax Credits

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

Deadline	Documentation Required
Late July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2013	Carryover Documentation Delivery Date.
07/01/2014	10 percent Test Documentation Delivery Date.
12/31/2015	Placement in Service.
Five (5) business days after the Deficiency Notice date (without incurring point loss)	Administrative Deficiency Response Deadline.

Brazos G Regional Water Planning Group

Public Notice: Application for Regional Water Planning Funds

Notice is hereby given that the Brazos River Authority will submit by 5:00 p.m. October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of the Brazos G Regional Water Planning Group, to carry out planning activities to develop the 2016 Brazos G Regional Water Plan in completion of the state's Fourth Cycle (2012 -2016) of Regional Water Planning.

The Brazos G Regional Water Planning Area includes all or portions of the following counties: Bell, Bosque, Brazos, Burleson, Callahan, Comanche, Coryell, Eastland, Erath, Falls, Fisher, Grimes, Hamilton, Haskell, Hill, Hood, Johnson, Jones, Kent, Knox, Lampasas, Lee, Limestone, McLennan, Milam, Nolan, Palo Pinto, Robertson, Shackleford, Somervell, Stephens, Stonewall, Taylor, Throckmorton, Washington, Williamson, and Young.

Copies of the grant application may be obtained from Brazos River Authority or online at www.brazosgwater.org beginning September 16, 2012. Written comments from the public regarding the grant application must be submitted to the Brazos River Authority and TWDB by October 16, 2012, 30 days from the application posting date. Comments can be submitted to the Brazos River Authority and the TWDB as follows.

For the Brazos River Authority: Troy Glasson, Administrative Agent for Region G, Brazos River Authority P.O. Box 7555, Waco, Texas 76714-7555.

For TWDB: Melanie Callahan, Executive Administrator, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

For additional information, please visit www.brazosgwater.org or contact Troy Glasson, Brazos River Authority, c/o Region G, at (254) 761-3172, or troy.glasson@brazos.org. Contact information for the TWDB Contracting and Purchasing is as follows: David Carter, Texas Water Development Board, Manager, Contracting and Purchasing, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

TRD-201204813
Troy Glasson
Administrative Agent for Region G
Brazos G Regional Water Planning Group
Filed: September 11, 2012

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.301 and §403.3011, Texas Government Code; and the Property Tax Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #204a) from qualified, independent individuals and firms to provide consulting services to Comptroller. The successful respondent(s) will assist Comptroller in accurately estimating the fiscal impacts to state property tax-related legislation and related tasks for the upcoming session of the Texas Legislature. Comptroller reserves the right to select multiple contractors to participate in conducting the reviews as set forth in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about November 15, 2012, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Jason Frizzell, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, September 21, 2012, after 10:00 a.m., Central Time (CT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CT on Friday, September 21, 2012.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Frizzell at: (512) 463-3669, not later than 2:00 p.m. (CT), on Friday, September 28, 2012. Official responses to questions received by the foregoing deadline will be posted electronically on the ESBD on or about Friday, October 5, 2012, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above no later than 2:00 p.m. CT, on Friday, October 26, 2012. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - September 21, 2012, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - September 28, 2012, 2:00 p.m. CT; Official Responses to Questions Posted - October 5, 2012, or as soon thereafter as practical; Proposals Due - October 26, 2012, 2:00 p.m. CT; Contract Execution - November 15, 2012, or as soon thereafter as practical; Commencement of Project Activities - November 15, 2012, or as soon thereafter as practical.

TRD-201204815

Jason Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 12, 2012

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/10/12 - 09/16/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/10/12 - 09/16/12 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 09/01/12 - 09/30/12 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 09/01/12 - 09/30/12 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-201204639
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 6, 2012

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/17/12 - 09/23/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/17/12 - 09/23/12 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201204817
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 12, 2012

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Texas Council for Developmental Disabilities

Requests for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for 1 project to recruit, engage, empower and support families of children with special needs attending schools in the Educational Service Center Region 17 to become involved with their child's public school.

The Council has approved funding for up to $300,000 per year, for up to 5 years, for the project funded under this Announcement. Funds available for this project are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by the Council and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Proposals (RFP) or more information about TCDD may be obtained through TCDD's website at **http://www.txddc.state.tx.us.** All questions pertaining to this RFP should be directed to Joanna Cordry, Planning Coordinator, at (512) 437-5410 or via email **Joanna.Cordry@tcdd.state.tx.us,** or to Cynthia Ellison, Senior Grants Specialist, at (512) 437-5436 or via email **Cynthia.Ellison@tcdd.state.tx.us.** Application packets must be requested in writing or downloaded from the Internet.

Deadline: One hard copy, with original signatures, and one electronic copy must be submitted. All proposals must be received by TCDD, not later than 4:00 p.m. Central Time, Wednesday, November 21, 2012, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509 to the attention of Jeri Barnard. Faxed proposals cannot be accepted. Electronic copies should be addressed to **Jerianne.Barnard@tcdd.state.tx.us.**

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will conduct telephone conferences to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at **http://txddc.state.tx.us/grants_projects/rfp_announcements.asp** for a schedule of conference calls for this RFP.

TRD-201204823
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: September 12, 2012

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Texas Education Agency

Public Notice Announcing the Intent to Request Waivers Under P.L. 107-110, the Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act of 2001, Section 9401

Purpose and Scope of the Waiver Requests. The Secretary of Education at the U.S. Department of Education (USDE) may waive any statutory or regulatory requirement of the No Child Left Behind Act of 2001 (NCLB) for a state educational agency, local educational agency (LEA), Indian tribe, or school through a local educational agency that receives funds under a program authorized by the NCLB Act.

The state has long emphasized college and career readiness standards, high-quality assessments, differentiated accountability, and improving teacher quality. However, the state recognizes that the lack of NCLB's reauthorization in a timely manner has created an obsolete system that

does not adequately reflect the accomplishments of the state's schools. This, combined with LEAs being required to meet and function within two different assessment and accountability systems, takes valuable resources and time away from the intent and focus of improving student achievement and school accountability.

Texas has developed and begun full implementation of a statewide system that surpasses the requirements of the Elementary and Secondary Education Act (ESEA), as amended. Specifically, the state has already fully implemented the Texas College and Career Readiness Standards (CCRS) and this year is transitioning to a consolidated, differentiated accountability and interventions system that, upon approval of the waiver request, would be a single differentiated accountability system with tiered interventions beginning in school year 2013-2014. This differentiated accountability system is based on the state's rigorous new assessment system. Also, Texas continues to build upon its stringent teacher certification system that ensures every new certified teacher meets the federal highly qualified teacher requirement to ensure teacher and principal accountability for improved teaching and learning for all students.

Therefore, to further support the implementation of the state's CCRS, the state accountability system, the state assessment system, the Texas accountability intervention system, and the state's teacher certification and principal accountability systems, the Texas Education Agency (TEA) intends to request a waiver of the statutory provisions listed in the September 6, 2012, To The Administrator Addressed letter available at http://www.tea.state.tx.us/taa_letters.aspx to reduce duplication and unnecessary burden on TEA and LEAs. TEA believes that these waiver requests will provide the state and LEAs with the flexibility needed to reduce duplication and unnecessary burden while allowing LEAs to focus resources on one coherent system of accountability and improvement. TEA believes these waivers will increase the academic achievement of students by improving and aligning the quality of instruction with the state's CCRS. LEAs will be better prepared to meet the robust assessment and accountability systems while being supported by the state's intervention and support system.

Texas must ensure in the waiver request that the state has met or will meet all of the eligibility requirements outlined by the USDE and authorized in statute under the ESEA, Section 9401.

Further Information. For more information, contact Gene Lenz, TEA Division of Federal and State Education Policy, by email at nclb@tea.state.tx.us or by telephone at (512) 463-9414.

TRD-201204828
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: September 12, 2012

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is October 22, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on October 22, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2012-0606-PWS-E; IDENTIFIER: RN102676723; LOCATION: McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(4) and (5), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate or a uniform purchase rate to meet a minimum production capacity of 0.6 gallon per minute (gpm) per connection, and that authorizes a maximum hourly purchase rate plus the actual service pump capacity of at least 2.0 gpm per connection or is at least 1,000 gpm and able to meet peak hourly demands, whichever is less; 30 TAC §290.44(a)(4), by failing to locate the water line a minimum of 24 inches below the ground surface; and 30 TAC §290.42(e)(3)(G), by failing to obtain an exception in accordance with 30 TAC §290.39(l) prior to using any primary disinfectant other than chlorine; PENALTY: $1,860; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Aus-Tex Parts & Services, Ltd.; DOCKET NUMBER: 2012-0729-MWD-E; IDENTIFIER: RN102314218; LOCATION: Hays County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014060001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0014060001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011 by September 1, 2011; PENALTY: $13,750; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-3087 (512) 339-2929.

(3) COMPANY: BIVA ENTERPRISES, INCORPORATED dba Papa Keith's 2; DOCKET NUMBER: 2012-1288-PST-E; IDENTIFIER: RN101774818; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once a month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Kristyn Bower, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Copperas Cove; DOCKET NUMBER: 2012-1638-WQ-E; IDENTIFIER: RN106017429; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Copperas Cove; DOCKET NUMBER: 2012-1639-WQ-E; IDENTIFIER: RN101673424; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Copperas Cove; DOCKET NUMBER: 2012-1651-WQ-E; IDENTIFIER: RN101610905; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of Hubbard; DOCKET NUMBER: 2011-1381-MWD-E; IDENTIFIER: RN101918480; LOCATION: Hubbard, Hill County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010534001, Operational Requirements Number 11.f. and 30 TAC §305.125(1), by failing to maintain adequate management records for all sludge removed from any wastewater treatment process; TPDES Permit Number WQ0010534001, Monitoring and Reporting Requirements Number 3.b. and Sludge Provisions and 30 TAC §305.125(1), by failing to maintain annual sludge records on-site and have them readily available for review by a TCEQ representative; TPDES Permit Number WQ0010534001, Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(1) and §319.4, by failing to analyze for carbonaceous biochemical oxygen demand; TPDES Permit Number WQ0010534001, Permit Conditions (PC) Number 2.g. and TWC, §26.121(a), by failing to prevent an unauthorized discharge of wastewater into or adjacent to water in the state; TPDES Permit Number WQ0010534001, Monitoring and Reporting Requirements Number 5 and 30 TAC §305.125(1) and §319.11(d), by failing to ensure that flow measuring devices were properly installed and calibrated annually; TPDES Permit Number WQ0010534001, Other Requirements Number 1 and 30 TAC §30.331(b) and §30.350(d), by failing to employ or contract a licensed individual holding the appropriate level of license to operate the facility; TPDES Permit Number WQ0010534001, Operational Requirements (OR) Number 1 and 30 TAC §305.125(1), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; TPDES Permit Number WQ0010534001, OR Number 1, Effluent Limitations and Monitoring Requirements Number 4 and PC Number 2.g. and TWC, §26.121(a), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained which resulted in the unauthorized discharge of sludge into the receiving stream; and 30 TAC §317.6(c), by failing to maintain a scale for determining the amount of chlorine used daily at the facility; PENALTY: $52,708; Supplemental Environmental Project offset amount of $42,167 applied to Installation of Course Screening Device and Bypass Channel; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (8187) 588-5890; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Consolidated Communications Services Company; DOCKET NUMBER: 2012-1039-PST-E; IDENTIFIER: RN101771202 and RN102458882; LOCATION: Katy, Harris County; TYPE OF FACILITY: two facilities with underground storage tanks (USTs) and an emergency generator; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the USTs; PENALTY: $1,876; ENFORCEMENT COORDINATOR: Maggie Dennis, (512) 239-2578; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Duval County; DOCKET NUMBER: 2012-0597-MSW-E; IDENTIFIER: RN101921286; LOCATION: San Diego, Duval County; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.165(b) and Municipal Solid Waste (MSW) Permit Number 1481, Site Operating Plan (SOP), Section X., by failing to provide adequate weekly cover; 30 TAC §330.143(b)(1)(A), by failing to install facility boundary markers; 30 TAC §30.201(b) and MSW Permit Number 1481, SOP, Section II., by failing to have at least one individual licensed to supervise or manage an MSW facility; and 30 TAC §330.165(c) and MSW Permit Number 1481, SOP, Section X., by failing to provide adequate intermediate cover in all areas which have received waste but will be inactive for longer than 180 days; PENALTY: $8,915; Supplemental Environmental Project offset amount of $3,566 applied to Texas Association of Resource Conservation and Development Areas, Incorporated (RC&D) - Cleanup of Unauthorized Trash Dumps and Supplemental Environmental Project offset amount of $3,566 applied to Texas Association of RC&D Areas, Incorporated - Household Hazardous Waste Clean-up; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(10) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2012-0804-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: New Source Review Permit Numbers 76305 and PSDTX1058, Special Conditions Numbers 1, 3, and 4, 40 Code of Federal Regulations §61.12(c) and §63.6(e), 30 TAC §§101.20(2), 113.100, and 116.115(c), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions. Since the emissions event could have been avoided through better maintenance practices, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: $10,000; Supplemental Environmental Project offset amount of $4,000 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Clean School Buses; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Graham Tank Trucks, Incorporated; DOCKET NUMBER: 2012-1640-WQ-E; IDENTIFIER: RN104071451; LOCATION: Newcastle, Young County; TYPE OF FACILITY: individual; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to obtain the required permit authorization before impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: Huntsman Petrochemical, LLC; DOCKET NUMBER: 2012-0738-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), New Source Review Permit Number 20160, Special Conditions Number 1, Federal Operating Permit Number O-3056, Special

Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions during an event on November 17, 2011 (Incident Number 161901). Because the event could have been prevented with better operator training, the demonstrations in 30 TAC §101.222 necessary to present an affirmative defense were not met; PENALTY: $7,500; Supplemental Environmental Project offset amount of $3,000 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Ibrahim Retail Group, Incorporated dba Buy and Ride Food Store; DOCKET NUMBER: 2012-0912-PST-E; IDENTIFIER: RN101564920; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain all underground storage tank records and making them immediately available for inspection upon request by agency personnel; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 236-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: INVISTA S.a r.l; DOCKET NUMBER: 2012-0684-AIR-E; IDENTIFIER: RN104244942; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.116(a)(1) and §122.143(4), Federal Operating Permit (FOP) Number O-01908 Special Terms and Conditions Number 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with representations in the permit application for New Source Review Permit Number 2925; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-01908, Special Terms and Conditions Number 15, and THSC, §382.085(b), by failing to report all deviations; PENALTY: $8,304; Supplemental Environmental Project offset amount of $3,322 applied to Houston Regional Monitoring Corporation - Houston Area Air Monitoring; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Klaas Talsma dba Talsma Dairy; DOCKET NUMBER: 2012-0840-AGR-E; IDENTIFIER: RN102313384; LOCATION: Hico, Erath County; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0003145000, Section VII.A.8.(f)(2), Irrigation Operating Requirements, Section VI.A., Discharge Authorization, 30 TAC §321.40(f) and §321.31(a), and TWC, §26.121(a), by failing to prevent a discharge of wastewater from a CAFO caused by operating a pivot irrigation system during a rainfall event; TPDES Permit Number WQ0003145000, Section VII.A.3.(e), Irrigation Equipment Design, Section VII.A.5.(a), Operation and Maintenance of Retention Control Structure (RCS), Sections IX.E. and IX.S., Standard Permit Conditions, 30 TAC §§321.42(c)(1) and (d), 321.36(c) and 321.39(b)(1), and TWC, §26.121(a), by failing to prevent a discharge of wastewater from a CAFO caused by not maintaining a margin of safety in the RCS to contain the volume of runoff and direct precipitation from the 25-year/10-day rainfall event; and TPDES Permit Number WQ0003145000, Section VII.A.8.(e), Exported Wastewater, Sludge, and/or Manure and 30 TAC §321.42(i), by failing to dispose of exported waste by utilizing an approved method; PENALTY: $49,687; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Manuel Guevara; DOCKET NUMBER: 2012-1080-LII-E; IDENTIFIER: RN106355571; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: yard maintenance service; RULE VIOLATED: 30 TAC §30.5(a), TWC, §37.003, and Texas Occupations Code §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system; PENALTY: $792; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: MHC TT, Incorporated; DOCKET NUMBER: 2012-0742-MWD-E; IDENTIFIER: RN101714871; LOCATION: Whitney, Hill County; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013075001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limits; PENALTY: $7,525; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Murvaul Water Supply Corporation; DOCKET NUMBER: 2012-0758-IWD-E; IDENTIFIER: RN105703672; LOCATION: Gary, Panola County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System Permit Number WQ0004875000, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $6,950; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Newcastle ISD; DOCKET NUMBER: 2012-1642-WQ-E; IDENTIFIER: RN104071451; LOCATION: Newcastle, Young County; TYPE OF FACILITY: individual; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to obtain the required permit authorization before impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(20) COMPANY: Paradime, Incorporated dba Roadhouse Café; DOCKET NUMBER: 2012-0936-PST-E; IDENTIFIER: RN102260767; LOCATION: Frankston, Henderson County; TYPE OF FACILITY: a convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and also by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $3,508; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: Pierce Metals, LLC; DOCKET NUMBER: 2012-1253-MLM-E; IDENTIFIER: RN106399389; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: steel tank manufacturing; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under the Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; and 30 TAC §335.4(3), by failing to prevent the unauthorized discharge of industrial solid waste; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(22) COMPANY: S.K. TENG CORPORATION dba K & S Food Mart; DOCKET NUMBER: 2012-0850-PST-E; IDENTIFIER: RN101432334; LOCATION: Center, Shelby County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $4,008; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Saylor General Contractors, Incorporated; DOCKET NUMBER: 2012-1641-WQ-E; IDENTIFIER: RN104071451; LOCATION: Newcastle, Young County; TYPE OF FACILITY: individual; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to obtain the required permit authorization before impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(24) COMPANY: Seven Star Enterprises LLC dba Thompson Oil 4; DOCKET NUMBER: 2012-0712-PST-E; IDENTIFIER: RN101433530; LOCATION: New Summerfield, Cherokee County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (C), and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form within 30 days of ownership change; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(25) COMPANY: SHAMSA ENTERPRISES, INCORPORATED; DOCKET NUMBER: 2012-0988-PST-E; IDENTIFIER: RN101567212; LOCATION: Everman, Tarrant County; TYPE OF FACILITY: two inactive underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $4,012; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Shumard Corporation dba Associated Fiberglass Enterprises; DOCKET NUMBER: 2012-0481-AIR-E; IDENTIFIER: RN101340818; LOCATION: Haltom City, Tarrant County; TYPE OF FACILITY: fiberglass manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(E)(iv) and (c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review Permit Number 4830, Special Conditions Numbers 8 and 10H, by failing to maintain the required filter maintenance records for the fiberglass manufacturing plant; and 30 TAC §122.143(4) and §122.145(2), THSC, §382.085(b), and Federal Operating Permit Number O2785, General Terms and Conditions, by failing to submit six semi-annual deviation reports within 30 days from the end of the reporting period; PENALTY: $15,402; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2012-0897-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O2213, Special Terms & Conditions (STC) Number 19, and Flexible Permit Numbers 20432 and PSD-TX-994M1, Special Conditions (SC) Number III-1, by failing to prevent unauthorized emissions. Since the emissions event could have been avoided by better operational practices, the respondent is precluded from asserting the affirmative defense under 30 TAC §101.222; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O2215, STC Number 11, and New Source Review Permit Numbers 834 and 8567, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: $19,689; Supplemental Environmental Project offset amount of $7,876 applied to Houston-Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Tho T. Nguyen dba Family Discount Store 2; DOCKET NUMBER: 2012-1025-PST-E; IDENTIFIER: RN101432698; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank system; PENALTY: $2,005; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(29) COMPANY: WALIA FUEL, INCORPORATED dba Sunny Food Mart 3; DOCKET NUMBER: 2012-1076-PST-E; IDENTIFIER: RN102270147; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,825; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201204704
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 10, 2012

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40264

Application. Stericycle, Inc., 2725C FM 521, Fresno, Fort Bend, Texas 77545, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40264, to construct and operate a Type V municipal solid waste Transfer and Treatment Facility. The proposed facility, Stericycle Fresno

will be located on the east side of Farm-To-Market FM Road 521 approximately 2.8 miles north of Hwy. 6, 77545, in Fort Bend County. The Applicant is requesting authorization to process, store, and transfer municipal solid waste which includes Special Waste from Health Care Related Facilities, medical waste, non-hazardous pharmaceuticals, non-hazardous chemotherapy waste, confidential documents, and Animal and Plant Health Inspection Service. The registration application is available for viewing and copying at the Stimley-Blue Ridge Neighborhood Library, 7007 W. Fuqua, Houston, Texas 77489 and may be viewed online at www.texaspermits.net. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.546944&lng=-95.444166&zoom;=13&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, Mail Code MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to http://www10.tceq.texas.gov/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Mr. R. Mark Triplett, PE, BCEE, Regional Environmental Manager, Stericycle, Inc., at the address stated above or by calling Ms. Amy R. Hesseltine, PE, at 1-361-883-1984 or Ms. Lara Garey at 1-936-499-1041.

TRD-201204819

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 12, 2012

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Notice of Extended Comment Period for a New Municipal Solid Waste Facility Registration Application No. 40259

Application. Pintail Landfill, LLC, P.O. Box 969, Hempstead, Texas 77445, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40259 to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Pintail Landfill Transfer Station will be located at 24644 Highway 6, Hempstead, Texas 77445, in Waller County. The Applicant is requesting authorization to process, transfer, and recycle construction and demolition waste from municipal sources. The registration application is available for viewing and copying at the Waller County Clerk's Office, 836 Austin Street, Suite 217, Hempstead, Texas 77445 and may be viewed online at http://www.biggsandmathews.com/permits.php. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.134167&lng=-96.061111&zoom=13&type=r. For exact location, refer to application.

Public Comment. The Executive Director has extended the comment period for this application. Written public comments must be submitted to the Office of Chief Clerk at the address included in the information section below. The executive director will review and consider public comments. The extended comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, Mail Code MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to http://www10.tceq.texas.gov/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. Individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Pintail Landfill, LLC at the address stated above or by calling Mr. Ernest Kaufmann, manager of Pintail Landfill, LLC at (770) 720-2717.

TRD-201204820
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 12, 2012

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Notice of Water Quality Applications

The following notices were issued on August 31, 2012 through September 7, 2012.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AMERIFORGE CORPORATION, 13770 Industrial Road, Houston, Texas 77015, which operates the Ameriforge manufacturing facility, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003767000, which authorizes the discharge of: non-contact cooling water, stormwater, domestic wastewater, and drainage from the forklift area at a daily average flow not to exceed 30,000 gallons per day (dry weather flow) via Outfall 001. The facility is located at 13770 Industrial Boulevard in the City of Houston, Harris County, Texas 77015.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495010, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 9030 Clinton Drive, approximately 4,000 feet north and 500 feet west of the intersection of Loop 610 and Buffalo Bayou in Harris County, Texas 77029.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495100, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,710,000 gallons per day. The facility is located at 303 Benmar Drive, on the south bank of Greens Bayou approximately 3,000 feet northeast of the intersection of Interstate Highway 45 and North Belt Freeway, Houston in Harris County, Texas 77060.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495122 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day. The facility is located at 14506 Smith Road, approximately 1.0 mile southeast of the intersection of U.S. Highway 59 and Northbelt (Beltway 8) in Harris County, Texas 77396.

CLIFF VIEW LEASING LP AND GARDNER LEON CAMPBELL which proposes to operate the Cliff Leasing water treatment plant, a drinking water treatment plant, has applied for a new permit, proposed TPDES Permit No. WQ0004983000, to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 7,200 gallons per day via Outfall 001. This application was submitted to the TCEQ on March 21, 2012. The facility is located at 9440 River Road, City of New Braunfels, in Comal County, Texas 78132.

OSCAR RENDA CONTRACTING INC has applied for a new permit, TPDES Sludge Permit No. WQ0004993000 (E.P.A. ID No. TXL005022) to authorize the surface disposal of water treatment plant sludge in a 35-acre monofill. This permit will not authorize a discharge of pollutants into water in the State. The sludge disposal site will be located on Wolf Springs Road, approximately 2.5 miles east of the intersection of Parkinson Road and Wolf Springs Road, in Dallas County, Texas 75125.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495101, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located at 15500 Cotillion Drive, approximately 1.1 miles southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 525 in Harris County, Texas 77060.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0010694001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on the east side of Sellers Road, approximately 700 feet north of the intersection of Hollyvale and Sellers Road at 14902 Sellers Road, Houston in Harris County, Texas 77060.

GALVESTON COUNTY FRESH WATER SUPPLY DISTRICT NO 6 has applied for a renewal of TPDES Permit No. WQ0010879001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility is located at 802 Tiki Drive, Tiki Island, at the intersection of Tiki Drive and Windward Way in Galveston County, Texas 77554.

GREENWOOD UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011061001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 11702 Tidwell Road and approximately 1,000 feet west of the intersection of John Ralston Road and Tidwell Road in Harris County, Texas 77044.

CHAMP'S WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0011158001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 28,000 gallons per day. The facility is located at 6102 Laramie Street, east of the intersection of Old Humble Road and Laramie Street and approximately 3,500 feet northeast of the intersection of U.S. Highway 59 and Old Humble Road in Harris County, Texas 77396.

CITY OF THE COLONY has applied for a renewal of TPDES Permit No. WQ0011570001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located at 7500 Forrest Drive, approximately 0.2 mile east and 2.7 miles north of the intersection of State Highway 121 and Farm-to-Market Road 423, near Stewart Creek in the City of The Colony in Denton County, Texas 75056.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 49 has applied for a renewal of TPDES Permit No. WQ0011919002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located on a dirt road, approximately 0.5 mile west of the intersection of Kentington Oak Drive and John Ralston Road in Harris County, Texas 77376.

NATIONAL OILWELL VARCO LP an oilfield pipe inspection service, has applied for a renewal of TPDES Permit No. WQ0012386001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The facility is located at 10222 Sheldon Road, Houston, Texas, approximately 1/4 mile south of the intersection of Old Beaumont Highway and Sheldon Road, on the east side of Sheldon Road in Harris County, Texas 77049.

FLAGSHIP EMERALD POINT LP has applied for a renewal of TCEQ Permit No. WQ0013825001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via non-public access subsurface low pressure dosing drainfields with a minimum area of 31,250 square feet. This permit will not authorize a discharge of pollutants into waters in the State. TCEQ received this application on May 18, 2012. The wastewater treatment facility and disposal site are located at 5973 Hiline Road in Austin, on the west side of Hiline Road off of Hudson Bend Road approximately 1/4 mile north-northwest of the intersection of Ranch Road 620 and Hudson Bend Road in Travis County, Texas 78734.

J AND S WATER COMPANY LLC has applied for a renewal of TPDES Permit No. WQ0013882001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed

150,000 gallons per day. The facility is located at 813 Hollyvale Drive, east of Interstate Highway 45 in Northern Houston in Harris County, Texas 77060.

BISTONE MUNICIPAL WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014012001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately one mile north of the intersection of State Highway 164 and Farm-to-Market Road 39 at 168 LCR 448 in Limestone County, Texas 76642.

SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0014100001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 902,000 gallons per day. The facility is located 0.5 mile southwest of the intersection of State Highway 6 and McKeever Road, 1.1 miles east of the intersection of Thompson Ferry and Hagerson Roads, Missouri City, in Fort Bend County, Texas 77459.

BCWK LP has applied for a renewal of TPDES Permit No. WQ0014874001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 14400 Highway 59 North, Humble in Harris County, Texas 77396.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201204818
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 12, 2012

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Notice of Water Rights Application

Notice issued August 24, 2012.

WATER USE PERMIT NO. 12047; HRC Cherokee Tree Farm, L.P., 3819 Maple Avenue, Dallas, Texas 75219, Applicant, seeks an extension of time to begin and complete construction of two reservoirs located on the Flat Creek, tributary of Neches River, Neches River Basin, in Cherokee County. The application and partial fees were received on May 7, 2012. Additional information and fees were received on June 15, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 25, 2012. The Executive Director has determined the applicant has shown due diligence and justification for delay. In the event a hearing is held on this application, the Commission shall also consider whether the appropriation shall be forfeited for failure to demonstrate sufficient due diligence and justification for delay. The Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize the extension of time to begin and complete construction. The application and Executive Director's draft Order are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, TX 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201204821
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 12, 2012

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Texas Superfund Registry 2012

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361 to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). In accordance with THSC, §361.181, the commission must publish an updated state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) and listed in accordance with THSC, §361.188(a)(1) (see also 30 TAC §335.343) or to remove facilities that have been delisted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

In accordance with THSC, §361.188(a)(1), the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of Hazard Ranking System (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate 20 (United States Highway 80) in Colorado City, Mitchell County: tank farm and refinery.

2. J. C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.

3. ArChem Thames/Chelsea, Harris County. Located at 13013 Conklin Lane, Houston, Harris County: specialty chemical and toll manufacturing facility.

4. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

5. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

6. Voda Petroleum, Inc. Located at 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility.

7. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

8. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

9. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

10. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.

11. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

12. McBay Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

13. Materials Recovery Enterprises, Inc. (MRE). Located about four miles southwest of Ovalo, near United States Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.

14. American Zinc. Located approximately 3.5 miles north of Dumas on United States Highway 287 and five miles east on Farm Road 119, Moore County: zinc smelter.

15. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.

16. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

17. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

18. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

19. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

20. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

21. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

22. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

23. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

24. Hall Street. Located north of the intersection of 20th Street East and California Street, north of the Dickinson city limits, Galveston County: waste disposal and landfill/open field dumping.

25. Unnamed Plating. Located at 6816-6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

26. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

In accordance with THSC, §361.184(a), those facilities that may pose an imminent and substantial endangerment, and that have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows.

1. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

2. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of Farm-to-Market (FM) Road 1431, in the community of Kingsland, Llano County: two groundwater plumes.

3. Rogers Delinted Cottonseed-Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: former cottonseed delinting, processing.

4. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County: former fuel storage/fuel blending/distillation.

5. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: groundwater plume of unknown source.

6. Industrial Road/Industrial Metals. Located at 3000 Agnes Street, Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

7. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of United States Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

8. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of FM 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

9. Sherman Foundry. Located at 532 E. King Street in south central Sherman, Grayson County: cast iron foundry.

10. Process Instrumentation and Electrical (PIE), Inc. Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.

11. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.

12. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

13. Avinger Development Company (ADCO). Located on the south side of State Highway 155, approximately one quarter mile east of the

intersection with State Highway 49, Avinger, Cass County: wood treatment.

14. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

15. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

16. Moss Lake Road Groundwater Site. Located approximately 1/4 mile north of the intersection of North Moss Lake Road and Interstate 20, approximately four miles east of Big Spring, Howard County: groundwater plume of an unknown source.

17. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73 approximately 5.8 miles north of Robstown, Nueces County: storage and disposal of hazardous substances.

18. Cass County Treating Company. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

19. San Angelo Electric Service Company (SESCO). Located at 926 Pulliam Street in a residential area of northeastern San Angelo, Tom Green County: electric transformer recycling.

20. Tucker Oil Refinery/Clinton Manges Refinery. Located on the east side of United States Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

21. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

22. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

23. Mineral Wool Insulation Mfg. Co. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

24. Woodward Industries, Inc., Nacogdoches County. Located on County Road 816, about six miles north of the city of Nacogdoches in Nacogdoches County: wood treating.

Since the last publication in the September 23, 2011, issue of the *Texas Register* (36 TexReg 6314), no additional sites were proposed to the state Superfund registry.

To date, 47 sites have been deleted from the state Superfund registry in accordance with THSC, §361.189:

Aluminum Finishing Company, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; Force Road Oil and Vacuum Truck Company, Brazoria County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting Company, Jasper County; Harvey Industries, Inc., Henderson County; Hicks Field Sewer Corporation, Tarrant County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; Kingsbury Metal Finishing, Inc., Guadalupe County; LaPata Oil Company, Inc., Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Old Lufkin Creosoting, Angelina County; Permian Chemical Company, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Inc., Ellis County; Poly-Cycle Industries, Inc., Jacksonville, Cherokee County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed Company-Farmersville, Collin County; Sampson Horrice, Dallas County; Shelby Wood Specialty, Inc., Shelby County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical Company, Knox County; Waste Oil Tank Service, Harris County; Wortham Lead Salvage, Henderson County.

The Lindsay Post Company Site, located in Alto, Cherokee County, was removed from inclusion on the registry as a site that was proposed for listing in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427).

The public records for each of the sites are available for inspection and copying during regular TCEQ business hours at the TCEQ Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, telephone (800) 633-9363 or (512) 239-2900. Fees are charged for photocopying file information. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

TRD-201204761
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 10, 2012

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Semiannual Report due July 16, 2012, for Candidates and Officeholders

Saul Arechar, 3016 Pritchett Dr., Irving, Texas 75061

Joshua Daniel Baker, 215 Fieldstone Pl., College Station, Texas 77845

Vacochia I. "Vickie" Barnett, 7205 Port Phillip Dr., Arlington, Texas 76002

Jeffery B. Blake, 5821 Sunset Ridge, Austin, Texas 78735

Fernando Castillo, P.O. Box 903, San Juan, Texas 78589

Rebecca J. Cervera, 5111 N. 10th St. #345, McAllen, Texas 78504

Christopher D. Christal, P.O. Box 12104, San Antonio, Texas 78212

Cedric W. Davis Sr., 2308 Rodney Ln., Balch Springs, Texas 75180

Keryl Douglas, 5804 Bayou Bend Ct., Houston, Texas 77004

Jeremy B. DuCote, 3027 Marina Bay Dr., #204, League City, Texas 77573

Kevin Dean Dunn, 500 S. Denton Tap Rd., Coppell, Texas 75019

Frederick Durham III, 601 Haines, Dallas, Texas 75208

George E. Emery, 1950 Webberville Rd. #1205, Austin, Texas 78721-1639

Jon L. Fitts, 18016 Shady Ln., Flint, Texas 75762

Gregory L. Fox, 611 Knotty Knoll, San Antonio, Texas 78219

Guillermo Gandara Jr., 10736 Thunder Rd., El Paso, Texas 79927

Ursula A. Hall, P.O. Box 2103, Houston, Texas 77252

Paul A. Heidt Jr., P.O. Box 425, Queen City, Texas 75572-0425

Bonnie C. Hellums, P.O. Box 2404, Houston, Texas 77252-2404

Agustin Hernandez Jr., 1801 Wendy Dr., Edinburg, Texas 78539-5358

Ronald T. Johnson, 2206 Southern Hills, League City, Texas 77573

Matthew Grant Johnston, 12960 Trail Hollow Dr., Houston, Texas 77079

LaMartin Jones-Anderson, 2040 Oak Ave., Port Arthur, Texas 77642

Eric L. Kirkland, 2080 FM 972, Georgetown, Texas 78626

Davey O. Lamb, P.O. Box 596244, Dallas, Texas 75359

Andrew C. McMillan, 1708 B Elkhart Ave., Lubbock, Texas 79410

Richard F. Melendrez, 3030 Altura Ave., El Paso, Texas 79930

Jesus A. "Alex" Mendoza, PMB 128, 2560 King Arthur Blvd. #124, Lewisville, Texas 75056

Choco G. Meza, 13707 Cape Bluff, San Antonio, Texas 78216

Alfred Molison Jr., P.O. Box 31546, Houston, Texas 77231

G. C. Molison, P.O. Box 31546, Houston, Texas 77231

Andrew A. Page, 1202 Colony Lakes Dr., Sugar Land, Texas 77479

Cheryl D. Patterson, 1795 Laubach Rd., Seguin, Texas 78155

John Pena, 102 W. 10th St., La Joya, Texas 78560

Bruce Priddy, 17327 Davenport Rd., Dallas, Texas 75248-1367

Jonathan G. Rhine, 214 Joyce St. Apt. A, Weatherford, Texas 76085-1615

Daniel G. Rios, 323 Nolana Loop, McAllen, Texas 78504-2514

Anthony B. Schram, 8018 Broadway, Ste. 101, San Antonio, Texas 78209

Michael Joseph Spanos, #933, 2400 Waterview Pkwy., Ste. 100, Richardson, Texas 75080

Norma Venso, 11822 Sportsman Rd., Galveston, Texas 77554

Javier Villalobos, 1515 Fullerton Ave., McAllen, Texas 78504

TRD-201204632
David Reisman
Executive Director
Texas Ethics Commission
Filed: September 5, 2012

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List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: 30-Day Pre-Election Report due April 30, 2012, for Committees

Billie W. James, Arlington Republican Club PWR PAC, P.O. Box 14095, Arlington, Texas 76094-1095

Deadline: 8-Day Pre-Election Report due May 4, 2012, for Committees

Billie W. James, Arlington Republican Club PWR PAC, P.O. Box 14095, Arlington, Texas 76094-1095

Deadline: 8-Day Pre-Election Report due May 21, 2012, for Committees

Jane Berberich, Tarrant County Republican Assembly PAC, 2151 Green Oaks Rd. #4204, Fort Worth, Texas 76116-1746

Esther Francis, Texas Association of Minority Contractors, 1113 Howard Ave., Deer Park, Texas 77536

Leslie A. Gower, Hidalgo County Texas Democratic Women, 712 Walnut, McAllen, Texas 78501

Billie W. James, Arlington Republican Club PWR PAC, P.O. Box 14095, Arlington, Texas 76094-1095

Deadline: June Monthly Report due June 5, 2012, for Committees

Ross Hunschild, League City Police Officers Association PAC Fund, 500 W. Walker St., League City, Texas 77573

Deadline: July Monthly Report due July 5, 2012, for Committees

Gina M. Gabriano, Alliance of Conservative Texans, 5040 Lorraine Dr., Frisco, Texas 75034

L. Alan Gray, Licensed Beverage Distributors PAC, 1212 Guadalupe, Ste. 1003, Austin, Texas 78701

Randall D. Kubosh, Republican Hispanic Citizens in Action, 1701 Lubbock St., Houston, Texas 77007

Richard Christopher Nevills, Bayou City P.A.C., 414 Marshall St. #1, Houston, Texas 77006

Deadline: July Semiannual Report due July 16, 2012, for Committees

Randy Atchley, McKinney Fire Fighters Association for Responsible Government, P.O. Box 2754, McKinney, Texas 75070-8175

Eric M. Barber, Big Springs Fire Fighters Association PAC, 1908 S. Monticello, Big Spring, Texas 79720

Dennis L. Bowman, Texas Coalition of Black Democrats - Harris County, 5111 Dowling #10, Houston, Texas 77004

Sajjad I. Burki, Pakistan American Council of Texas Inc., 9494 Southwest Fwy. #350, Houston, Texas 77074

Ronal Callender, Ellis County Sheriffs Officers Association PAC, 101 Pecan Creek, Red Oak, Texas 75154

Robert Castaneda Jr., Keep Bexar Met, 203 Langford Pl., San Antonio, Texas 78221-2443

Erasmo Castro, Bringing Brownsville Change, 1216 E. Madison, Ste. D, Brownsville, Texas 78520

Fernando Z. Contreras Jr., San Anto Democrats PAC, 946 S.W. 35th St., San Antonio, Texas 78237

LaQuinta D. Donatto, Key PAC, 3722 Rio Vista, Houston, Texas 77021

Bob Eignus, Friends of Randy Weber, 408 Rustic Lane, Friendswood, Texas 77546

Danielle J. Eldridge, Justice For Everyone, 5702 Lafitte, Galveston, Texas 77551

Kenneth W. Flippin, Turn Texas Blue, 6209-B Adalee Ave., Austin, Texas 78723

Glenn F. Fuller, Plumbers PAC, 11501 W. Hardy, Houston, Texas 77076

Len Goff, Fort Bend Democrats, 602 Texas Parkway, Missouri City, Texas 77489

Ken Gray, Friends of Spring Schools, 4703 Charade, Houston, Texas 77006

Hope A. Hart, Texas Coalition of Black Democrats - Dallas Chapter, 1536 Acapulco Dr., Dallas, Texas 75232

Charlie H. Harvey, Concerned Citizens of Washington Co., P.O. Box 1582, Brenham, Texas 77834

Michelle Hill, Citizens State Bank Woodville Texas PAC, 800 Washington Ave., Waco, Texas 76701

Michelle Hill, First Financial Corp. PAC, 800 Washington Ave., Waco, Texas 76701

James P. Ingle Jr., Greater DFW Sign Association PAC, 7070 Rye Loop, Bryan, Texas 77807

Ray C. Jones Sr., Houston Black American Democrats PAC, P.O. Box 2893, Houston, Texas 77252

Justin R. Jordan, Conservative Republicans of Houston, 11318 Starlight Bay St., Pearland, Texas 77584

Jonathan Kennedy, Stonewall Democrats of El Paso, 2500 Scenic Crest Circle, El Paso, Texas 79930

Jaclyn A. Kurasz, AIA Engineers PAC, 15310 Park Row, Houston, Texas 77084

Paul A. Landerman, El Paso Stonewall Young Democrats, 2205 Federal Ave., El Paso, Texas 79930-1501

Carole L. Liberte, Greater Dallas Republican PAC, 3708 Cromwell Dr., Carollton, Texas 75007

Maria R. Lucio, Caldwell County Democrats, 1103 1/2 Magnolia St., Lockhart, Texas 78644

Heriberto Medrano, Harlingen Citizens Leadership Council Inc., 2009 E. Harrison, Ste. B, Harlingen, Texas 78550

Carla Michele, American's Independent Party, 3600 Waketon Rd., Trlr. 12, Flower Mound, Texas 75028-2405

Patricia L. Radillo, Wood County Democrats, P.O. Box 341, Yantis, Texas 75497

Pamela K. Sanford, Shelby County Republican Women, 5364 County Road 1005, Center, Texas 75935

Roger A. Sikes, Raging Elephants Org Texas PAC, 11839 Moss Branch Rd., Houston, Texas 77043

Daniel G. Simmons, Harris County Council of Organizations PAC, 4210 Tylergate, Spring, Texas 77373

Joe D. Webb, Richmondrail.org, 3701 Kirby Dr., Ste. 916, Houston, Texas 77098

TRD-201204646
David Reisman
Executive Director
Texas Ethics Commission
Filed: September 6, 2012

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Far West Texas Water Planning Group

Notice of Application for Regional Water Planning Grant Funding for the Completion of the Fourth Cycle of Regional Water Planning

Notice is hereby given that the Rio Grande Council of Governments, as the political subdivision for the Far West Texas Water Planning Group (Region E), will submit by 5:00 p.m., October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region E, to carry out planning activities to develop the 2016 Region E Regional Water Plan in completion of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning.

The Far West Texas Water Planning Group (Region E) includes the following counties: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio, and Terrell counties.

Copies of the grant application may be obtained from the Rio Grande Council of Governments or online at www.riocog.org. Written comments from the public regarding the grant application must be submitted to the Rio Grande Council of Governments and TWDB by no later than October 14, 2012. Comments can be submitted to the Rio Grande Council of Governments and the TWDB as follows:

Annette Gutierrez, Administrative Agent for Region E

Rio Grande Council of Governments

8037 Lockheed

El Paso, Texas 79925

Melanie Callahan, Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact Michael Ada, Rio Grande Council of Governments, c/o Region E, 8037 Lockheed, El Paso, Texas 79925; (915) 533-0998 ext. 112; and michaela@riocog.org.

TRD-201204630
Annette Gutierrez
Administrative Agent for Region E
Far West Texas Water Planning Group
Filed: September 5, 2012

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 20, 2012, through August 30, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on September 12, 2012.

The public comment period for this project will close at 5:00 p.m. on October 12, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: City of Kemah; Location: The project site is located on the south side of the Clear Creek Channel in Kemah, Galveston County, Texas. The project site can be located on the U.S.G.S. quadrangle map titled: TX-LEAGUE CITY, Texas. NAD 83, Latitude: 29.5475 North; Longitude: -95.0220 West. Project Description: The applicant proposes to construct improvements to the existing Ben Blackledge Public Boat Ramp Facility. These improvements would include installing 360 feet of sheet pile bulkhead along the inlet that provides access to the boat ramp from Clear Creek Channel, extending two existing storm water culverts from the existing bank to the newly proposed bulkhead, installing a 40- by 10-foot floating wooden dock, installing a jet ski/kayak slip, installing a boat lift, and restoring the existing docks and bulkheads. The entire project would result in the discharge of 3,200 cubic yards of clean earthen materials into 1.4 acre of tidally influenced open water. The applicant is proposing to mitigate for the loss of aquatic resources by creating 0.3 acre of intertidal marsh planted with Spartina alterniflora. CMP Project No.: 12-0623-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00862 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Ballard Exploration Company, Inc.; Location: The project site is located in an unnamed water body, northwest of State Highway 87, 13.4 miles northeast of Port Arthur, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. NAD 83, Latitude: 30.0168472 North; Longitude: -93.8542361 West. Project Description: The applicant proposes to construct, install, operate and maintain structures and equipment necessary for oil and gas drilling, and production activities. Such activities include placement of 16,567 cubic yards of fill material to construct a 2.41-acre drilling pad, and placement of 2,905 cubic yards of fill material to construct a 0.49-acre road and pull-over area. Depth at the project site is -1.02 feet below mean high water. CMP Project No.: 12-0823-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-01221 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: San Isidro Development Company, LC; Location: The project site is located in wetlands adjacent to the Gulf Intracoastal Waterway (GIWW), south of Carancahua Lake, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Sea Isle, Texas. NAD 83, Latitude: 29.228532 North; Longitude: -95.030557 West. Project Description: The applicant requests permission to temporarily fill 3.51 acres of wetlands to construct an oil and gas exploration pad and temporary access road. If the well is successful, the applicant requests permission to permanently fill 4.98 acres of wetlands to construct a production pad and roadway. The proposed project will temporarily impact 3.51 acres of wetlands, which would be restored within 180 days of placement into wetlands, if the well is unsuccessful. The proposed project will permanently impact 4.98 acres of wetlands, if the well is successful. CMP Project No.: 12-0824-F1. Type of Application: U.S.A.C.E. permit application #SWG-2012-00198 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Mr. Charles Doolin; Location: The project site is located in Offatts Bayou; south of the Gulf Freeway, in Galveston County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: Christmas Point, Texas. NAD 83, Latitude: 29.28637 North; Longitude: -94.85442 West. Project Description: The applicant is seeking after-the-fact authorization to maintain the removal and replacement of 5,060 square feet of riprap placed prior to authorization as part of the proposed armored face of the living shoreline. The applicant is also seeking to dredge approximately 10,000 cubic yards of sand by a barge-mounted dragline to lower the marina turning basin from depths currently averaging 5 feet to a depth of 9 feet below mean high tide. Approximately 1,452 cubic yards of sand will be mixed with gravel and used to nourish the existing beach at the site and to create a 5,500-square-foot beach to facilitate launching of sailboats. The remainder of the sand will be used to fill the adjoining upland in preparation for dormitory and parking lot construction. Approximately 1,000 feet of wave attenuation structure will be installed to protect the basin. The applicant will install 58 pilings and 50 floating pier/slip structures within the basin to create a floating marina for the Sea Scout training facility. Approximately 0.57 acre of shallow water habitat will be deepened. Approximately 0.14 acre of beach area will be filled with sand dredged from the basin, mixed with gravel, and approximately 0.64 acre of floating dock area will be installed. The applicant is proposing to create 5,500 square feet of intertidal marsh, in the form of a living shoreline, as mitigation for the proposed submerged sand and gravel beach nourishment area. The applicant is also proposing to install a 2-inch saltwater intake pipe for fire protection and possibly desalinization process for up to 15,000 gallons per day of potable water. Two 24-inch sewer outfalls and one 6-foot by 1-foot TxDOT storm water discharge drainage pipes will also be installed. CMP Project No.: 12-0825-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00245 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Brazoria County; Location: The project site is located in wetlands adjacent to the Gulf of Mexico, Swan Lake, Drum Bay, and Christmas Bay primarily within the existing right-of-way of County Road 257 (Blue Water Highway). The northeast end of the project is located just south of the San Luis Pass toll bridge and extends approximately 10.5 miles southwest of the toll bridge in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle maps titled: Christmas Point and Freeport, Texas. NAD 83, Latitude: 29.012381 North; Longitude: -95.209469 West. Project Description: The applicant is requesting after-the-fact authorization for the discharge of fill material into wetlands adjacent to the Gulf of Mexico, Swan Lake, Drum Bay, and Christmas Bay as part of the Blue Water Highway road revetment installation project. The proposed project consists of placing cement-stabilized base along the edge of the existing roadway and installation of a buried riprap revetment system along portions of the roadway. The revetment system has been installed below the existing grade. In order to install the revetment below grade, material has been excavated and temporarily placed in adjacent wetlands. Once the revetment was installed, the material was removed from the wetlands and replaced over the installed revetment, restoring the pre-construction contours of the adjacent wetlands. The proposed project also consists of the placement of fill material into an adjacent wetland for a temporary construction yard/office area. The proposed project has impacted approximately 5.01 acres of adjacent wetlands. Of the 5.01 acres of wetlands already impacted, 3.04 acres

has been returned to pre-construction contours and the fill material was in place for approximately three to six months. The remaining 1.97 acres of wetlands already impacted is for the construction yard/office area. This area has been impacted for approximately seven months and is proposed to be restored in approximately two months, at the completion of the project. CMP Project No.: 12-0841-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-01274 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Bolivar Barge Cleaning Services; Location: The project site is located in the Gulf Intracoastal Waterway (GIWW), at 1415 Rankin Avenue in Port Bolivar, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Bolivar, Texas. NAD 83, Latitude: 29.3844 North; Longitude: -94.769 West. Project Description: The applicant is proposing to install approximately 413 linear feet of sheetpile bulkheading and six 24-inch mooring pilings along the remnants of an existing bulkhead. Approximately 2,185 cubic yards of clean upland fill (1,555 cubic yards below the high water mark) will be used to backfill the bulkhead and fill an existing boat slip; displacing approximately 0.27 acre of subaqueous bottom and 0.003 acre of wetlands. Distance between the uplands and the proposed bulkhead varies from 0 to 30 feet, because of the irregularly-shaped shoreline. Approximately 0.003 acre of wetlands would be impacted. No compensatory mitigation is proposed. CMP Project No.: 12-0845-F1. Type of Application: U.S.A.C.E. permit application #SWG-2012-00202 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Jefferson County Drainage District No. 7; Location: The proposed project is located on the east bank of Alligator Bayou on the Port Arthur Hurricane Protection Levee, opposite the existing Alligator Bayou Pump Station No. 16 (PS 16), at the confluence of Alligator Bayou and Taylors Bayou, approximately 2 miles southwest of Port Arthur, in Jefferson County, Texas. NAD 83, Latitude: 29.8626 North; Longitude: -93.9872 West. Project Description: Department of the Army Permit SWG-2007-00850, issued to the applicant on 12 February 2010, authorized permanent excavation in Taylors Bayou of 0.31 acres of open water and 0.21 acres of adjacent herbaceous wetlands, and permanent fill of 0.037 acres of open water in Alligator Bayou, during construction of a new low-flow pump station. Approximately 970 linear feet of temporary steel sheet pile cofferdam was authorized. The applicant proposes to modify the project. Approximately 1,400 linear feet of temporary steel sheet pile cofferdam would initially be constructed around the construction site to allow excavation and construction in the dry. Construction of the cofferdam would result in 0.82 acre of temporary impact to waters of the U.S. The areas to be excavated consist mostly of man-made levee and access road. The new pump station, concrete wing walls, concrete slab, access road, and pumping machinery would then be constructed within the newly excavated area, with a bottom elevation at approximately 4.5 feet below sea level. The applicant proposes to mitigate for the proposed aquatic resource impacts. CMP Project No.: 12-0846-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-00850 Amendment is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Jack Brooks Regional Airport; Location: The project is located within the Jack Brooks Regional Airport, east of North Highway 69, in Nederland, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Acres, Texas. NAD 83, Latitude: 29.94426 North; Longitude: -94.02305 West. Project Description: The applicant proposes to improve airfield drainage, and to reduce wildlife habitat to reduce wildlife strike potential by reshaping 6,720 linear feet of stream channel, relocating 3,000 linear feet of stream channel, and placing fill material into 3.25 acres of wetlands. Topsoil and subgrades typical of the area will be utilized as fill material and will be excavated within the floodplain to ensure that there is no net fill in the floodplain. CMP Project No.: 12-0847-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00167 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Texas Lehigh Cement Company; Location: The project is located in the Corpus Christi Industrial Canal, between Corps of Engineers Stations 1182+20 and 1189+70, in Corpus Christi Bay, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Corpus Christi, Texas. NAD 83, Latitude: 27.8164 North; Longitude: -97.4189 West. Project Description: The applicant has revised the project originally described to include advance maintenance and allowable overdepth dredging. The applicant proposes to amend his previously approved project to accommodate a new barge unloading area. Six monopile breasting structures are now proposed instead of the two that were previously approved. Three of the monopiles would be located north of the existing dock and three to the south. The proposed dredging area would be moved closer to the shoreline and would include removal of a portion of the existing shore (6,800 square feet of area and 760 cubic yards of material). A total of 20,700 cubic yards of material would be removed by hydraulic and mechanical methods from two irregularly shaped areas totaling approximately 86,000 square feet of area to achieve the target depths shown in the plans. Dredged material would be placed in South Shore Dredged Material Placement Area (DMPA) Cell A or Cell B, DMPA No. 1, or the Herbie A. Maurer DMPA. The new shoreline would be armored by a steel sheetpile bulkhead approximately 230 feet long. The existing dock would remain in place and a proposed elevated walkway/pipe-bridge, approximately 66 feet long, would span from the shoreline to the dock. No mitigation is being proposed. CMP Project No.: 12-0848-F1. Type of Application: U.S.A.C.E. permit application #SWG-1997-00189(Rev.) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201204822
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: September 12, 2012

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Texas Health and Human Services Commission

Notice of Adopted Payment Rate for Pediatric Care Facility Special Reimbursement Class

Adopted Rate. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts the following per day payment rate for the Pediatric Care Facility Special Reimbursement Class for fiscal year (FY) 2013 effective September 1, 2012: $226.66.

HHSC conducted a public hearing to receive public comment on the proposed payment rate for Pediatric Care Facilities in the nursing facility program operated by the Texas Department of Aging and Disability Services. The hearing was held in compliance with Texas Administrative Code (TAC), Title 1, §355.105(g), which requires public hearings on proposed payment rates, on August 15, 2012, at 1:00 p.m., in the Permian Basin Conference Room of Building H, Braker Center, at 11209 Metric Blvd., Austin, Texas 78758-4021.

One comment was received. The commenter requested that the state either review the rates several times a year or amend the rate methodology to guarantee a certain annual payment to the facility regardless of the units of service provided, so that a decrease in clients does not cause revenue to fall below what is required to maintain the facility. HHSC did not adjust the proposed payment rate in response to this comment.

Methodology and justification. The adopted rate was determined in accordance with the reimbursement setting methodology at 1 TAC §355.307.

TRD-201204648
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 7, 2012

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Notice of Adopted Reimbursement Rates for Large State-Operated Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) and for Small State-Operated ICFs/IID

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted the following per diem reimbursement rates to be effective September 1, 2012.

Per Diem Rates for Large State-Operated ICF/IID Services, Large State-Operated ICF/IID Facilities - Medicaid Only clients: Adopted interim daily rate: $656.00

Large State-Operated ICF/IID Facilities - Dual-eligible Medicaid/Medicare clients: Adopted interim daily rate: $634.26

Per Diem Rate for Small State-Operated ICF/IID Services: Adopted interim daily rate: $625.18

Hearing. HHSC conducted a public hearing on August 8, 2012, to receive public comment on the proposed rates. The hearing was held in accordance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC. The public hearing notice and the notice of proposed reimbursement rates were published in the July 20, 2012, issue of the *Texas Register* (37 TexReg 5508).

Methodology and Justification. The adopted rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter D, §355.456(e), relating to Reimbursement Determination for State-Operated Facilities. The rate changes are based on actual and projected increases in costs to operate these facilities.

TRD-201204762
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 10, 2012

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective October 1, 2012.

The purpose of this amendment is to update the fee schedules in the current state plan by including fees for new services and by modifying fees for existing services. These rate actions are being taken to comply with §355.8085(1)(B), concerning Texas Medicaid Reimbursement Methodology for Physicians and Certain Other Practitioners, under Texas Administrative Code, Title 1, Part 15, Chapter 355, Subchapter J, which requires the Health and Human Services Commission to review fees for individual services at least once every two years. After performing the required review, the Health and Human Services Commission has determined that amendments to the fee schedule are appropriate.

Accordingly, the amendments will modify the fee schedules in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

Family Planning Services;

Hearing Aids and Audiometric Evaluations; and

Physicians and Other Practitioners.

The proposed amendment is estimated to result in an additional annual cost of $845,494 for federal fiscal year (FFY) 2013, consisting of $501,378 in federal funds and $344,116 in state general revenue. For FFY 2014, the estimated annual cost is $869,133, consisting of $519,742 in federal funds and $349,391 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201204633
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 5, 2012

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Public Notice

On August 24, 2012, in the *Texas Register* (37 TexReg 6805), the Texas Health and Human Services Commission (HHSC) announced its intent to submit amendments concerning inpatient hospital reimbursement to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The amendments are proposed to be effective September 1, 2012. This notice supplements information in the notice published on August 24, 2012.

HHSC proposes to amend the state plan to comply with Chapter 536 of Texas Government Code, which requires HHSC, to the extent possible, to convert hospital reimbursement systems under the child health plan and Medicaid programs to a diagnosis-related groups (DRG) methodology that will allow HHSC to more accurately classify specific patient populations and account for severity of patient illness and mortality risk. The amendment proposes changing from the Medicare Severity Diagnosis Related Grouping (MS-DRG) to the 3MTM All Patient Refined Diagnosis Related Grouping (APR-DRG) for hospital inpatient reimbursement. The proposed amendment also removes the state plan provision related to mitigation of disproportionate losses up to September 1, 2012.

The fiscal impact included in the August 24, 2012, notice is being updated with this notice. The previous notice indicated that the proposed amendment would not result in a fiscal impact to the state. However, since the proposal deletes the provision pertaining to mitigation of disproportionate losses, the state will actually realize a savings. The revised fiscal impact follows:

The proposed amendments are estimated to result in additional aggregate savings of $(3,989,150) for federal fiscal year 2012, with approximately $(2,322,483) in federal funds and $(1,666,667) in State general revenue (GR). For federal fiscal year 2013 the estimated savings is $(49,140,049) with approximately $(29,140,049) in federal funds and $(20,000,000) in GR and in 2014 the estimated savings is $(49,751,244) with approximately $(29,751,244) in federal funds and $(20,000,000) in GR.

Interested parties may obtain copies of the proposed amendment by contacting Kevin Niemeyer, Rate Analysis for Hospital Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1366; by facsimile at (512) 491-1998; or by e-mail at Kevin.Niemeyer@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Department of Aging and Disability Services.

Individuals may make comments on the proposed amendment by contacting Mr. Niemeyer by any of the means listed above.

TRD-201204786
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 11, 2012

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments concerning Disproportionate Share Hospital (DSH) reimbursement to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The amendments are proposed to be effective September 24, 2012.

HHSC proposes to amend the state plan to change the methodology for the distribution of DSH reimbursements for specific categories of hospitals. This change is being made in response to a proposal in a petition submitted to HHSC by the hospitals that provide the vast majority of the intergovernmental transfer funds used as the state share for DSH payments. This change also recognizes funding changes that will occur as a result of implementation of the new 1115 demonstration waiver.

The proposed amendment is estimated to result in no change in the amount of federal funds eligible to be received by the state. The source of non-federal funding for the DSH program is public funds from local and state governmental entities.

Interested parties may obtain copies of the proposed amendment by contacting Diana Miller, Rate Analysis for Hospital Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1436; by facsimile at (512) 491-1998; or by e-mail at diana.miller@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Department of Aging and Disability Services.

Individuals may make comments on the proposed amendment by contacting Ms. Miller by any of the means listed above.

TRD-201204826
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 12, 2012

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Brownsville	VHS Brownsville Hospital Company, L.L.C. dba Valley Baptist Medical Center Brownsville	L06500	Brownsville	00	08/20/12
Dallas	Health Texas Provider Network dba Dallas Heart Group	L06501	Dallas	00	08/22/12
Denison	Texomacare Specialty Physicians dba Texoma Cardiovascular Care Associates	L06504	Denison	00	08/29/12
Harlingen	VHS Harlingen Hospital Company, L.L.C. dba Valley Baptist Medical Center Harlingen	L06499	Harlingen	00	08/20/12
Helotes	Medicine and Radiation Oncology, P.A.	L06503	Helotes	00	08/28/12
Throughout TX	Critical Response Inspection Services, L.L.C.	L06497	Dayton	00	08/14/12
Throughout TX	Savoy Technical Services, Inc.	L06502	Houston	00	08/24/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Baptist St. Anthony's Health System	L01259	Amarillo	93	08/22/12
Amarillo	Panhandle Nuclear Rx, Ltd.	L04683	Amarillo	27	08/20/12
Austin	Austin Radiological Association	L00545	Austin	172	08/13/12
Austin	North Austin Surgery Center, L.P.	L05832	Austin	04	08/22/12
Austin	St. David's Healthcare Partnership, L.P., L.L.C. dba St. David's Medical Center	L06335	Austin	08	08/21/12
Bay City	Equistar Chemicals, L.P.	L03938	Bay City	30	08/23/12
Baytown	PMI Specialist, Inc.	L04686	Baytown	18	08/23/12
Bedford	Texas Oncology, P.A. dba Edwards Cancer Center	L05550	Bedford	26	08/29/12
Brenham	Scott and White Hospital Brenham	L03419	Brenham	27	08/21/12
Bryan	St. Joseph's Regional Health Center	L00573	Bryan	79	08/15/12
Burnet	Seton Family of Hospitals dba Seton Highland Lakes Hospital	L03515	Burnet	49	08/24/12
Channelview	Phoenix Non-Destructive Testing Company	L04454	Channelview	62	08/28/12
Channelview	TAPCO International, Inc. dba TAPCO Enpro International	L04990	Channelview	29	08/29/12
College Station	Texas A&M University	L00448	College Station	136	08/22/12
Conroe	CHCA Conroe, L.P. dba Conroe Regional Medical Center	L01769	Conroe	89	08/24/12
Conroe	Adnan Afzal, M.D., FACC dba Healing Hearts	L06071	Conroe	04	08/20/12
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	116	08/22/12
Dallas	Texas Oncology, P.A. dba Sammons Cancer Center	L04878	Dallas	46	08/22/12
Dallas	Peloton Therapeutics, Inc.	L06490	Dallas	01	08/27/12
Floresville	Wilson County Memorial Hospital District dba Connally Memorial Medical Center	L03471	Floresville	20	08/14/12
Fort Worth	Radiology Associates	L03953	Fort Worth	66	08/22/12
Fort Worth	Allied International Emergency, L.L.C.	L06394	Fort Worth	02	08/13/12
Garland	Cardiology Consultants of North Dallas, P.A.	L05454	Garland	14	08/15/12
Gonzales	Gonzales Healthcare System dba Memorial Hospital	L03473	Gonzales	14	08/17/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	135	08/22/12
Houston	Ben Taub General Hospital	L01303	Houston	73	08/29/12
Houston	Radiographic Specialists, Inc.	L02742	Houston	63	08/24/12
Houston	Radiographic Specialists, Inc.	L02742	Houston	64	08/31/12
Houston	Woodlands-North Houston Cardiovascular Imaging Center	L04253	Houston	25	08/15/12
Houston	Texas Childrens Hospital	L04612	Houston	57	08/29/12
Houston	Complete Cardiac Care	L05218	Houston	10	08/30/12
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	79	08/23/12
Houston	Radiomedix, Inc. dba Radiomedix	L06044	Houston	06	08/14/12
Houston	Memorial Hermann Medical Group	L06430	Houston	06	08/23/12
Houston	Multi Phase Meters, Inc.	L06458	Houston	03	08/13/12
Irving	Columbia Medical Center of Las Colinas, Inc. dba Las Colinas Medical Center	L05084	Irving	18	08/20/12
Irving	Columbia Medical Center of Las Colinas, Inc. dba Las Colinas Medical Center	L05084	Irving	19	08/28/12
Irving	Healthcare Associates of Irving, L.L.P.	L05371	Irving	13	08/29/12
Jewett	NRG Texas Power, L.L.C.	L06457	Jewett	01	08/14/12
Lewisville	Columbia Medical Center of Lewisville Subsidiary, L.P. dba Medical Center of Lewisville	L02739	Lewisville	62	08/15/12
Lewisville	Cardiovascular Specialists, P.A.	L05507	Lewisville	20	08/17/12
Longview	Longview Medical Center, L.P. dba Longview Regional Medical Center	L02882	Longview	42	08/15/12
Lubbock	Covenant Medical Group dba Cardiology Associates Covenant Medical Group	L04468	Lubbock	26	08/23/12
Lubbock	Manhattan Isotope Technology, L.L.C.	L06404	Lubbock	02	08/21/12
Lufkin	Temple Imaging Center	L05839	Lufkin	08	08/23/12
Mansfield	Cardiology Partners, L.L.P.	L05999	Mansfield	04	08/21/12
McKinney	Texas Institute of Cardiology, P.A.	L05953	McKinney	02	08/24/12
Mission	Mission Hospital, Inc. dba Mission Regional Medical Center	L06192	Mission	01	08/24/12
Orange	Miguel Castellanos, M.D., P.A.	L06184	Orange	02	08/31/12
Pasadena	Albemarle Corporation	L04072	Pasadena	19	08/13/12
Plano	Health Texas Provider Network dba Cardiovascular Consultants of North Texas	L06494	Plano	01	08/23/12
Round Rock	Qal-Tek Associates, L.L.C.	L05965	Round Rock	11	08/28/12
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	219	08/15/12
San Antonio	Methodist Healthcare System of San Antonio, Ltd., L.L.P.	L00594	San Antonio	307	08/15/12
San Antonio	Methodist Healthcare System of San Antonio, Ltd., L.L.P.	L00594	San Antonio	308	08/22/12
San Antonio	Raba-Kistner Consultants, Inc. dba Raba-Kistner-Brytest Consultants, Inc.	L01571	San Antonio	73	08/21/12
San Antonio	Heart and Vascular Clinic of San Antonio, P.L.L.C.	L06485	San Antonio	01	08/31/12
San Marcos	Adventist Health System/Sunbelt, Inc. dba Central Texas Medical Center	L03133	San Marcos	27	08/28/12
Sherman	Sherman/Grayson Hospital, L.L.C. dba Texas Health Presbyterian Hospital - WNJ	L06354	Sherman	08	08/20/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Sugar Land	Memorial Hermann Healthcare System dba Memorial Hermann Sugar Land Hospital	L03457	Sugar Land	31	08/30/12
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	21	08/15/12
Taylor	Scott & White Hospital - Taylor	L03657	Taylor	31	08/30/12
Texas City	Styrolution America, L.L.C.	L00354	Texas City	41	08/21/12
Throughout TX	Alpha Testing, Inc.	L03411	Dallas	22	08/22/12
Throughout TX	Critical Response Inspection Service, L.L.C.	L06497	Dayton	01	08/16/12
Throughout TX	Precision NDT, L.L.C.	L06399	Henderson	03	08/14/12
Throughout TX	QC Laboratories, Inc.	L05956	Houston	09	08/16/12
Throughout TX	Ensource Corporation	L06496	Houston	01	08/14/12
Throughout TX	Hi-Tech Testing Service, Inc.	L05021	Longview	96	08/23/12
Throughout TX	Desert NDT, L.L.C.	L06462	Odessa	03	08/20/12
Throughout TX	Pioneer Wireline Services, L.L.C.	L06220	Rosharon	20	08/29/12
Throughout TX	SWL Group, Inc. dba Southwest Laboratories, Inc.	L05269	Texas City	17	08/22/12
Tyler	East Texas Medical Center	L00977	Tyler	155	08/22/12
Tyler	Mother Frances Hospital	L01670	Tyler	177	08/20/12
Tyler	Mother Frances Hospital	L01670	Tyler	178	08/29/12
Tyler	Cardiovascular Associates of East Texas, P.A.	L04800	Tyler	29	08/28/12
Victoria	Invista Sarl	L00386	Victoria	85	08/22/12
Austin	Ranger Excavating, L.P.	L06314	Austin	02	08/30/12
Dallas	Texas Oncology, P.A. dba Sammons Cancer Center	L04878	Dallas	47	08/30/12
Arlington	Texas Health Physicians Group dba Arlington Cancer Center	L06434	Arlington	01	08/31/12
College Station	Texas A&M University	L05683	College Station	22	08/31/12
Round Rock	Texas Oncology, P.A.	L06349	Round Rock	06	08/31/12
Austin	Austin Heart, P.L.L.C. dba Austin Heart	L04623	Austin	73	08/31/12
La Porte	E. I. Dupont De Nemours & Company	L00314	La Porte	88	08/30/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Thompsons	NRG Texas Power, L.L.C.	L02063	Thompsons	75	08/21/12
Throughout TX	Geotel Engineering, Inc.	L05674	Dallas	10	08/14/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Donald L. Levene, M.D., F.A.C.C.	L03817	Dallas	15	08/28/12
Dallas	Cor SpecialtyAssociates of North Texas, P.A. dba The Dallas Heart Group	L04694	Dallas	31	08/22/12
El Paso	Archana USA, Inc.	L05931	El Paso	05	08/21/12
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	76	08/20/12
New Braunfels	Cemex, Inc.	L02809	New Braunfels	32	08/23/12
Sherman	Sherman Cardiovascular Care Associates, P.A.	L05271	Sherman	11	08/29/12
Tomball	Clinic for Cardiovascular Care, P.A. dba Cardiovascular Clinic of Texas	L05670	Tomball	10	08/22/12

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201204816
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 12, 2012

♦ ♦ ♦

Maximum Fees Allowed for Providing Health Care Information Effective September 2012

The Department of State Health Services licenses and regulates the operation of general and special hospitals in accordance with Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended this law to address the release and confidentiality of health care information. In 2009, the Texas Legislature amended the statute again to change the definition of health care information and to add a category of fees for records provided on digital or other electronic media and delivered electronically.

In accordance with Health and Safety Code, §241.154(e), the fee effective as of September 2012, for providing a patient's health care information has been adjusted by increasing by 1.3% the 2011 rate to reflect the most recent changes to the consumer price index that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers as published by the Bureau of Labor Statistics of the United States Department of Labor.

Health and Safety Code, §241.154(b) - (d) Provisions:

(b) Except as provided by subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed $44.35; and

(A) a charge for each page of:

(i) $1.49 for the 11th through the 60th page of provided copies;

(ii) $.74 for the 61st through the 400th page of provided copies;

(iii) $.39 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $67.57; and

(A) $1.49 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed $80.36; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed $10.00 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under subsection (b) to the extent the fee is prohibited under Health and Safety Code, Chapter 161, Subchapter M;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payer, except as provided under Health and Safety Code, §311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

This information is provided only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that fees for health care information are charged in accordance with Health and Safety Code, Chapters 241, 311, and 324.

The statutes referenced in this notice may be found on the Internet at:

Health and Safety Code, http://www.statutes.legis.state.tx.us?link=HS

Labor Code, http://www.statutes.legis.state.tx.us?link=LA

Civil Practice and Remedies Code, http://www.statutes.legis.state.tx.us?link=CP

Should you have questions, you may contact the Department of State Health Services, Facility Licensing Group, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 834-6648.

TRD-201204827
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 12, 2012

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Texas Department of Housing and Community Affairs

Announcement of the Public Comment Period and Public Hearing Schedule for Comment on the One Year Action Plan

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of the public comment period for the *2013 State of Texas Consolidated Plan One Year Action Plan* (the "Plan"). The Plan has a thirty-day (30) public comment period beginning Friday, September 21, 2012, and ending at 5:00 p.m. on Monday, October 22, 2012.

The Plan is required as part of the overall requirements governing the State's consolidated planning process, and the public comment period on the Plan is required by the U.S. Department of Housing and Urban Development (HUD). The Plan is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The Department coordinates the preparation of the Plan with the Texas Department of Agriculture (TDA) and the Department of State Health Services (DSHS). The Plan covers the State's administration of the Community Development Block Grant Program by TDA, the Housing Opportunities for Persons with AIDS Program by DSHS, and the Emergency Solutions Grants Program and the HOME Investment Partnerships Program by the Department.

The Department also announces the public hearing schedule for the Plan.

Comment may be provided at the Department's Board meeting on:

Tuesday, October 9, 2012

Details on location and time of the meeting will be found on the Department's website at http://www.tdhca.state.tx.us/board/meetings.htm or by calling 1-800-525-0657.

Comment may also be provided at the public hearing on:

Wednesday, October 10, 2012

10:00 a.m.

Stephen F. Austin State Office Building, Room 172

1700 N. Congress Avenue

Austin, Texas 78701

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two (2) days before the scheduled hearing, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

The Plan will be available on the Department's website at www.tdhca.state.tx.us. A hard copy of the Plan can be requested by contacting the Housing Resource Center via mail at the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin Texas 78711-3941, or phone at (512) 475-3800, or email at info@tdhca.state.tx.us.

Public comment may also be provided in writing via mail at TDHCA, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941; via fax at (512) 475-0070; or via email at elizabeth.yevich@tdhca.state.tx.us.

TRD-201204765
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 11, 2012

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Texas Department of Insurance

Company Licensing

Application to change the name of AMERICAN MEDICAL SECURITY LIFE INSURANCE COMPANY to UNITEDHEALTHCARE LIFE INSURANCE COMPANY, a Life company. The home office is in Green Bay, Wisconsin.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201204760
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: September 10, 2012

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Legislative Budget Board

Notice of Request for Qualifications

The Legislative Budget Board (LBB) issues this Request for Qualifications (RFQ) to pre-qualify vendors to assist the LBB in conducting a variety of performance reviews of Texas School, Charter School, and Community College Districts (Districts). Vendors may apply to be pre-qualified to provide expertise related to one or more of the functional areas listed in Section 3.2 of the RFQ.

Contact: The LBB is the Issuing Office and the sole point of contact for the RFQ. Questions concerning the RFQ must be in writing and addressed to:

Legislative Budget Board, (512) 475-2902 (fax) or email: contract.manager@lbb.state.tx.us

Closing Date: Applications must be received in the issuing office at the address specified above no later than 5:00 p.m. CZT, on August 31, 2013. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: The Team Manager with the assistance of the Contract Administrator will review all applications for compliance, experience, and thoroughness. All applications will be evaluated under the following criteria: **Knowledge of Functional Area and Review Process and Experience Related to Functional Area and Review Process.**

The LBB reserves the right to accept or reject any or all applications submitted. The LBB is under no legal or other obligation to execute any

contracts on the basis of this notice or the distribution of any RFQ. The LBB shall not pay for any costs incurred by any entity in responding to this notice or the RFQ.

The anticipated schedule of events is as follows: This is an "ongoing" process of pre-qualifying applicants.

TRD-201204683
Bill Parr
Assistant Director
Legislative Budget Board
Filed: September 10, 2012

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Texas Department of Licensing and Regulation

Public Notice - Revised Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held August 14, 2012, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction.

The enforcement plan is revised to update the penalty matrix for the Cosmetology program. Acts of the 81st Legislature, House Bill 2310 amended Texas Occupations Code, Chapter 51, the Department's enabling statute, which required changes to 16 Texas Administrative Code Chapter 60, Procedural Rules of the Commission and the Department. The penalty matrix was also updated to reflect rule changes from December 2010; August 2011; and February 2012. The rule changes from December 2010 included adding rules which established temporary salon licensing and removed square footage requirements. The August 2011 rule changes included clarifying the cleaning process for footspas; adding the cleaning process for foot basins; and adding disposal requirements for disposable spa liners and whirlpool jets. The most recent rule changes from February 2012 included amending the definition of "Cosmetology" to include preparation and tweezing techniques in the means of removing superfluous hair; changing the facialist license to an esthetician license; creating an eyelash extension specialty license and requirements; creating a manicurist esthetician specialty license and requirements; amending the language of refund policies for schools, including changes on how the period of enrollment for a student was calculated; changing the word "waxing" to "temporary hair removal"; requiring thread to be stored in sealed bag or covered container; and requiring all temporary multi-use temporary hair removal items to be cleaned, disinfected and sterilized. Finally, the penalty matrix was also updated to reflect public feedback on penalty amounts.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.license.state.tx.us. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@license.state.tx.us to obtain a copy of the revised plan.

TRD-201204702
Brian Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
Filed: September 10, 2012

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North Central Texas Council of Governments

Request for Proposals for the North Central Texas National Household Travel Survey Review and Analysis

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting written proposals from consulting firms to perform a comprehensive review and analysis of the 2009 National Household Travel Survey (NHTS) data collected in the North Central Texas Region. The initial task in this work is for the consultant to perform a comprehensive analysis of the sampling design, household recruitment methods, household contacting and re-contacting methods, and expansion weights of the 2009 NHTS. The study will require the development of a set of criteria for identifying acceptable and non-acceptable records, development and implementation of checks on the data, compilation of data imputation methods for each missing field value, implementation of the data imputation if approved, identification of the data that can be used to extract specified attributes, identification of the need for reweighting of data against a 2010 Census product, presentation of results and findings for major milestones, and documentation of all work. Engineering services are not anticipated for this study.

Due Date

Proposals must be received no later than 5:00 p.m., on Friday, October 19, 2012, to Kathy Yu, Senior Transportation System Modeler, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, September 21, 2012. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201204825

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: September 12, 2012

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Panhandle Regional Planning Commission

Extension to the Deadline for Request for Statements of Qualifications Responses for the Development of a Facility Biosecurity Guide

The Panhandle Regional Planning Commission (PRPC) submitted a Request for Statements of Qualifications (RFQ) that was published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6813).

The deadline for the submission of responses to the PRPC's RFQ for the Development of a Facility Biosecurity Guide has been extended by five (5) days. The submission deadline for responses to this RFQ has been changed to **4:00 p.m. (CST) on Wednesday, September 19, 2012.** Again, late responses to this request will not be considered.

Further information can be obtained from John Kiehl, Regional Services Director, Panhandle Regional Planning Commission at (806) 372-3381.

TRD-201204814
John Kiehl
Regional Services Director
Panhandle Regional Planning Commission
Filed: September 11, 2012

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Request for Statements of Qualifications for the Development of a Business Continuity and Recovery Guide

The Panhandle Regional Planning Commission (PRPC) is seeking Statements of Qualifications from firms or individuals interested in the development of a Business Continuity and Recovery Guide for the benefit of and use by Panhandle cattle feedlots and associated infrastructure and organizations.

Additional information and a Request for Qualifications (RFQ) package may be obtained from the PRPC Regional Services Director, 415 West Eighth Avenue, Amarillo, Texas 79101, by phoning (806) 372-3381 or by emailing jkiehl@theprpc.org.

Due to the project's classified status, this package will only generically describe the types of qualifications required of the firm/individual responding to this RFQ. As the PRPC works through the consultant selection process, those respondents whose qualifications appear to be best suited to the work to be done will be provided additional information about the nature and purpose of the project. Any firm/individual receiving a background briefing on the project will first be required to sign a Non-Disclosure Agreement (NDA), agreeing to hold and maintain any Confidential Information disclosed during the briefing in strictest confidence for the sole and exclusive benefit of the PRPC.

PRPC assumes no liability for any costs related to the development of a response to this RFQ in the event this effort does not result in the execution of a Project Management Consultant Services contract with the responding firm.

This solicitation is being offered in accordance with local, state and federal requirements governing the procurement of consultant services. Accordingly, the PRPC reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.

Responses will be received at the offices of the Panhandle Regional Planning Commission, 415 West Eighth Avenue, Amarillo, Texas 79101, until 4:00 p.m. (CST), Friday, October 26, 2012. Additional information can be obtained by contacting Walt Kelley, PRPC RAPP Project Manager, at (806) 678-3750.

TRD-201204703
John Kiehl
Regional Services Director
Panhandle Regional Planning Commission
Filed: September 10, 2012

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Panhandle Water Planning Group (Region A)

Notice of Application for Regional Water Planning Grant Funding for the Fourth Cycle of Regional Water Planning

Notice is hereby given that the Panhandle Regional Planning Commission will submit by October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of the Panhandle Water Planning Group (Region A), to carry out planning activities to develop the 2016 Region A Regional Water Plan as part of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning. It is anticipated that the application will be considered by TWDB at an October 17, 2012 board meeting.

The Panhandle Water Planning Group (Region A) includes the following counties: Armstrong, Carson, Childress, Collingsworth, Dallam, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, and Wheeler Counties.

On September 5, 2012, copies of the grant application may be obtained from the Panhandle Regional Planning Commission when it becomes available or online at www.panhandlewater.org. Written comments from the public regarding the grant application must be submitted to the Panhandle Regional Planning Commission and TWDB prior to TWDB action on this application. Comments can be submitted to the Panhandle Regional Planning Commission and the TWDB as follows:

Kyle G. Ingham

Administrative Agent for Region A

Panhandle Regional Planning Commission

415 W. 8th

Amarillo, Texas 79105

Melanie Callahan

Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact Kyle G. Ingham, Panhandle Regional Planning Commission, 415 W. 8th, Amarillo, TX 79105 or email kingham@theprpc.org.

TRD-201204764

Kyle G. Ingham

Local Government Services Director, Panhandle Regional Planning Commission

Panhandle Water Planning Group (Region A)

Filed: September 10, 2012

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Plateau Water Planning Group

Notice of Application for Regional Water Planning Grant Funding

Notice is hereby given that the Upper Guadalupe River Authority (UGRA), as the political subdivision for the Plateau Water Planning Group (Region J), will submit by 5:00 p.m., October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region J, to carry out planning activities to develop the 2016 Plateau Water Planning Group (Region J) Regional Water Plan in completion of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning.

The Plateau Water Planning Group (Region J) is one of the 16 regional water planning groups established by the Texas Water Development Board (TWDB) to develop or revise a comprehensive water supply plan for each water user group in the region through 2070. The Plateau Water Planning Area (Region J) includes the following counties: Bandera, Edwards, Kerr, Kinney, Real, and Val Verde.

Copies of the grant application will be available for review throughout the entire 30-day comment period from the UGRA or on line at http://www.ugra.org/waterdevelopment.html. Written comments from the public regarding the grant application must be submitted to the Plateau Water Planning Group (Region J) and TWDB by no later than October 16, 2012. Comments can be submitted to the Plateau Water Planning Group and the TWDB as follows:

Jody Grinstead, Administrative Agent

Plateau Water Planning Group (Region J)

Kerr County Courthouse

700 Main Street, Ste. 101

Kerrville, Texas 78028

Melanie Callahan, Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please visit http://www.ugra.org/waterdevelopment.html or contact Jonathan Letz, Plateau Water Planning Group - Region J Chairman, c/o Plateau Water Planning Group - Region J, Kerr County Courthouse, 700 Main Street, Ste. 101, Kerrville, Texas 78028, jletz@co.kerr.tx.us.

TRD-201204635

Tully Shahan

Planning Group Voting Member

Plateau Water Planning Group

Filed: September 5, 2012

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 4, 2012, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Longview Cable Television Company, Inc., for State-Issued Certificate of Franchise Authority, Project Number 40725.

The requested CFA service area consists of the municipality of Hallsville, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 40725.

TRD-201204650

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 7, 2012

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 5, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Ochiltree County, Texas.

Docket Style and Number: Application of North Plains Electric Cooperative, Inc., to Amend its Certificate of Convenience and Necessity for a Proposed 115 kV Transmission Line in Ochiltree County. Docket Number 40659.

The Application: The application of North Plains Electric Cooperative (NPEC) proposes a new 115-kV transmission line approximately 10 miles to the east of the city of Spearman, Texas. The proposed transmission line will be approximately 4.0 miles in length. A three-way, phase-over-phase line switch will be installed in an existing 115-kV line segment, and the new line will extend to the proposed new Waka 115-kV Substation. NPEC plans to construct the line with galvanized steel or concrete single pole structures. The total estimated cost for the project ranges from approximately $4,517,275 to $4,946,841 depending on the route chosen.

The proposed project is presented with two alternate routes. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is October 22, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40659.

TRD-201204649

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 7, 2012

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Request for Proposals to Act as the Independent Market Monitor for the ERCOT Region

RFP Number 473-13-00020

The Public Utility Commission of Texas (PUCT or Commission) is issuing a Request for Proposals for an Independent Market Monitor (IMM) for the wholesale electricity market in the Electric Reliability Council of Texas, Inc. (ERCOT) power region.

Scope of Work:

The contractor (IMM) shall be responsible for monitoring the wholesale electricity market in the ERCOT power region, including all markets for energy, ancillary capacity services, and congestion revenue rights, as well as monitoring all aspects of ERCOT's operations that affect supply, demand, and the efficient functioning of the competitive wholesale electricity market.

The contractor (IMM) shall act as the PUCT's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market. The IMM operates under the supervision and oversight of the PUCT.

RFP documentation may be obtained by contacting:

Purchaser

Public Utility Commission of Texas

P.O. Box 13326

Austin, TX 78711-3326

(512) 936-7069

purchasing@puc.texas.gov

RFP documentation is also located on the PUCT website at http://www.puc.state.tx.us/agency/about/procurement/Default.aspx.

Deadline for proposal submission is 3:00 p.m. CT on Wednesday, October 10, 2012.

TRD-201204763
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2012

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Red River Authority of Texas

Public Notice for Grant Application

Notice is hereby given that the Red River Authority of Texas will submit by 5:00 p.m., October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of the Regional Water Planning Group - Area B, to carry out planning activities to develop the 2016 Region B Regional Water Plan in completion of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning.

The Regional Water Planning Group - Area B includes the following Texas counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and the portion of Young County that encompasses the City of Olney.

Copies of the grant application may be obtained from Red River Authority of Texas after September 4, 2012, or online at www.rra.dst.tx.us. Written comments from the public regarding the grant application must be submitted to the Red River Authority of Texas or the TWDB no later than 5:00 p.m., October 9, 2012. Comments can be submitted to the Red River Authority of Texas and the TWDB as follows:

Mr. Curtis W. Campbell

Administrative Agent for Region B

Red River Authority of Texas

P.O. Box 240

Wichita Falls, Texas 76307-0240

Ms. Melanie Callahan

Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact Mr. Curtis W. Campbell, Red River Authority of Texas, c/o Region B, P.O. Box 240, Wichita Falls, Texas 76307-0240, (940) 723-2236 or by email at rwpg-b@rra.dst.tx.us.

TRD-201204651
D. Todd Davenport
Attorney
Red River Authority of Texas
Filed: September 7, 2012

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Region F Regional Water Planning Group

Notice of Application for Regional Water Planning Grant Funding

Notice is hereby given that the City of San Angelo will submit by 5:00 p.m., October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region F, to carry out planning activities to develop the 2016 Region F Regional Water Plan in completion of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning.

The Region F Water Planning Group includes the following counties: Andrews, Borden, Brown, Coke, Coleman, Concho, Crane, Crockett, Ector, Glasscock, Howard, Irion, Kimble, Loving, Martin, Mason, McCulloch, Menard, Midland, Mitchell, Pecos, Reagan, Reeves, Runnels, Schleicher, Scurry, Sterling, Sutton, Tom Green, Upton, Ward, and Winkler.

Copies of the grant application may be obtained from the City of San Angelo or online at www.sanangelotexas.us. Written comments from the public regarding the grant application must be submitted to the City of San Angelo and TWDB by no later than October 8, 2012. Comments can be submitted to the City of San Angelo and the TWDB as follows:

Will Wilde

Administrative Agent for Region F

72 W. College Avenue

San Angelo, Texas 76902

Melanie Callahan

Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact Will Wilde, Administrative Agent for Region F, at will.wilde@sanangelotexas.us or at (325) 657-4209.

TRD-201204631
Will Wilde
Administrative Agent for Region F
Region F Regional Water Planning Group
Filed: September 5, 2012

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Rio Grande Regional Water Planning Group (Region M)

Notice of Application for Regional Water Planning Grant Funding

Notice is hereby given that the Rio Grande Regional Water Planning Group will submit by 5:00 p.m., October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region M, to carry out planning activities to develop the 2016 Region M Regional Water Plan in completion of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning.

The Rio Grande Regional Water Planning Group (Region M) includes the following counties: Cameron, Hidalgo, Jim Hogg, Maverick, Starr, Webb, Willacy, and Zapata Counties.

Copies of the grant application will be available for review from Lower Rio Grande Valley Development Council (LRGVDC) or online at www.lrgvdc.org and the Region M website at www.riograndewaterplan.org no later than September 16, 2012. Written comments from the public regarding the grant application must be submitted to LRGVDC and TWDB no later than October 16, 2012. Comments can be submitted as follows:

Kenneth N. Jones

Administrative Agent for Region M

Lower Rio Grande Valley Development Council

301 W. Railroad

Weslaco, Texas 78596

Melanie Callahan

Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact Kenneth N. Jones, LRGVDC, c/o Region M, 301 W. Railroad, Weslaco, Texas 78596, (956) 682-3481 and knjones@lrgvdc.org.

TRD-201204647
Kenneth N. Jones, Jr.
Executive Director
Rio Grande Regional Water Planning Group (Region M)
Filed: September 7, 2012

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The Texas A&M University System

Notice of Sale of Oil, Gas, and Sulphur Lease

The Board of Regents of The Texas A&M University System, pursuant to provisions of Education Code, Chapter 85, as amended, and subject to all policies and regulations promulgated by the Board of Regents, offers for sale at public auction in Room 614, System Real Estate Office, John B. Connally Building, 301 Tarrow, College Station, Texas, at 10:00 a.m., Wednesday, October 17, 2012, an oil, gas, and sulphur lease on the following described land in Henderson County, Texas.

The property offered for lease contains 81.25 mineral acres, more or less, and is more particularly described as follows:

Being an undivided 1/12 interest in 975 acres of land, more or less, a part of the Thomas S. Mitchell Survey A-488 of Henderson County, Texas; and being the same land as described as 950 acres in a deed dated April 10, 1946, of record in Volume 307, Page 440 of the Deed Records of Henderson County, Texas.

The minimum lease terms, which apply to this tract, are as follows:

(1) Bonus: Market rate, but in no event will it be less than $350 per net mineral acre

(2) Royalty: 25%

(3) Primary term: Three (3) years

(4) Net Mineral Acres: 81.25 (More or Less)

Highest bidder shall pay to the Board of Regents on the day of the sale 25% of the bonus bid, and the balance of the bid shall be paid to the Board within twenty four (24) hours after notification that the bid has been accepted.

All payments shall be by cash, certified check, cashier's check, or wire transfer as the Board may direct.

Failure to pay the balance of the amount bid will result in forfeiture to the Board of the 25% paid.

The Board of Regents of The Texas A&M University System RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.

Further inquiries concerning oil, gas, and sulphur leases on System land should be directed to:

Melody Meyer

The Texas A&M University System

System Real Estate Office

301 Tarrow, 6th Floor

College Station, Texas 77840-7896

(979) 458-6350

TRD-201204637
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: September 5, 2012

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University of Houston System

Notice of Award of a Major Consulting Contract

In compliance with the provision of Chapter 2254, Subchapter B, §2254.030 of the Texas Government Code, the University of Houston System (the "University") furnishes this notice of consultant contract award. The consultant will conduct the following services: evaluate the efficiency and effectiveness of the University's operations and organizational structures; conduct policy analysis and identify national best practices for consideration by the University's institutions; assist the University in identifying and executing strategic goals; and provide counsel to the Board of Regents in matters related to governance.

The contract was awarded to Pappas Consulting Group, Inc., 117 Island Cove Way, Palm Beach Gardens, Florida 33418, for an amount not to exceed $150,000.

The beginning date of the contract is August 28, 2012, and the ending date is August 31, 2013.

Consultant is expected to present its final written report to the University of Houston System in connection with the services no later than August 31, 2013.

TRD-201204634
Kristen Gibson
Associate General Counsel
University of Houston System
Filed: September 5, 2012

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Texas Water Development Board

Applications for September 2012

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73640, a request from the City of McAllen, P.O. Box 220, McAllen, Texas 78501, received March 9, 2012, for financial assistance in the amount of $7,808,511, consisting of $6,655,000 in loan and $1,153,511 in loan forgiveness from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #62529, a request from the City of Comanche, 114 W. Central Avenue, Comanche, Texas 76442-3215, received July 5, 2012, for financial assistance in the amount of $1,269,750 consisting of $705,000 in loan and $564,750 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62518, a request from the City of Menard, P.O. Box 145, Menard, Texas 76859, received February 15, 2012, for financial assistance in the amount of $1,087,000 consisting of $550,000 in loan and $537,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62525, a request from the City of Paris, P.O. Box 9037, Paris, Texas 75460-9037, received June 22, 2012, for financial assistance in the amount of $3,400,778, consisting of $2,900,000 in loan and $500,778 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62526, a request from the City of Ranger, 400 W. Main Street, Ranger, Texas 76470, received June 22, 2012, for financial assistance in the amount of $1,612,761 consisting of $895,000 in loan and $717,761 in loan forgiveness from the Drinking Water State Revolving Fund to finance the water system improvements, utilizing the pre-design commitment option.

Project ID #10372, a request from the City of Alpine, 100 N. 13th Street, Alpine, Texas 79830, received May 1, 2012, for financial assistance in the amount of $204,000 consisting of a $102,000 grant and a $102,000 loan from the Economically Distressed Areas Program for acquisition and design costs relating to wastewater system improvements.

Project ID #21721, a request from the Panhandle Groundwater Conservation District, P.O. Box 637, White Deer, Texas 79097-0637, received July 24, 2012, for a loan in the amount of $2,000,000 from the Agricultural Water Conservation Program to provide financing for an agricultural water conservation program.

Project ID #21720, a request from the City of Brownwood, P.O. Box 1389, Brownwood, Texas 76804-1389, received July 10, 2012, for a loan in the amount of $12,000,000 from the Texas Water Development Fund to fund a direct re-use project, utilizing the pre-design funding option.

TRD-201204785
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: September 11, 2012

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*