



TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS

2401 E 6th St, Ste 3037, PMB 153, Austin, TX 78702

(512) 476-9901 | info@taahp.org | taahp.org



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July 29, 2025

Mr. Cody Campbell, Director of Multifamily Programs  
Texas Department of Housing and Community Affairs  
221 E 11<sup>th</sup> Street  
Austin, Texas 78701  
[cody.campbell@tdhca.state.tx.us](mailto:cody.campbell@tdhca.state.tx.us)

Re: Texas Affiliation of Affordable Housing Providers – Consensus Recommendations on  
2026 Qualified Allocation Plan

Dear Mr. Campbell:

The Texas Affiliation of Affordable Housing Providers (“TAAHP”) greatly appreciates the time that TDHCA staff and the Board have dedicated to discussing the 2025 Draft Qualified Allocation Plan (“QAP”) and Multifamily Rules. Our membership represents a variety of disciplines and works diligently to provide affordable housing to low- and moderate-income families in the State of Texas. It is TAAHP’s policy to submit only those recommendations that represent a consensus among our membership; those consensus recommendations are attached hereto.

On behalf of our membership, TAAHP thanks you and staff for all your efforts on the QAP. If you have any questions or would like to discuss any of these items further, please do not hesitate to contact Karsten Lowe or Emily Abeln.

Sincerely,

Karsten Lowe  
TAAHP QAP Chair  
(210) 493-8633  
[karsten.lowe@jpi.com](mailto:karsten.lowe@jpi.com)

Emily Abeln  
TAAHP QAP Co-Chair  
(713) 569-4833  
[emily@brinshore.com](mailto:emily@brinshore.com)

CC: Meghan Cano, President  
Kathryn Saar, President-Elect  
Bobby Wilkinson, Executive Director, TDHCA  
Joshua Goldberger, Administrator 9% Competitive HTC, TDHCA



# TAAHP Recommendations for the 2026 QAP

## QAP Committee Review & Consensus Outcomes – July 29, 2025

QAP Section	Proposed Change	Outcome
§11.6(3)(5)(c)(iii) – Pg. 49	Remove the 50% rehab cap in subregions with less than \$2M in credits; retain in larger urban regions.	✅ Adopted by Consensus
§11.7(2)(A)(i)(II) – Pg. 54	Expand school-based tiebreaker to include middle and high schools in addition to elementary.	✅ Adopted by Consensus
§11.9(b)(2)(A)(i) – Pg. 61	Clarify that the qualifying HUB individual must materially participate in the development.	✅ Adopted by Consensus
§11.9(b)(3) – Pg. 63	Eliminate 'Quantity of Low-Income Units' scoring item and all subparts.	✅ Adopted by Consensus.
§11.9(c)(4)(A) & (C) – Pgs. 66–67	Remove Section 811 scoring; standardize CoC hold period to 6 months for urban subregions only.	✅ Adopted by Consensus
§11.9(d)(7) – Pgs. 84–85	Add Opportunity Zones as a 7-point CRP alternative.	✅ Adopted by Consensus.
§11.9(e)(4)(A) – Pg. 88	Move tax exemption scoring to Leveraging with Path A: no exemption for 15 years.	✅ Adopted by Consensus
§11.9(e)(4)(B)(i–iv) – Pg. 88	Raise leveraging thresholds by 1% to reflect cost escalation.	✅ Adopted by Consensus
§11.9(e)(8) – Pg. 90	Remove 1-point scoring item for requesting less than 100% of regional allocation.	✅ Adopted by Consensus.
§11.9(e)(9) – Pg. 90	Pause Readiness to Proceed Scoring Item	✅ Adopted by Consensus.
Multiple: §11.9, §11.101 – Pgs. 71–102	Remove all scoring, eligibility, and disclosure items tied to TEA school ratings (SB 2137). §11.9(c)(5)(B)(i)(XV) – <i>Opportunity Index: Urban Scoring Criteria</i> (Page 71) §11.9(c)(5)(B)(ii)(XIV) – <i>Opportunity Index: Rural &amp; USDA Criteria</i> (Pg 73) §11.101(a)(3)(D)(iii) – <i>Neighborhood Risk Factors</i> (Pages 98–99) §11.101(a)(3)(E)(iii) – <i>Evidence of Mitigation</i> (Page 100) §11.101(b)(1)(C) – <i>Ineligible Development Sites</i> (Page 102)	✅ Fully Implemented – SB 2137 compliance



# TAAHP Recommendations for the 2026 QAP

*Detailed Summary of Committee Discussion – July 29, 2025*

## REMOVE 50% REHAB CAP FOR SMALL SUBREGIONS

### QAP Section:

§11.6(3)(5)(c)(iii) – *Award Recommendation Methodology* (Page 49)

Previously limited the total amount of 9% credits awarded to rehabilitation projects to no more than 50% of the region's allocation, unless all eligible new construction applications had already been funded.

**Proposed Change:** Remove the 50% cap on rehabilitation projects only in subregions with less than \$2 million in credit availability. Retain the cap in larger urban subregions with greater credit capacity.

### Key Justifications:

- In small and rural subregions, especially those capped at \$750,000, high costs make new construction unworkable—rehab is often the only feasible way to provide or preserve housing.
- The change maintains regional fairness by not altering the Regional Allocation Formula (RAF) or shifting credits between regions.
- The expected 12% increase in federal credit resources (pending IRS notice) adds further capacity to absorb increased rehab activity without sacrificing new supply in other regions.

### Concerns Raised:

- A related proposal to raise the \$750,000 minimum allocation per subregion—a more redistributive alternative—was rejected by 70% of participants due to RAF equity concerns.

**Outcome:**  Consensus Reached. Strong support for a targeted, non-redistributive solution.

## EXPAND SCHOOL-BASED TIEBREAKER TO INCLUDE MIDDLE & HIGH SCHOOLS

### QAP Section:

§11.7(2)(A)(i)(II) – *Tiebreaker Factors: Proximity to Schools* (Page 54)

→ Previously limited to zoned elementary schools only; now broadened to include middle and high schools.

**Proposed Change:** Permit applicants to use zoned middle or high schools—in addition to elementary schools—for the purposes of the school-based tiebreaker.

### Key Justifications:

- Fulfills TDHCA Board request to broaden flexibility.
- Maintains geographic basis only – fully compliant with SB 2137.
- Easy to implement using current methodology and zoning verification.

### Concerns Raised:

- No formal objections were raised.
- A clarification was added to ensure that only zoned campuses qualify—open enrollment and district-wide choice schools are not eligible under this provision.

**Outcome:**  Consensus Reached. The change was viewed as a minor but meaningful improvement.



## CLARIFY HUB PARTICIPATION MUST INVOLVE QUALIFYING INDIVIDUAL

### QAP Section:

**§11.9(b)(2)(A)(i)** – *Sponsor Characteristics: HUB Participation* (Page 61)

→ Requires that the individual(s) who qualified the firm as a HUB must materially participate in development and operations throughout the compliance period.

**Proposed Change:** Clarify that the *certified HUB individual*—not just any member of the entity—must be directly involved in the project’s development and operations.

### Key Justifications for Change:

- Directly addresses TDHCA concerns about nominal or symbolic HUB participation, such as where certification is based on a spouse or family member with no actual involvement.
- Preserves the integrity of the scoring item while avoiding broader changes that could reduce legitimate HUB access.
- Viewed as a practical and measured compromise that signals good faith while maintaining the item’s original intent.

### Concerns Raised:

- Some noted that monitoring may not change dramatically, and the impact could be more symbolic than enforceable in practice.
- Still, members agreed it was better to advance a narrow fix now than risk broader overhauls or deletion of the scoring item later.

**Outcome:**  Consensus Reached. The committee agreed this clarification was a reasonable and strategic way to respond to agency feedback without undermining true HUB entities.

## ELIMINATE ‘QUANTITY OF LOW-INCOME UNITS’ SCORING ITEM

### QAP Section:

**§11.9(b)(3)** – *Competitive HTC Selection Criteria: Quantity of Low-Income Units* (Page 63)

→ This scoring item awarded points for maximizing the total number of restricted units per development.

**Proposed Change:** Delete the scoring item and all subclauses, including the portion incentivizing higher unit counts in rehabilitation developments.

### Key Justifications:

- Originally introduced as a one-year experiment but misaligned with current deal feasibility.
- Developers reported feeling pressured to overstate unit counts to remain competitive, resulting in unsustainable capital stacks and deals that were withdrawn, delayed, or failed to close.
- The rehabilitation subclause conflicted with the Board’s imposed regional cap on rehab awards, creating contradictory incentives within the QAP.
- Removal aligns scoring with rising costs, smaller deal sizes, and sound underwriting.

### Concerns Raised:

- One member proposed retaining a lower-value version of the rehab clause to support preservation of naturally occurring affordable housing (NOAH).
- However, most warned that partial retention would introduce scoring inconsistencies and might unintentionally favor low-impact or low-quality rehab projects.



**Outcome:**  Consensus Reached. 87% of members voted in favor of full removal. The committee strongly favored a clean deletion over incremental reform, viewing the item as well-intentioned but counterproductive under current market conditions.

## REMOVE SECTION 811 SECTION + STANDARDIZE CoC HOLD PERIODS TO 6 MONTHS

### QAP Section:

**§11.9(c)(4)(A)** – *Competitive HTC Selection Criteria: Special Needs Set-Asides* (Page 66)

**§11.9(c)(4)(C)** – *Continuum of Care (CoC) Hold Requirement* (Page 67)

### Proposed Change:

- **Remove Section 811 as a scoring item**, reverting to the baseline 5% special needs and 2% CoC set-aside requirements.
- **Standardize the CoC hold period to 6 months for urban subregions**, removing the 12-month requirement in urban subregions and 6-month requirement for rural subregions.

### Key Justifications:

- The 811 scoring item was a temporary, one-year addition; TDHCA staff confirmed its sunset was anticipated.
- Developers reported significant misalignment between Section 811 timelines and HTC application schedules, complicating compliance and underwriting.
- The 12-month CoC hold requirement in urban areas extended beyond initial lease-up periods, leading to delays in placed-in-service timing and credit delivery.
- A 6-month hold requirements for urban subregions balances compliance integrity with development feasibility and improves consistency across markets.

### Concerns Raised:

- Some members suggested exploring even shorter hold periods (e.g., 3 months) or shifting toward a marketing-based compliance model that does not require units to be held vacant.

**Outcome:**  Consensus Reached. Stakeholders broadly supported the change as both a technical cleanup and a practical improvement to facilitate smoother lease-up and credit timelines, especially in urban regions.

## ADD OPPORTUNITY ZONES AS CRP ALTERNATIVE SCORING

### QAP Section:

**§11.9(d)(7)** – *Concerted Revitalization Plan and Opportunity Zones* (Page 84–85)

→ Adds a new subparagraph that awards 7 points to developments located within federally designated Opportunity Zones.

**Proposed Change:** Allow a parallel 7-point scoring path for developments located in Opportunity Zones (OZs)– without requiring traditional CRP documentation.

### Key Justifications:

- Opportunity Zones reflect state/federal revitalization priorities and provide basis boost benefits.
- Avoids excessive documentation and protects scoring access for 4th quartile areas.
- Widens access for smaller developers without CRP infrastructure.
- Responds to prior TDHCA staff proposal to limit CRPs, which was strongly opposed.

### Concerns Raised:

- Some concern about “overuse” of CRP points, but stakeholders disagreed this was a problem.



- Encouraged TDHCA to clean up submission checklist language.

**Outcome:**  Consensus Reached. The committee broadly supported this addition as a smart, low-burden enhancement that advances revitalization goals while improving geographic equity in the scoring system.

## UPDATE COST OF DEVELOPMENT PER SQUARE FOOT

### QAP Section:

**§11.9(e)(2)** – *Cost of Development per Square Foot* (Page 86)

→ Sets maximum allowable development costs per square foot, adjusted annually.

**Proposed Change:** No change in redline – just an FYI. TDHCA will continue to update cost thresholds annually based on inflation and market conditions. Statutory obligation under Texas Government Code §2306.6710(b)(2).

**Outcome:** No need for consensus. The committee deferred to TDHCA’s annual process for updating it.

## ADD TAX EXEMPTION SCORING OPTION TO LEVERAGING SECTION

### Proposed QAP Section:

**§11.9(e)(4)(A)** – *Leveraging: Property Tax Exemption Path* (Page 88)

→ New subparagraph (A) allows 3 points for developments that do **not** claim a property tax exemption, abatement, or similar benefit for the first 15 years.

### **Proposed Change:**

Create a dual-path scoring structure under the Leveraging section:

- **Subparagraph A:** Applicants certify that no property tax exemption will be claimed through Year 15 (3 points).
- **Subparagraph B:** Applicants pursue revised leveraging thresholds (see next item).

### **Key Justifications:**

- More logically belongs in Leveraging, where the financial impact of tax status is already evaluated.
- Responds directly to Board’s call to reward taxable developments without disincentivizing local policy tools like CRPs or PFCs.
- Multiple participants pointed out that in some cases—such as when local governments automatically offer exemptions through CRP incentives—developers would be unable to refuse the exemption even if they wanted to. In those cases, applicants could default to the leveraging option.

### **Concerns:**

- Some members expressed that most applicants will default to Path B, making the political impact of Path A largely symbolic.
- Interest in eventually collecting longitudinal data on exemption usage to inform future reforms or scoring weight.

**Outcome:**  Consensus Reached. Strong stakeholder alignment on structure and intent. The change preserves developer flexibility while signaling support for local tax contributions.



## RAISE LEVERAGING THRESHOLDS TO REFLECT CURRENT COSTS

### QAP Section:

**§11.9(e)(4)(B)(i-iv)** – *Leveraging Threshold Scoring* (Page 88)

→ Revised scale increases each point tier by 1%:


**Proposed Change:** Adjust each leveraging point threshold by 1% to account for increased development costs and reduced soft funding availability.

### Key Justifications:

- Brings the QAP in line with real-world capital stack conditions and construction cost escalation.
- Reduces pressure on developers to submit unrealistically low credit requests just to score.
- Viewed as a technical correction that maintains the policy intent without punitive side effects.

### Concerns:

- None. Stakeholders unanimously supported the revision as overdue and needed.

**Outcome:**  Consensus Reached. Participants agreed the update was timely, practical, and aligned with sound underwriting practices.

## ELIMINATE SCORING PENALTY FOR EXCEEDING 100% REGIONAL ALLOCATION

### QAP Section:

**§11.9(e)(8)** – *Funding Request Amount* (Page 90)

→ Previously awarded 1 point to applications requesting less than or equal to 100% of the region's total credit allocation.


**Proposed Change:** Remove the scoring item that penalizes applicants requesting more than 100% of the regional allocation amount.

### Key Justifications for Change:

- Unfairly penalizes applicants in smaller subregions where most deals—regardless of efficiency—naturally exceed the \$750,000 statutory minimum allocation.
- Creates a structural scoring bias that favors larger regions where even sizable developments remain within allocation limits.
- Encourages developers to artificially shrink their deals just to gain the point, which compromises project feasibility and long-term performance.

### Concerns:

- None. Stakeholders consistently cited this item as one of the most burdensome scoring barriers in rural and lower-credit areas.

**Outcome:**  Consensus Reached - Scoring Item Removed. The committee unanimously supported removal of this provision as a necessary correction to level the playing field across regions.



## PAUSE READINESS TO PROCEED SCORING ITEM

### QAP Section:

**§11.9(e)(9)** – *Readiness to Proceed* (Page 90)


→ Awards points to applicants that can demonstrate advanced site control, financing, and permitting milestones at application time.

### Key Justifications for Reform:

- There is a growing disconnect between this scoring item and actual delivery timelines, especially given TDHCA’s routine granting of placed-in-service extensions.
- Developers are being penalized for market-wide delays such as interest rate shocks, material shortages, and permitting backlogs—factors outside their control.
- Originally added to support disaster recovery cycles (e.g., post-Harvey), this item may no longer serve its intended purpose in the current statewide context.

### Concerns Raised:

- Full elimination may be politically sensitive and could require sign-off from the Governor or TDHCA Board.
- A middle-ground reform—such as clarifying when the penalty is applied or tying scoring to actual force majeure events—was raised as a feasible interim step.
- General sentiment favored pausing rather than permanently removing the item.


**Outcome:**  Consensus Reached. Pause Readiness to Proceed item.

## REMOVAL OF SCHOOL PERFORMANCE-BASED SCORING (SB 2137 COMPLIANCE)

**Mandate:** Senate Bill 2137 (2025) prohibits the use of public school academic performance—such as TEA Accountability Ratings—as a factor in LIHTC eligibility or scoring.

### QAP Sections Affected:

1. **§11.9(c)(5)(B)(i)(XV)** – *Opportunity Index: Urban Scoring Criteria* (Page 71)  
→ Deleted 1 point for being in the attendance zone of a TEA-rated A or B school.
2. **§11.9(c)(5)(B)(ii)(XIV)** – *Opportunity Index: Rural & USDA Criteria* (Page 73)  
→ Deleted 1 point for being in the attendance zone of a TEA-rated A or B school.
3. **§11.101(a)(3)(D)(iii)** – *Neighborhood Risk Factors* (Pages 98–99)  
→ Removed disclosure requirement tied to low TEA-rated campuses.
4. **§11.101(a)(3)(E)(iii)** – *Evidence of Mitigation* (Page 100)  
→ Eliminated mitigation requirements related to school performance.
5. **§11.101(b)(1)(C)** – *Ineligible Development Sites* (Page 102)  
→ Deleted provisions disqualifying sites based on low-rated school attendance zones.

**Outcome:**  Fully Implemented. All education-based provisions were removed to bring the QAP into full compliance with SB 2137.

### §11.6.Competitive HTC Allocation Process.

This section identifies the general allocation process and the methodology by which awards during the Application Round are made.

**(1) Regional Allocation Formula.** The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an amount not less than \$750,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve \$750,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the competitive ranking of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$6 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter (relating to Tax Credit Request, Award Limits and Increase in Eligible Basis). The Department will publish on its website on or before December 1 of each year, initial estimates of Regional Allocation Formula percentages and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated.

**(2) Credits Returned and National Pool Allocated After January 1.** For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under force majeure provisions), the Department shall first return the credits to the subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. Consistent with the allocation process described in this section, credits that are returned to the USDA or At-Risk Set-Asides are not eligible to flow to another subregion or set-aside unless no eligible Applications remain in the Set-Aside to which the credits were returned. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to any remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

**(3) Award Recommendation Methodology.** (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting

divisions. In general, Applications reviews will be conducted in the order described in subparagraphs (A) - (F) of this paragraph based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

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

(B) At-Risk Set-Aside Application Selection (Step 2). The second set of reviews will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter (relating to At-Risk Set-Aside) are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps. If all eligible Applications participating in the At-Risk Set-Aside are awarded and the minimum requirement stated in §11.5(3) has not been met, the Department will award the highest scoring Applications in the USDA Set-Aside that are otherwise eligible to participate in the At-Risk Set-Aside until that threshold is met.

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application with the priorities in this subparagraph first prioritized. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions. In Urban subregions in which credits available do not allow for all of the priorities in clauses (iii) to (v) of this subparagraph to be achieved, the priorities will be followed in the order reflected in this subparagraph.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website.

(ii) In accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for

§11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)), is located in an Urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(iii) In Urban and Rural subregions eligible for the maximum HTC request limit established in §11.4(b), not including the calculation of At-Risk Applications awarded, no more than 50% of all credits in a subregion will be awarded to Applications proposing Rehabilitation or Reconstruction, unless all eligible New Construction Applications in that subregion have been awarded.

**Commented [KS1]:** Prioritizing net new units makes sense in place that have access to the max credits. In places with less credits, rehab is often the only development type that will be financially feasible.

**Commented [WP2R1]:**  Adopted by Consensus

(iv) In Urban subregions containing a county with a population that exceeds 750,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that is located in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years from the date of Application submission and funds from the HUD Choice Neighborhood awardee are reflected in the Application's Sources and Uses.

(v) In Urban subregions containing a county with a population that exceeds 1,000,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that elects to provide a High-Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site that meets the requirements of items (a)-(c) of subparagraph (C)(i)(I) of §11.101(b)(5)- (related to Common Amenities). Developments serving a Target Population that is Elderly or Supportive Housing are not eligible for this item.

(vi) In Urban and Rural subregions that do not contain a county with a population of at least 2,500,000, no more than one Application with a Supportive Housing Target Population will be awarded unless there are no other eligible Applications in the subregion. Awards made in the At-Risk Set-Aside will not count towards this limitation.

(vii) In Urban subregions that contain a county with a population of at least 2,500,000, no more than two Applications with a Supportive Housing Target Population will be awarded unless there are no other eligible Applications in the subregion. Awards made in the At-Risk Set-Aside will not count towards this limitation.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural subregion as compared to the subregion's allocation, continuing with the priorities and limitations established in §11.6(3)(C). This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20% of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is

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

#### §11.7. Tie Breaker Factors.

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

(1) For Applications funded through the USDA Set-Aside

(A) Applications proposed to rehabilitate the Property with the earliest year of initial construction as a residential Development.

(i) Only the year of initial construction will be taken into consideration. The specific date of construction or conversion will not affect this tie breaker. A tie will persist if two Applications have the same year. In the event that a Development was constructed over a number of years, the earliest year will be used.

(ii) Year submitted must be evidenced by the initial USDA loan documentation. If such documentation does not exist or cannot be provided, the Application is ineligible for this tiebreaker.

(B) Once 5% or more of the State Housing Credit Ceiling has been allocated to USDA developments, no further applications with USDA financing shall receive preference under this tie breaker but may receive preference under subsections (2) and (3) of this section.

(2) For all other competitive Applications

((A) Applications proposed to be located in closest proximity to the following features as of the Full Application Delivery Date.

() Each feature's location may be used only once for tie breaker purposes regardless of the number of categories it fits:

(I#) A park or a parcel of land dedicated for public use by either a governmental entity or an entity authorized or created by a governmental entity that is used as parkland or for a recreational purpose. This feature must have been designated by the relevant authority one year prior to the Full Application Delivery Date. Features that charge admission for the general public to access the entire property for the majority of the calendar year are not eligible for consideration. A school campus' facilities may not be used for this feature; however, a parcel of land that is owned by a school district may qualify so long as it meets all requirements.

(II#) The elementary schools of attendance. In districts with district-wide enrollment or choice, the Applicant shall use the closest elementaryschools.

Commented [WP3]:  Adopted by Consensus

(-a-) Elementary school. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools, the closest campus of attendance that serves any grade from kindergarten to fifth grade shall be used.

(-b-) Middle school

(-c-) High school

(III#) A full service grocery store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items.

(IV#) A Public Library with indoor space, physical books that can be checked out and that are of general and wide-ranging subject matter, computers and internet access, and that is: Open 35 hours or more per week in an Urban Area and 25 hours or more per week in a Rural Area. The library must not be age or subject-restricted and must be at least partially funded with government funding.

(i#) The linear measurement will be performed from closest parcel boundary of the Development Site to closest parcel boundary of each feature. The Department may prescribe a specific form to be used for the calculation of these distances using GPS coordinates provided by the Applicant.

(iii) In calculating this proximity, each feature's distance will be required for submittal, with the sum of the three closest features being used to produce the result. The Application with the lowest sum of proximity will receive preference.

(iv) In the event that one of the top three features is disqualified due to not conforming to the definitions provided or a substantial misrepresentation of distance from the development, the fourth will be used as an opportunity to replace the disqualified feature. If multiple features are disqualified, the Application will not receive preference. If the competing application(s) also has multiple disqualified features the tie will persist.

(v) In the event that the sum proximities described under §11.7(2)(B) for two tied Applications differ by 100 or fewer feet, the tie will persist.

(3) If the tie persists, preference will be determined using this final tiebreaker. Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded 15 or fewer years ago. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory from the Site Demographics Characteristics report from the current year. The specific month and date of the award are disregarded for this analysis. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

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

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

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets the requirements of either subparagraphs (A), (B), or (C) of this paragraph.

(A) HUB. The ownership structure contains a HUB or HUBs certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date. The HUB or HUBs must have some combination of ownership interest in each of the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. When more than one HUB is included, each individual HUB is not required to participate in each category, nor is each HUB required to meet the minimum 5% in a category in which it does not participate. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB or nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories. Any Application that includes one or more HUBs must include a narrative description of each of the HUB's experience directly related to the housing industry.

(i) The member or members of the HUB that qualify for certification from the Comptroller must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal or officer of the HUB cannot be a Related Party to or Affiliate, including the spouse, of any other Principal or officer of the Applicant, Developer or Guarantor (excluding another Principal of said HUB), regardless of Control. (2 points).

Commented [WP4]:  Adopted by Consensus

(iii) The HUB must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the HUB or nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer or Guarantor (excluding another Principal of said HUB or Nonprofit Organization). (1 point).

(B) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization provided the Application is submitted in the Nonprofit Set-Aside. The Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50%, and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

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

(ii) A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (2 points).

(iii) The Qualified Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (1 point).

(C) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of IRC §42(h)(5)(C) on the Application Delivery Date, with at least 51% ownership in the General Partner of the Applicant. (2 points)

(i) The nonprofit organization must maintain Control of the Development and materially participate in the operation of the Development throughout the

Compliance Period. Nonprofit organizations that formally operate under a parent organization may assign Control of the Development to that parent organization, so long as it meets the requirements of IRC §42(h)(5)(C).

(ii) The nonprofit organization, or individuals with Control of the nonprofit organization, must provide verifiable documentation of at least 10 years' experience in the continuous operation of a Development that provides services similar to those in the proposed Development.

(iii) The Applicant will provide a minimum of 3 additional points under §11.101(7) of this chapter (related to Resident Supportive Services), in addition to points selected under subsection (c)(3) of this section.

~~(3) Quantity of Low Income Units. An Application may qualify for up to three (3) points under subparagraphs (A) or (B) of this paragraph. All calculations of averages shall be based solely on the July meeting of the Governing Board at which final awards of credits are authorized. Subsequent awards or withdrawals and supplemental credit allocations shall not be considered when calculating averages under this item. The only awards that will be included in the calculation of averages are 9% competitive tax credits, inclusive of any forward commitments made at the July meeting, and the average will only calculate housing tax credit units. If points are to be claimed under this item, Low Income Units shall not be reduced after an award of tax credits. The Department shall publish relevant averages pertaining to this scoring item in the Site Demographics and Characteristics Report, and those figures shall be authoritative. These points are not available in the USDA or At Risk Set Asides, and Applications that were awarded in those Set Asides will not be included in when calculating averages for this item.~~

~~(A) The Development is Urban and the Application proposes a number of Low Income Units that is greater than the subregion average of the 2022 and 2023 competitive rounds.~~

~~(i) The proposed number of Low Income Units is 5% greater than the subregion average of the 2022 and 2023 competitive rounds (1 point);~~

~~(ii) The proposed number of Low Income Units is 10% greater than the subregion average of the 2022 and 2023 competitive rounds (2 points);~~

~~(iii) The Application is proposing Rehabilitation of a Development that has no existing rent and income restrictions and does not receive any subsidy listed under §11.5(3)(B)(i). The proposed number of Low Income Units is 50% greater than the subregion average of the 2022 and 2023 competitive rounds (3 points).~~

**Commented [KS5]:** In the current capital constrained environment, minimum unit counts don't make sense and lead to Applicants submitting deals that are infeasible.

**Commented [WP6R5]:**  Adopted by Consensus.

~~(B) The Development is rural and the Application proposes a number of Low-Income Units that is larger than the average of all rural awards in the 2022 and 2023 competitive rounds.~~

~~(i) The proposed number of Low-Income Units is 5% greater than the average of all Rural awards in the 2022 and 2023 competitive rounds (1 point);~~

~~(ii) The Development size is 80 units and entirely Low-Income or the proposed number of Low-Income Units is 10% greater than the average of all rural New Construction awards in the 2022 and 2023 competitive rounds (2 points).~~

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

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

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 30% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 20% of all Low-Income Units at 50 % or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 20% of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 10% of all Low-Income Units at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or

(iii) The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or

(iii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. If selecting points from paragraph (1)(A) or paragraph (1)(B) of this subsection, these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from paragraph (1)(C) or paragraph (1)(D) of this subsection, these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation. Scoring options include:

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

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

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Supportive Services. (§2306.6710(b)(3) and (1)(G), and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of resident supportive services, which are listed in §11.101(b)(7) of this chapter (relating to Development Requirements and Restrictions) and meet the requirements of that section. (10 points).

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

(4) ~~Section 811 Project Rental Assistance Program (811 PRA)~~ and Residents with Special Housing Needs. (§2306.6710(b)(4); §42(m)(1)(C)(v)) An Application may qualify to receive up to four (4) points by serving Residents with Special Housing Needs by selecting points under any combination of subparagraphs (A), (B), and (C), or this paragraph. Only Applications that are unable to meet the requirements of subparagraph (A) of this paragraph may qualify for points under subparagraphs (B) or (C) of this paragraph relating to Residents with Special Housing Needs. The point available under subparagraph (D) is available to all Applications that qualify. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program.

**Commented [KS7]:** Bobby mentioned this was a one year add - Cody needs to confirm they got enough 811 units in 2025 - this redline assumes they did

**Commented [WP8R7]:**  Adopted by Consensus

~~(A) Section 811 Project Rental Assistance Program (811 PRA). An Application may qualify to receive three (3) points by serving tenants with special housing needs through participation in the 811 PRA Program. Points will be awarded as described in clauses (i) through (ii) of this subparagraph.~~

~~(i) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Section 811 PRA Program, as referenced in 10 TAC §8.4, Qualification Requirements for Existing Developments. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 5% of the total Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Project Rental Assistance Rule (811 Rule), 10 TAC Chapter 8, limits the Existing Development to fewer Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for~~

points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8. (3 points)

(ii) In order to be eligible for points, Applicants must commit at least 5% of the total Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Rule, 10 TAC Chapter 8, limits the Development to fewer Section 811 PRA Program Units. The Applicant will comply with the requirements of 10 TAC Chapter 8. (3 points)

(A) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing Needs or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(B) If the Development has committed Units under subparagraph (A) of this paragraph, the Development must commit at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness. Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market the 2% of Units through the Continuum of Care and other homelessness providers local to the Development Site. In addition, the Department will require an initial minimum ~~twelve-month period in Urban subregions, and an initial~~ six-month period in ~~Rural-Urban~~ subregions, during which Units must either be occupied by Persons referred from the Continuum of Care or local homeless service providers, or held vacant, unless the Units receive HOME funds from any source. After the initial ~~twelve-month or six-month~~ period, the Development Owner will no longer be required to hold Units vacant

Commented [KS9]: 12 month is more than the initial lease-up period and can cause problems with credit delivery

Commented [WP10R9]:  Adopted by Consensus

but will be required to continue to provide quarterly notifications to the Continuum of Care and other homeless service providers local to the Development Site on the availability of Units at the Development Site. A Development is not eligible under this paragraph unless points have also been selected under subparagraph (B) of this paragraph. (1 point)

(C) If the Development is Supportive Housing and has a proposed occupancy preference or limitation for Veterans or a subgroup of only Veterans that is required or allowed by other federal or state financing by the Full Application Delivery Date. These points are only available to Developments that are proposed to be located on sites owned by the United States Department of Veterans Affairs (1 point).

(5) Opportunity Index. (42(m)(1)(C)(i)) The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. Based on the American Community Survey (ACS) data, a Development is eligible for a maximum of seven (7) opportunity index points from subparagraphs (A) and (B) of this paragraph.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and meets the requirements in clause (i),(ii), or (iii) of this subparagraph:

(i) The Development Site is located entirely within a census tract that has:

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region whichever is greater; and

(II) a median household income in the two highest quartiles among Census tracts within the uniform service region (2 points); or

(ii) The Development Site is located entirely within a census tract that has:

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater, and

(II) a median household income in the third quartile among Census tracts within the region, and

(III) is contiguous to a census tract that is in the first or second quartile among tracts for median household income in the region, and has a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and the Development Site is no more than 2 miles from the boundary between the census tracts (1 point); or

Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

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

(XI) Development Site is within 2 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XII) Development Site is within 2 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XIII) Development Site is within 2 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

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

(XV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point)

(XV+) If at Application, the Development is located in a county with a population of 1.2 million or more, but less than 4 million, and is located not more than two miles from a veteran's hospital, veteran's affairs medical center, or veteran's affairs health care center, (which include all providers listed under the Veteran's Health Administration categories, excluding Benefits Administration offices, listed at this link [https://www.va.gov/directory/guide/fac\\_list\\_by\\_state.cfm?State=TX&dnum=AL](https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=TX&dnum=AL))

**Commented [KS11]:** Pursuant to SB 2137, cannot consider school scores in QAP

**Commented [WP12R11]:**  Adopted by Consensus

L), and has federal or state financing that requires or allows preference for leasing units in the Development to low income veterans, and agrees to provide that preference. (1 point).

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

(I) The Development Site is located within 5 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (2 point).

(II) The Development Site is located within 5 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (2 point).

(III) The Development Site is located within 5 miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point).

(IV) The Development Site is located within 5 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point).

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

(VI) The Development Site is located within 5 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-

restricted and must be at least partially funded with government funding. (1 point).

(VII) The Development Site is located within 5 miles of a public park with a playground. (1 point).

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

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

(X) Development Site is within 4 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point).

(XI) Development Site is within 4 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XII) Development Site is within 4 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

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

(XIV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

**Commented [KS13]:** Pursuant to SB 2137, cannot consider school scores in QAP

**Commented [WP14R13]:**  Adopted by Consensus

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

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, Program Calendar for Competitive Housing Tax Credits), include the Development Site.

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

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

Commented [WP15]:  Adopted by Consensus.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is geographically located within an area for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality.

(ii) A plan may consist of one or two complementary local planning documents that together have been approved by the municipality as a plan to revitalize the specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, including a consolidated plan or one-year action plan required to receive HUD funds does not equate to a concerted revitalization plan. However, a comprehensive plan may include plans for specific areas targeted for revitalization that would qualify so long as that plan meets all requirements of this section.

(iii) The proposed Development must be entirely located within the targeted revitalization area.(iv) The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) and (II) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been published by the municipality or county in which the Development Site is located.

(II) The plan must be current at the time of Application. (v) If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded as follows:

(-a-) the proposed Development Site is located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(-b-)the proposed Development Site is not located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(-c-)the proposed Development Site does not have a letter described in items (-a-) and (-b-) of this subclause (5 points).

(B) For Developments located in a Rural Area, the Rehabilitation or demolition and Reconstruction of a Development that has been leased and occupied at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include Units that cannot be occupied due to needed repairs, as confirmed by the SCR or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Neighborhood Risk Factors. (7 points)

**(C) Developments located in a Federal Opportunity Zone. (7 points)**

**Commented [KS16]:** Opportunity Zones are analogous to CRPs but were nominated at the State level (with local input). Investment in these zones have preferential tax treatment and therefore have the potential of achieving higher credit pricing.

**Commented [WP17R16]:**  Adopted by Consensus.

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

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) All eligible Applications are awarded twenty-six (26) points, conditioned upon the successful completion of underwriting in accordance with this chapter.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned. The Department will annually compare the proportional cost increases from October of the prior year to October of the year being calculated based on the Construction Price Index for Multifamily Housing Units Under Construction (US Census Bureau) and increase the square foot cost targets in this item by that annual proportional amount of increase.

**Commented [KS18]:** Need to adjust with CPI

**Commented [WP19R18]:** NO CHANGE NEEDED. TDHCA DOES THIS.

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

- (i) the voluntary Eligible Building Cost per square foot is less than or equal to \$150.68 per square foot; or
- (ii) the voluntary Eligible Hard Cost per square foot is less than or equal to \$201.28 per square foot.

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

- (i) the voluntary Eligible Building Cost per square foot is less than or equal to \$160.80 per square foot; or
- (ii) the voluntary Eligible Hard Cost per square foot is less than or equal to \$211.40 per square foot.

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

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to \$201.28 per square foot; or

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to \$260.88 per square foot, located in an Urban Area, and that qualify for 5 or more points under subsection (c)(5)(A) and (B) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to \$260.88 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (K) of this paragraph will qualify for six (6) points:

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

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

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

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

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

(F) If points are claimed related to Underserved Area and/or Proximity to Jobs, the point elections may not change from what was reflected in the pre-application self-score and the supporting documentation for these points must be substantially similar to what was submitted with the Pre-Application;

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

(H) The distance used to determine the Tie-Breaker established in 10 TAC §11.7(2) remains the same or does not decrease between pre-application and full Application. If

closer features to the Development Site are identified that could potentially result in a lower distance used for the Tie-Breaker, Applicants may elect to continue using the higher distance submitted with the Pre-Application in order to not be disqualified from pre-application points;

(I) For Applications funded through the USDA Set-Aside; year of initial construction as a residential Development remains the same or is not earlier;

(J) If a high quality Pre-Kindergarten is to be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application.

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

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3)) ~~(A)~~ An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count).

(A) The Application does not include any exemptions, abatements, rebates, or similar reductions related to the ad valorem taxes imposed by the taxing jurisdictions applicable to the Development Site. The Application must include a certification from the Development Owner that no such exemption or abatement will be sought or effected prior to the expiration of the Compliance Period (3 points); or

(B) and The Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph. Applications submitted in the USDA or At-Risk Set-Asides that propose 50 or fewer units may add an additional 1% of the Total Housing Development Cost to the levels described in clauses (i) – (iv):

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 109% of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) if the Housing Tax Credit funding request is less than 109% of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than 1110% of the Total Housing Development Cost (2 points); or

(iv) if the Housing Tax Credit funding request is less than 1211% of the Total Housing Development Cost (1 point).

**Commented [KS20]:** (a) In allocating low income housing tax credits, the department shall score each application using a point system based on criteria adopted by the department that are consistent with the department's housing goals, including criteria addressing the ability of the proposed project to:

(3) consistent with sound underwriting practices and when economically feasible, serve individuals and families of extremely low income by leveraging private and state and federal resources, including federal HOPE VI grants received through the United States Department of Housing and Urban Development;

**Commented [WP21]:**  Adopted by Consensus

**Commented [WP22]:**  Adopted by Consensus

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

(5) Extended Affordability. (§§2306.6725(a)(5) and (7); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total. (4 points)

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6); §42(m)(1)(C)(x)).

(A) An Application may qualify to receive five (5) points if;

(i) For Developments with under 100 total Units at least 55% of the residential Units shall be constructed fully or partially within the Certified Historic Structure.

(ii) For Developments with 100 total Units or more, at least 55 of the residential Units shall be constructed fully or partially within the Certified Historic Structure.

(B) To qualify for points, the Development must receive historic tax credits before or by the issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the Property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)). An Application may receive points under subparagraphs (A) or (B) of this paragraph.

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

(B) The Development at the time of LURA execution is single family detached homes on separate lots or is organized as condominiums under Chapter 81 or 82 of the Texas Property Code and commits to offer a right of first refusal to tenants of the property to purchase the dwelling at a selected term but no earlier than the end of the Compliance Period and no later than the Extended Use Period. A de minimis amount of a participating tenant's rent may be attributed to the purchase of a Unit. Such commitment will be reflected in the LURA for the Development. The Applicant must provide a description of how they will implement the 'rent-to-own' activity, how they will make tenants aware of the opportunity, and how they will implement the right at the end of the selected term. If a Development is layered with National Housing Trust Funds, HOME-ARP, or another MFDL source where homeownership is not an eligible activity, the right of first refusal may not be earlier than the end of the Federal Affordability Period. §42(m)(1)(C)(viii). (1 point)

~~(8) Funding Request Amount. The Application requests no more than 100% of the amount of LIHTC available within the subregion or set aside as determined by the regional allocation formula on or before December 1, 2024. (1 point)~~

~~(89) Readiness to Proceed. The Application includes a certification that site acquisition and building construction permit submission will occur on or before the last day of March of the following year or as otherwise permitted under subparagraph (C) of this paragraph. These points are not available in the At Risk or USDA Set Asides. (1 point)~~

~~(A) Applications must include an acknowledgement from all lenders and the syndicator of the required Development Site closing date.~~

~~(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to acquire the site and submit construction permits by the March deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.~~

~~(C) Applications that remain on the waiting list after awards are made in late July that ultimately receive an award will receive an extension of the March deadline equivalent to the period of time between the late July meeting and the date that the Commitment Notice for the Application is issued.~~

**(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds.** Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be

**Commented [WP23]:** ✓ Adopted by Consensus.

**Commented [KS24]:** In a capital constrained environment, we shouldn't be artificially capping credits like this.

**Commented [WP25R24]:** ✓ Adopted by Consensus.

## **SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS**

### **10 TAC §11.101**

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§11.101.Site and Development Requirements and Restrictions.

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

(1) Floodplain. New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements.

The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting NHTF funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME, HOME-ARP, or NSP PI funds from the Department must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, to the extent NHTF is not being requested from the Department. All Developments located within a 100 year floodplain must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features.

(A) An Undesirable Site Feature will render an Application ineligible unless acceptable mitigation as determined by staff or the Board is undertaken. For Competitive HTC Applications, if staff identifies an undesirable site feature reflected in clause (i) - (x) of subparagraph (E) and it was not disclosed, the Application shall be terminated by staff. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under clause (xi) of subparagraph (E), staff may issue an Administrative Deficiency. In the event that staff cannot reasonably conclude whether a feature is considered undesirable, it may defer to the Board for decision.

(B) Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) and Developments encumbered by a TDHCA LURA the earlier of the first day of the Application Acceptance Period for HTC, Application Acceptance Date for Direct Loan, or date the pre-application is submitted (if applicable) may be granted an exemption by staff; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing

of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability) may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application.

(C) Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit a request for pre-determination at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Undesirable Site Features become available while the Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in an Administrative Deficiency or re-evaluation.

(D) If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.

(E) The Undesirable Site Features include those described in clauses (i) - (xi) of this subparagraph. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance.

(i) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;

(ii) Development Sites located within 300 feet of an active solid waste facility, sanitary landfill facility, waste transfer station, or illegal dumping sites (as such dumping sites are identified by the local municipality);

(iii) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(iv) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(I) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(II) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(III) the railroad in question is commuter or light rail;

(v) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or that maintain fuel storage facilities, to the extent that these qualifying items are consistent with the general characteristics of heavy industry. Gas stations and other similar facilities that are not consistent with the characteristics of heavy industry are not considered an undesirable site feature;

(vi) Development Sites located within 10 miles of a nuclear plant;

(vii) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(viii) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(ix) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily;

(x) Development Sites that are located in a Clear Zone, any Accident Potential Zone, or within any Noise Contour of 65 decibels or greater, as reflected in a Joint Land Use Study for any military Installation, except that if the Development Site is located in a Noise Contour between 65 and 70 decibels, the Development Site will not be

considered to have an Undesirable Site Feature if the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(xi) Any Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) A Neighborhood Risk Factor will render an application ineligible unless acceptable mitigation as determined by staff or the board is undertaken. If the Development Site has any of the characteristics described in subparagraph (D) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, should staff determine that the Development Site has any of the characteristics described in subparagraph (D) of this paragraph and such characteristics were not disclosed, the Application shall be terminated by staff.

(B) Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraph (E) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and staff may issue an Administrative Deficiency.

(C) The presence of any characteristics listed in subparagraph (D) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit. Mitigation to be considered by staff is identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(D) The Neighborhood Risk Factors include those noted in clauses (i) - (iii) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraph (E) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13). Rehabilitation Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA), and Developments encumbered by a TDHCA LURA re exempt from this Neighborhood Risk Factor.

(ii) The Development Site is New Construction or Reconstruction and is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. Rehabilitation developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA), and Developments encumbered by a TDHCA LURA are exempt from this Neighborhood Risk Factor.

~~(iii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that had a TEA Accountability Rating of "Not Rated: Senate Bill 1365" for 2022.~~

~~(l) In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site.~~

~~(ll) 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.~~

**Commented [KS26]:** School scores prohibited from consideration by SB 2137

**Commented [WP27R26]:**  Fully Implemented – SB 2137 compliance

~~(III) If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. Sixth grade centers will be considered as part of the middle school rating.~~

~~(IV) Elderly Developments, Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units, and Applications with USDA financing for Rehabilitation of existing properties are exempt and are not required to provide mitigation for this subparagraph, but are still required to provide rating information in the Application.~~

(E) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and should include the measures described in clauses (i) - (iii) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting.

(i) Mitigation for Developments in a census tract that has a poverty rate that exceeds 40% may include a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward. If the Development is located in the ETJ, the resolution would need to come from the county.

(ii) Evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within

the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. The data must include incidents reported during the entire calendar year previous to the year of Application. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates.

~~(iii) Evidence of mitigation for each of the schools in the attendance zone that has a TEA Accountability Rating of "Not Rated: Senate Bill 1365" for 2022 must meet the requirements of clause (iv) which will be a requirement of the LURA for the duration of the Affordability Period and cannot be used to count for purposes of meeting the threshold requirements under subparagraph (7)(B)(ii) of this paragraph.~~

~~(iv) Acceptable mitigation requires that the Applicant has committed that it will operate an after-school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided to elementary, middle and high school children by a dedicated service coordinator or Third Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.~~

(F) In order for the Development Site to be found eligible, including when mitigation described in subparagraph (E) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

Commented [KS28]: SB 2137  
Commented [WP29R28]:  Fully Implemented – SB 2137 compliance

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

(iv) a Development that proposes population limitations that violate §1.15 of this title (relating to Integrated Housing Rule);

(v) a Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto;

(vi) a Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, 104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision; or

(vii) any New Construction or Reconstruction proposing more than 35.00% efficiency and/or one-Bedroom Units. This requirement will not apply to Elderly or Supportive Housing Developments. For Historic Developments, this requirement will not apply to any units constructed within the Historic structure. For any New Construction or Reconstruction undertaken as part of a Historic Application, those newly constructed or reconstructed Units must meet this standard. The Units that are part of the Historic structure will not be included in the total when determining if the Application meets this requirement.

(B) Ineligibility of Elderly Developments include:

(i) any Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

(ii) any Elderly Development with any Units having more than two Bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, or security officer. These employee Units must be specifically designated as such; or

(iii) any New Construction, Reconstruction, or Adaptive Reuse Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

~~(C) Ineligibility of Developments within Certain School Attendance Zones. Due to uncertainty linked to the delayed release of TEA Accountability ratings, this item is suspended. Any Development that falls within the attendance zone of a school that has a TEA Accountability Rating of F for 2023 and a rating of "Not Rated: Senate Bill 1365" for 2022 is ineligible with no opportunity for mitigation. Developments that are~~

**Commented [KS30]:** School scores prohibited from consideration by SB 2137

**Commented [WP31R30]:**  Fully Implemented – SB 2137 compliance

~~encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or at the time of Pre-application (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units are exempt. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.~~

~~(CB)~~ Ineligibility of Developments within Areas of High Crime. Any Development involving New Construction or Adaptive Reuse located in an area described in (a)(3)(D)(ii) of this subsection and for which mitigation submitted under subparagraph (D)(ii) of this paragraph still yields a Part I violent crime rate greater than 18 per 1,000 persons (annually) is ineligible with no opportunity for mitigation. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area must meet the Development size limitation and corresponding capture rate requirements in §11.302(i)(1)(C) of this chapter (related to Feasibility Conclusion). Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) - (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new USDA funding, staff may consider the cost standard under subparagraph (A) of this paragraph on a case-by-case basis.

(A) For Housing Tax Credit Developments with USDA financing the Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work.

(B) For Tax-Exempt Bond Developments, less than 20 years old, based on the placed in service date, the Rehabilitation will involve at least \$20,000 per Unit in Building Costs and Site Work. If such Developments are greater than or equal to 20 years old, based on the placed in service date, the Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work.

(C) For all other Developments, the Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work.