

# BOARD MEETING OF MAY 7, 2015

**J. Paul Ozer, Chair**



Juan Muñoz, Vice-Chair

Leslie Bingham Escareño, Member

T. Tolbert Chisum, Member

Tom Gann, Member

J. B. Goodwin, Member

# CONSENT AGENDA

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
BOARD MEETING**

**A G E N D A  
9:30 AM  
May 7, 2015**

**Dewitt C. Greer State Highway Building  
Ric Williamson Hearing Room  
125 E 11<sup>th</sup> Street  
Austin, Texas**

**CALL TO ORDER**

**ROLL CALL**

**J. Paul Oxer, Chairman**

**CERTIFICATION OF QUORUM**

*Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.*

*Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.*

Recognition of Barbara Deane upon the occasion of her retirement.

**CONSENT AGENDA**

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

**ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:**

**COMMUNITY AFFAIRS**

- a) Presentation, Discussion, and Possible Action on the Award of Program Year (“PY”) 2015 Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”), PY 2015 Low-Income Home Energy Assistance Program (“LIHEAP”) WAP, and PY 2015 Comprehensive Energy Assistance Program (“CEAP”) contracts to Community Action Corporation of South Texas (“CACST”) to provide weatherization and energy assistance services in Cameron and Willacy counties; and its designation as the formula funded provider of these Programs
- b) Presentation, Discussion, and Possible Action on Awards of Unexpended Program Year (“PY”) 2013 Emergency Solutions Grant (“ESG”) Funds

**Michael DeYoung**  
Director of Community  
Affairs

**ASSET MANAGEMENT**

- c) Presentation, Discussion and Possible Action on Material LURA Amendment  
93156                      Villa Victoria Apartments                      Waco
- d) Presentation, Discussion and Possible Action on Housing Tax Credit Application  
Amendment  
10222                      Citrus Gardens                      Brownsville

**Raquel Morales**  
Director of Asset  
Management

## MULTIFAMILY FINANCE

- e) Presentation, Discussion, and Possible Action regarding Waiver of 10 TAC §10.201(1)(C), Uniform Multifamily Rules related to Procedural Requirements for Application Submission

**Jean Latsha**  
Director of Multifamily  
Finance

## RULES

- f) Presentation, Discussion, and Possible Action proposing amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2 Definitions, and directing that they be published for public comment in the *Texas Register*
- g) Presentation, Discussion, and Possible Action on proposed repeal of 10 TAC Chapter 5 Community Affairs Programs, Subchapter E, Weatherization Assistance Program General, §5.503 Distribution of WAP Funds; proposed new 10 TAC §§5.503 Definitions; and 5.504 Distribution of WAP Funds; and proposed amendments to 10 TAC §§5.505 Subrecipient Requirements for Appeals Process for Applicants; 5.507 Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria; 5.516 Monitoring of WAP Subrecipients; 5.525 Eligibility for Multifamily Dwelling Units; and 5.528 Health and Safety; and directing that they be published for public comment in the *Texas Register*
- h) Presentation, Discussion, and Possible Action proposing new 10 TAC Chapter 5 Community Affairs Programs, Subchapter F, Weatherization Assistance Program, Department of Energy, §5.614 Deobligation and Reobligation of Awarded Funds, and directing that it be published for public comment in the *Texas Register*
- i) Presentation, Discussion, and Possible Action proposing the repeal of 10 TAC Chapter 23 Single Family HOME Program, Subchapter A, General Guidance; Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds; Subchapter C, Homeowner Rehabilitation Assistance Program; Subchapter D, Homebuyer Assistance Program; Subchapter E, Contract for Deed Conversion Program; Subchapter F, Tenant-Based Rental Assistance Program; and Subchapter G, Single Family Development Program, and proposing new 10 TAC Chapter 23 Single Family HOME Program, Subchapter A, General Guidance; Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds; Subchapter C, Homeowner Rehabilitation Assistance Program; Subchapter D, Homebuyer Assistance Program; Subchapter E, Contract for Deed Conversion Program; Subchapter F, Tenant-Based Rental Assistance Program; and Subchapter G, Single Family Development Program, and directing their publication for public comment in the *Texas Register*
- j) Presentation, Discussion, and Possible Action regarding adoption of the proposed amendments to 10 TAC Chapter 10 §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4) concerning Underwriting and Loan Policy and directing their publication in the *Texas Register*

**Michael DeYoung**  
Director of Community  
Affairs

**Jennifer Molinari**  
HOME Program Director

**Brent Stewart**  
Director of Real Estate  
Analysis

## BOND FINANCE

- k) Presentation, Discussion and Possible Action regarding publication of a Request For Proposal (“RFP”) for a Market Rate To Be Announced (“TBA”) Program Administrator for the My First Texas Home Program
- l) Presentation, Discussion and Possible Action regarding publication of a Request For Proposal (“RFP”) for a Master Servicer for the Texas First Time Homebuyer Program and the My First Texas Home Program

**Monica Galuski**  
Director of Bond Finance

## CONSENT AGENDA REPORT ITEMS

### ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, April 2015
- b) Report on the Department's 2nd Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")
- c) Report on the Department's 2<sup>nd</sup> Quarter Investment Report relating to funds held under Bond Trust Indentures
- d) Report on the Program Year 2015 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan and Awards

**Michael Lyttle**  
Chief of External Affairs

**David Cervantes**  
Chief Financial Officer

**Monica Galuski**  
Director of Bond Finance

**Brooke Boston**  
Deputy Executive Director

## ACTION ITEMS

### ITEM 3: COMMUNITY AFFAIRS

Presentation, Discussion, and Possible Action regarding a Program Year ("PY") 2015 Community Services Block Grant Program Conditional Award for Urban League of Greater Dallas and North Central Texas and Possible Action Authorizing the Department to Issue a Notice of Hearing to Initiate Proceedings to Reduce or Eliminate CSBG Funding and to Remove Eligible Entity Status should it be deemed necessary

**Brooke Boston**  
Deputy Executive Director

### ITEM 4: MULTIFAMILY FINANCE

- a) Report on Staff Determinations regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics

**Jean Latsha**  
Director of Multifamily  
Finance

15043	Cleme Manor	Houston
15069	Wheatley Courts Senior Apartments	San Antonio
15076	Provision at Four Corners	Four Corners
15267	Thomas Westfall Memorial Apartments	El Paso

- b) Report on Site Challenges Made in Accordance with 10 TAC §11.10 Concerning 2015 Housing Tax Credit Applications

### ITEM 5: BOND FINANCE

Presentation, Discussion and Possible Action on Resolution 15-017 authorizing the filing of an application for reservation with the Texas Bond Review Board with respect to qualified mortgage bonds; authorizing publication of a notice of public hearing; approving an underwriting team; and containing other provisions relating to the subject

**Monica Galuski**  
Director of Bond Finance

### ITEM 6: MULTIFAMILY FINANCE

Presentation, Discussion, and Possible Action regarding Requests for Exemption from Undesirable Site Features under 10 TAC §10.101(a)(3) filed in the 2015 Competitive Housing Tax Credit Cycle

**Jean Latsha**  
Director of Multifamily  
Finance

15043	Cleme Manor	Houston
15128	Bay City Manor Apartments	Bay City

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

### EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

**J. Paul Oser**  
Chairman

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.

2. Pursuant to Tex. Gov't Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
  - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al.*, filed in federal district court, Northern District of Texas, and pending before the Supreme Court of the United States.
  - b) *McCardell v. HUD et al.*
3. Pursuant to Tex. Gov't Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code, Chapter 551:
  - a) Any posted agenda item
4. Pursuant to Tex. Gov't Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or-
5. Pursuant to Tex. Gov't Code, §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

### **OPEN SESSION**

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session

### **ADJOURN**

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

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

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

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

1a

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action on the Award of Program Year (“PY”) 2015 Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”), PY 2015 Low-Income Home Energy Assistance Program (“LIHEAP”) WAP, and PY 2015 Comprehensive Energy Assistance Program (“CEAP”) contracts to Community Action Corporation of South Texas (“CACST”) to provide weatherization and energy assistance services in Cameron and Willacy counties; and its designation as the formula funded provider of these Programs

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Texas Government Code, §§2306.053 and 2306.097, the Department is provided the authority to administer the DOE WAP and LIHEAP;

**WHEREAS**, the Department administers the WAP with funding from DOE and LIHEAP, and the CEAP with funding from LIHEAP;

**WHEREAS**, at the Governing Board Meeting of February 19, 2015, the Board neither approved nor denied WAP awards to Cameron and Willacy Counties Community Projects, Inc. (“CWCCP”) due to outstanding monitoring findings and awarded a portion of the CEAP funds allocated for Cameron and Willacy counties as an interim award to an alternate provider (“CACST”) in order to maintain continuity of CEAP services;

**WHEREAS**, at the Governing Board Meeting of February 19, 2015, the Department received authorization from this Board to release a Request for Applications (“RFA”) to identify an entity to administer the CEAP and the WAP in Cameron and Willacy counties ;

**WHEREAS**, at the Governing Board Meeting of March 12, 2015, the Board instructed staff to give CWCCP a thirty day notice in accordance with Texas Government Code, §2105.203 and Department staff provided this notice on March 16;

**WHEREAS**, the Department released the RFA on March 19, 2015, and received two qualifying responses by the April 3, 2015, deadline;



**WHEREAS**, CACST was the successful respondent, is already a current provider of these programs, and is positioned to deliver these programs and additional services immediately in Cameron and Willacy counties;

**WHEREAS**, CACST also currently administers Head Start, Early Head Start, Nutrition Programs, Early Childhood Intervention, Health Centers; Cancer Prevention Programs, and Teen Pregnancy Programs;

**Therefore, it is hereby**

**RESOLVED**, that the Department's highest priority has been, and will continue to be, the ongoing provision of assistance to households in Cameron and Willacy counties and to the lawful administration of the LIHEAP and DOE WAP funds that provide such assistance, and

**FURTHER RESOLVED**, that the awards to CACST for PY 2015 CEAP in the approximate amount of \$2,109,935, PY 2015 LIHEAP WAP in the approximate amount of \$414,899, and PY 2015 DOE WAP in the approximate amount of \$121,732, and the designation of CACST as the formula funded permanent provider of these programs in the CEAP and WAP networks are hereby approved.

### **BACKGROUND**

Cameron and Willacy counties have been served by CWCCP for three activities funded through TDHCA: the Community Services Block Grant Program ("CSBG"), the Low Income Home Energy Assistance Program ("LIHEAP") that provides funds for both utility assistance ("CEAP") and weatherization, and the U.S. Department of Energy's Weatherization Assistance Program ("DOE WAP"). In December 2014, TDHCA's Board approved the annual awards of CSBG, LIHEAP and DOE WAP to the network of providers that operate those programs. In that Board action, the Board held aside the funds for the clients within those areas. CWCCP was not approved at that time as the provider for those areas because a recent monitoring visit resulted in financial management concerns that related most significantly to inappropriate use of federal funds resulting in disallowed costs, ambiguity relating to an "equalization fund" that was being used to move funds among programs, and CWCCP's lack of provision of requested financial documents.

In February 2015, the Executive Award Review and Committee ("EARAC") realized that continued concerns with CWCCP would not permit a timely award of the DOE WAP and LIHEAP federal funds. However, the Board was committed to providing critical ongoing assistance, and at the February 2015 Board meeting, the Board authorized an adjacent provider, Community Action Corporation of South

Texas (“CACST”) to receive 24.99% of the LIHEAP funds for households residing in Cameron and Willacy counties to ensure that the immediate provision of utility payment assistance continued. Simultaneously, the Board also authorized staff to release a Request for Applications (“RFA”) to identify a permanent replacement provider to provide DOE WAP and LIHEAP services in the area so that no further delay in utility payment assistance would occur through the increasing warmer months should CWCCP’s issues continue. The Department received two applications from the request and CACST’s application was chosen as the successful respondent to the RFA. CACST also currently administers Head Start, Early Head Start, Nutrition Programs, Early Childhood Intervention, Health Centers; Cancer Prevention Programs, and Teen Pregnancy Programs among other services they provide. They have been a capable provider of their Department programs.

At the Board meeting on March 12, 2015, with the concerns regarding CWCCP not resolved, the Board took the formal step of denying the DOE WAP and LIHEAP awards. At that time, consistent with §2105.203 of the Texas Government Code, TDHCA’s Board provided CWCCP with 30 days notice relating to the nonrenewal of the LIHEAP award. CWCCP did not respond during that 30 day period, nor did they request a hearing regarding the nonrenewal of funds. In light of ongoing efforts to assess and address historic issues with CWCCP, including matters relating to these programs, this action is believed by TDHCA staff to be the course of action most likely to ensure continuity of service delivery to eligible households in Cameron and Willacy counties.

A concern has been voiced that the programs may be inaccessible to clients due to concern that there may only be one local office. Because of the very temporary and short-term nature of the initial LIHEAP funds (the 24.99%) provided to CACST, they have not yet pursued extensive outreach and it was originally hoped to be only a stop-gap measure. While CWCCP has multiple offices throughout Cameron and Willacy counties, the unresolved issues and associated lack of an award of funds hinder CWCCP from providing assistance through those offices. The provision of the services from CACST is ensuring, at a minimum, that some funds are indeed flowing to clients, in spite of the status of CWCCP’s contracts with TDHCA. CACST is a strong performer in operating these programs.

If this action is approved for CACST to receive the full DOE WAP and LIHEAP awards, they plan to quickly deploy resources and perform more permanent needed outreach to distribute the program funds - which are critical as the forthcoming summer weather conditions exacerbate the need to provide utility payment assistance - as CWCCP is not in a position to do so at this time. CACST has already established two outreach centers in Brownsville (Brownsville Community Health Center and the Texas Health and Human Services office), one in Harlingen (located at 1822 West Jefferson staffed with 6 Utility Assistance workers) and has received a verbal commitment from Willacy County Judge Guerra for office space adjacent to the judge’s office for client assistance. This has already resulted in assistance to 108 families in Cameron County and 15 families in Willacy County with approximately \$114,000 in assistance in the past month.

There has also been concern voiced relating to the closure of the 18 existing service centers and approximately 24 employees that have not been able to retain their positions. The Department empathizes with the employees and the hardships this may place on their families; however, the number of satellite offices and the number of employees has been inefficient and has contributed to CWCCP's financial management concerns. CWCCP, through its Quality Improvement Plan, acknowledged that only 10 of the centers are within the scope of operation, with seven to eight offices to remain closed, and that a reduction in the number of staff would also be needed.

It is emphasized that first and foremost this Board action does not create any loss in funds to the area, and that the actions above do not currently impact CWCCP's eligible entity status to receive CSBG funds; CWCCP was awarded its 2015 CSBG contract at the Board meeting of February 19, 2015, in the amount of \$897,019. That contract is temporarily suspended, pending the satisfaction of several conditions that relate to the issues identified above. In Program Year 2014 CWCCP served 13,405 persons and 5,536 households with CSBG funds, and the movement of CEAP and WAP to another provider does not preclude the impact and services that CWCCP can provide to the community with those funds if the outstanding issues with TDHCA are resolved.

1b

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action on Awards of Unexpended Program Year (“PY”) 2013 Emergency Solutions Grant (“ESG”) Funds

**RECOMMENDED ACTION**

**WHEREAS**, ESG is funded by the U.S. Department of Housing and Urban Development (“HUD”); and

**WHEREAS**, the Department has determined that there remains a balance of \$246,746 in unexpended funds from PY 2013 ESG, which HUD has determined is available for reobligation;

**WHEREAS**, the 2014 Notice of Funds Availability (“NOFA”), the most recent program-related guidance issued by the Department, addresses use of prior-year program funds; and

**WHEREAS**, funds will only be recommended for award to entities that were funded under the 2014 NOFA and are prepared to provide services through eligible activities;

**NOW, therefore, it is hereby**

**RESOLVED**, that staff is authorized to effectuate contracts with current subrecipients for the unexpended PY 2013 ESG funds to The Family Place in the amount of \$191,746 and to Advocacy Outreach on the amount of \$55,000.

**BACKGROUND**

Awardees for the unexpended PY 2013 ESG funds were chosen based on the requirements of the 2014 NOFA, the most recent program-related guidance issued by the Department relative to these funds. The NOFA outlines a 5-step process to determine which Applicants will be recommended for funding under the NOFA. This process has been utilized to date and this action is consistent with the steps.

**Step 1: Determining the funds to be distributed by CoC region**

ESG funds will be reserved for each of the HUD-designated 2014 Continuum of Care (CoC) Regions according to a combination of the region’s proportionate share of the state’s total homeless population, based on the 2012 Point-in-Time count submitted to HUD by the CoCs and the region’s proportionate share of people living in poverty, based on the 2012, 5-year American Community Survey (ASC) poverty data published by the Census Bureau. For the purposes of

distributing funds, the percentage of statewide homeless population is weighted at 75% while the percentage of statewide population in poverty is weighted at 25%.

**Step 2: Assigning award amounts using the Applicant's score ranking in the region**

Eligible Applications will be ranked in descending order by score within the CoC region in which they are geographically located. ESG funds reserved for each region will be obligated starting with the Applicant with the highest score until all regional funds have been awarded. If the balance of the funds in an area is insufficient to fully fund the next qualifying application, that application will be partially funded until all regional funds are used.

**Step 3: Allocating remaining funds among Applicants partially funded during step 2**

Remaining funds from each region with too few qualifying applications will be pooled together and reallocated to the regions with the greatest proportional share of the state's homeless population to fully fund applications that were partially funded during the first distribution, in an effort to fully fund their request.

**Step 4: Allocating remaining funds to unfunded Applications within the CoC regions with greatest proportional share of homeless population.**

Any funds still remaining will then be pooled together and distributed to unfunded eligible applications in rank order by score, starting with the regions with the greatest proportional share of the state's homeless population, excluding those regions who received additional funds under Step 3.

**Step 5: Allocating remaining funds by increasing the award amounts of those funded**

If there are not enough eligible Applicants to be funded in a region, and there are still funds remaining, the Department may award recommended Applicants in that region with an award amount in excess of the funds requested and above the award amount limits identified in the NOFA.

Previous to this action, the Department awarded ESG contracts of \$625,401 in the prior year, and \$249,926 and \$779,140 in prior years 2011 and 2012 respectively, consistent with the NFOA guidance. Those funds were used to further effectuate steps 3-5 of the award process.

In awarding these 2013 ESG funds, the Department referred to the next guidance included in the NOFA, which states that "if prior year funds become available, the additional funding *may* be used to make additional awards to ESG agencies already awarded 2014 ESG funds." Both of the organizations proposed for award were awarded 2014 ESG funds.

The Family Place is located within the City of Dallas/City of Irving/Dallas County CoC region, a region that was not fully funded during the PY 2014 funding cycle as the region had too few qualifying applications. The Family Place has evidenced the willingness and ability to expend the funds according to program guidelines.

Advocacy Outreach is located within the Balance of State CoC, the CoC which serves mostly the non-metropolitan areas of the state. Advocacy Outreach has the highest expenditure rate of any provider and has evidenced the willingness and ability to expend the funds according to program guidelines.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter A, §1.5) includes a review of ESG awards prior to contract execution. The award of new contracts is subject to this review.

The review has been performed and neither organization was identified with concerns or conditions.

The ESG program is funded by HUD. The ESG program's focus is to assist people to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. ESG funds can be utilized for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless; the payment of certain expenses related to operating emergency shelters; essential services related to emergency shelters and street outreach for the homeless; and, homelessness prevention and rapid re-housing assistance.

1c



**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action to Approve a Material Amendment to the Land Use Restriction Agreement (“LURA”) for Villa Victoria Apartments in Waco (File No. 93156).

**RECOMMENDED ACTION**

**WHEREAS**, Villa Victoria Apartments received an award of 9% Housing Tax Credits in 1993 to rehabilitate 91 units in Waco;

**WHEREAS**, the LURA requires that 100% of the units in the Project shall be leased and rented or made available to Low-Income Tenants;

**WHEREAS**, one of the residential units has been and continues to be used for non-residential purposes as a management office;

**WHEREAS**, the development owner has requested to amend the LURA to reduce the number of low income units from 91 to 90; and

**WHEREAS**, the development owner has complied with the procedures for a material amendment to the LURA including the notification requirements under the Department’s LURA Amendment Rule, 10 TAC §10.405(b);

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees are hereby, authorized, directed, and empowered, for and on behalf of the Department, to amend the Housing Tax Credit LURA for Villa Victoria to reduce the number of low income units from 91 to 90 as requested by the Development Owner and as presented to this meeting.

**BACKGROUND**

Villa Victoria is located in Waco and received an allocation of housing tax credits in 1993 for the acquisition and rehabilitation of 91 low income units. During a TDHCA monitoring visit on January 23, 2014, compliance staff identified that Unit #116 was not available for rent as a low income unit and was instead being utilized as an on-site management/leasing office. The current owner, Andy Sheehy, advised that Unit 116 was used as an office before they acquired ownership in 2008. Mr. Sheehy explained that he believes the Unit was originally constructed to

be an office because it shares an electric meter with the laundry facility on the property. Although the option for sharing a management/leasing office with one of his other properties was discussed, Mr. Sheehy advised that it would not be a viable solution since many of the tenants do not own vehicles in order to travel to an offsite office.

The owner has complied with 10 TAC §10.405(b) of the Asset Management rules adopted by the Board given the appropriate notifications to the tenants and elected officials, and provided the opportunity for public input. The public hearing was held on March 31, 2015. No negative public comment was received.

Staff recommends approval of the following changes to the LURA by replacing Section 4(c) with the language below:

*“The Development will contain a total of 91 Units (including Units occupied by a resident manager or other employee, such that they are not treated as “residential rental units” for purposes of Section 42 of the Code), of which 90 Units treated as residential rental units will be Low-Income Units and one unit will be treated as a management/leasing office. During the Term of this Declaration, residential units at the Development shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants; such that each building in the Development shall at all times satisfy the Minimum Applicable Fraction for such building. The Development Owner's failure to ensure that each building in the Development complies with such requirement will cause the Department to report such fact to the Service and may result in the reduction and recapture by the Service of Tax Credits, as well as other enforcement action by the Service and/or the Department. After the Compliance Period, Minimum Applicable Fraction will be monitored in accordance with Department Rules.”*

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## VILLA VICTORIA APARTMENTS

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**DATE:** DECEMBER 10, 2014

**FROM:** VILLA VICTORIA APARTMENTS / ANDY SHEEHY

**RE:** ADJUSTMENT TO LURA TO REMOVE UNIT 116 (OFFICE)

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RECEIVED  
MAR 09 2015  
BY: \_\_\_\_\_

To: TDHCA – LeeAnn Chance (Assett manager).

Hello. I am writing you at this time to formally request an adjustment in the LURA to allow us to maintain the current rental office in unit 116. If there is an alternate manner to allow us to operate in compliance with the LURA, then we would like to explore that as an option as well. In summary.

**Current Situation:**

- 1) Unit 116 was initially designed as an onsite rental office and Laundry facility (laundry Shares the electricity meter with unit 116). This was the original design of the property that was constructed in 1978. Unit 116 has been used as a rental office since before 2003 and most likely since prior to the inception of the LURA in 1994.
- 2) The LURA requires 100% of the units to be used for low income housing.
- 3) We would like to remove this unit from the requirement to be used as low income housing under the LURA.
- 4) The removal of this unit from the LURA requirements does not negatively impact the income of the property, since it has operated without this unit for the last ten plus years.

Villa Victoria is a financially stable apartment complex that has a proven record in operating without this office unit being used as a rental unit. In fact, many of the tenants do not have automobiles and the need to have an onsite presence for the rental payments and management is essential to the property. This change does not affect the historical or future performance of this property negatively since it has never been an income producing unit.

I look forward to working with you and I appreciate your efforts to assist us with this modification to the LURA.

Sincerely,



Andy Sheehy

1d

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action to Approve a Housing Tax Credit Application Amendment for Citrus Gardens in Brownsville (File No. 10222).

**RECOMMENDED ACTION**

**WHEREAS**, Citrus Gardens received an award of 9% Housing Tax Credits in 2010 to construct 148 units in Brownsville;

**WHEREAS**, the recorded Land Use Restriction Agreement (“LURA”) encumbers a total 26.260 acre development site;

**WHEREAS**, the Development Owner has requested approval from the Department to release 2.053 acres from the LURA for future development;

**WHEREAS**, the release of 2.053 acres from the Development site results in a 8.47% increase in residential density;

**WHEREAS**, pursuant to 10 TAC §10.405(a)(4)(F), a modification of the residential density of at least 5 percent, other than changes which are the result of a change required by local government, requires Board approval; and

**WHEREAS**, the Development Owner has complied with the procedures for an Application amendment under the Department’s Amendment Rule, 10 TAC §10.405(a);

**NOW, therefore, it is hereby**

**RESOLVED**, that the amendment of the Housing Tax Credit Application for Citrus Gardens is approved as presented to this meeting and the Executive Director and his designees are hereby, authorized, directed, and empowered, for and on behalf of the Department, to take all necessary action to effectuate the foregoing.

**BACKGROUND**

At the time of Application, the Development Owner, The Housing Authority of the City of Brownsville, along with the Developer, Brownstone Affordable Housing, Ltd., proposed to

newly construct 148 low income units on a 26.26 acre site. Of the 26.26 acres, a 2.053 acre tract lies on the north side of the property across Roosevelt Street and remains vacant land with low income units on it. The Development Owner wishes to develop 30 public housing units on this tract and at its January 26, 2015 meeting, the Board of Commissioners for the Housing Authority authorized the Development Owner to proceed with this public housing project which requires a release of this tract from the existing Housing Tax Credit LURA.

The removal of 2.053 acres results in a reduction in acreage from 26.260 acres to 24.207 acres and increases residential density by 8.47%. The land was originally owned by the Housing Authority of the City of Brownsville and was leased to the partnership, BHA Citrus Gardens, Ltd. The application did not identify any acquisition costs associated with the purchase of the site; therefore, no impact to the tax credit allocation would result. Finally, the change in density does not impact the final score of this Application as it was not a scoring item in the 2010 QAP.

Staff recommends approval of the request to release 2.053 acres from the Development Site and amend the Housing Tax Credit LURA's Exhibit A - Legal Description.



# HOUSING AUTHORITY of the

CHAIRMAN:  
COMMISSIONERS:

Mr. Patricio Sampayo  
Mr. John F. Cowen, Jr.  
Mr. Noe Guerrero  
Mr. Ruben Longoria  
Ms. Norma Zepeda

P.O. BOX 4420  
2606 BOCA CHICA BLVD  
BROWNSVILLE, TX 78523-4420  
MAIN PHONE (956) 541-8315  
MAIN FAX (956) 541-7860  
EMAIL: info@hacb.us  
WEBSITE: http://hacb.us

CHIEF EXECUTIVE OFFICER: Ms. Carla Mancha

City of **BROWNSVILLE**

April 2nd, 2015

Raquel Morales  
Director of Asset Management  
TDHCA  
221 East 11th Street  
Austin, Texas 78701

*Via e-mail: Raquel.Morales@tdhca.state.tx.us*

Re: Citrus Gardens # 10222 – Land Use Restriction Agreement (“LURA”)

Dear Ms. Morales,

The purpose of this letter is to request approval of a non-material amendment to the LURA and to the application. Enclosed herewith please find check #9697 for payment of the LURA amendment fee of \$2,500.00.

The amendment being requested is to remove Tract II from the LURA as Tract II is unimproved land across the street from Tract I and is not being used for Citrus Gardens despite its inclusion in the legal description of the subject real property. We need to make this amendment in order to utilize Tract II for a public housing project for which the Board of Commissioners of the Housing Authority of the City of Brownsville authorized us on February 2, 2015, to proceed. At this time, we anticipate building two apartment buildings consisting of a combined total of approximately 30 units on Tract II.

Because of our intention to develop public housing on Tract II, there is good cause for this amendment. In addition, releasing Tract II from the LURA will have no effect on the LURA for Citrus Gardens. Moreover, we consider the requested amendment as constituting a non-material amendment because the amendment will not modify the residential density of Citrus Gardens by 5% or more, and the amendment will decrease the site acreage by less than 10% from the original site under control and proposed in the application. The developer is in agreement with our request to amend the LURA. In addition, the investor and the lender have been notified of the request and are not adverse in theory, but reserve the right to review and approve the amendment once drafted.

Thank you for your attention to this matter. Please feel free to call me if you have any questions or would like additional information.

Sincerely,

Carla Mancha, CEO  
Housing Authority of the City of Brownsville

xc: Hudson Citrus Gardens, LLC (Investor)  
Doak Brown (Developer)  
Pacific Life (Lender)



# HOUSING AUTHORITY of the

CHAIRMAN:  
COMMISSIONERS:

Mr. Patricio Sampayo  
Mr. John F. Cowen, Jr.  
Mr. Noe Guerrero  
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EMAIL: info@hacb.us  
WEBSITE: http://hacb.us

CHIEF EXECUTIVE OFFICER: Ms. Carla Mancha

City of **BROWNSVILLE**

April 16, 2015

Colton W. Sanders  
Asset Manager, Regions 9 & 11  
Texas Department of Housing & Community Affairs  
221 East 11th Street  
Austin, Texas 78701

*Via Email Colton.Sanders@tdhca.state.tx.us*

Re: Citrus Gardens # 10222 – Land Use Restriction Agreement (“LURA”)

Dear Mr. Sanders,

Thank you for reviewing our request to release Tract II from the LURA as well as to amend the real property description in Exhibit A to the LURA. As requested, enclosed herewith please find the following:

1. Resolution to Approve Request for Amendment to the Land Use Restriction Agreement for Citrus Gardens
2. Amended Exhibit A to the Land Use Restriction Agreement.

The above Resolution will be presented to the Board of Commissioners of the Housing Authority on April 27, 2015, during their next meeting. Once approved, we will provide you with a signed copy of the Resolution in advance of your May 7, 2015, Board meeting.

Thank you again for your attention to this matter. Please feel free to call me if you have any questions or would like additional information.

Sincerely,

Carla Mancha, CEO  
Housing Authority of the City of Brownsville

Enclosures (2)

xc: Hudson Citrus Gardens, LLC (Investor)  
Doak Brown (Developer)  
Pacific Life (Lender)



RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO APPROVE REQUEST FOR AMENDMENT TO THE  
LAND USE RESTRICTION AGREEMENT FOR CITRUS GARDENS

WHEREAS, the Board of Commissioners of the Housing Authority of the City of Brownsville has previously authorized the Housing Authority to proceed with the Roosevelt RHF Public Housing Project (the "Public Housing Project"), and such project is anticipated to consist of two apartment buildings with a combined total of 30 public housing units; and,

WHEREAS, the Housing Authority wishes to construct the Public Housing Project on that certain real property known as Tract II (the "Property") under Exhibit A to the Declaration of Land Use Restrictive Covenants Land Use Restriction Agreement for Low Income Housing Tax Credits – Citrus Gardens #10222 (the "LURA"); and,

WHEREAS, the Property is unimproved land across the street from the Citrus Gardens Development, *i.e.*, Tract I, and is not being used as part of Citrus Gardens despite its inclusion in the legal description in Exhibit A of the LURA and has never been improved as part of Citrus Gardens; and,

WHEREAS, in order to proceed with the Public Housing Project on the Property, the Housing Authority needs the Property to be released from the LURA and to amend Exhibit A of the LURA accordingly so that Exhibit A only includes only Tract I;

**NOW, THEREFORE**, be it resolved by the Board of Commissioners of the Housing Authority that this Resolution is adopted on this 27<sup>th</sup> day of April 2015, as follows:

1. The Board of Commissioners of the Housing Authority hereby adopts the pending request to release the Property from the LURA and to amend Exhibit A of the LURA to only include Tract I as described therein.
2. Carla Mancha, CEO, is hereby authorized to proceed with and take any action consistent with and in furtherance of the pending request to release the Property from the LURA and to amend Exhibit A of the LURA accordingly.

Housing Authority of the City of Brownsville

\_\_\_\_\_  
Patricio Sampayo, Chairman

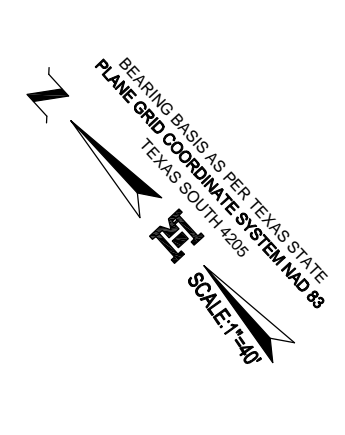
ATTESTED BY:

\_\_\_\_\_  
Raquel M. Lainez, Executive Secretary

**AMENDED EXHIBIT A TO DECLARATION – LEGAL DESCRIPTION**

**TRACT I:**

Lot One (1), CITRUS GARDENS VILLAGE, a subdivision in the City of Brownsville, Cameron County, Texas, as shown by the map or plat thereof recorded in Cabinet 1, Page 3079-A, Map Records of Cameron County, Texas.



- LEGEND**
- POWER POLE
  - SERVICE POLE
  - LIGHT POLE
  - GUY WIRE
  - CABLE FEEDSTOCK
  - TELEPHONE FEEDSTOCK
  - STOP SIGN
  - HANDBOOK SIGN
  - FIRE HYDRANT
  - WATER METER
  - FIRE DEPARTMENT CONNECTION
  - WATER VALVE
  - SPRINKLER VALVE
  - SAVANTRY SEWER MANHOLE
  - STORM SEWER MANHOLE
  - TYPE "A" INLET
  - TYPE "C" INLET
  - SAFETY END TREATMENT
  - CLEANOUT
  - UNDERGROUND CABLE MARKER
  - CLEANOUT
  - ELECTRIC BOX
  - F22 ELECTRIC BOX
  - TRANSFORMER
  - ELECTRICAL METER
  - GUARD POST
  - COLUMN
  - FENCE POST
  - CHAIN LINK FENCE
  - WOOD FENCE
  - PIPE RAILING FENCE
  - SIDE OF BRIDGE
  - OVERHEAD POWER LINE
  - AIRWAY AREA
  - CONCRETE AREA
  - NO PARKING ZONE
  - PICNIC TABLE
  - F22 BARBEQUE PIT
  - BENCH

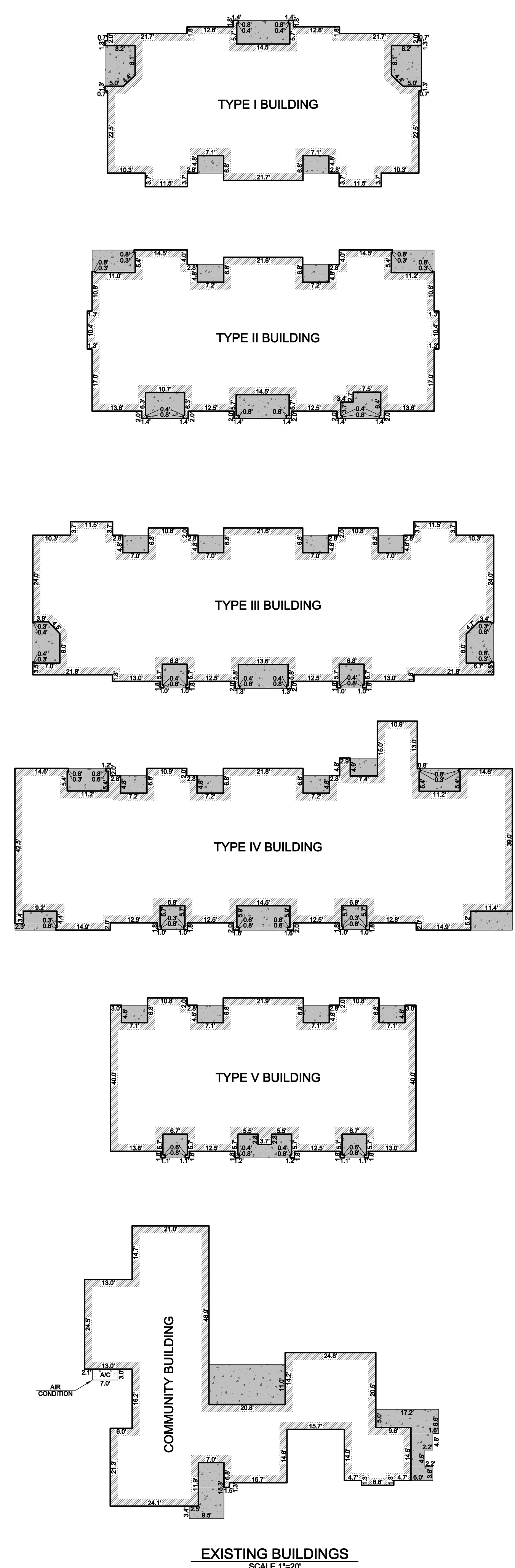
**FLOOD ZONE**  
 ZONE "C"  
 AREAS OF MINIMAL FLOODING.

**NOTE**  
 SPECIAL FLOOD HAZARD AREAS INDICATED BY 100-YEAR FLOOD BASE FLOOD ELEVATIONS AND FLOOD HAZARD FACTORS NOT DETERMINED.

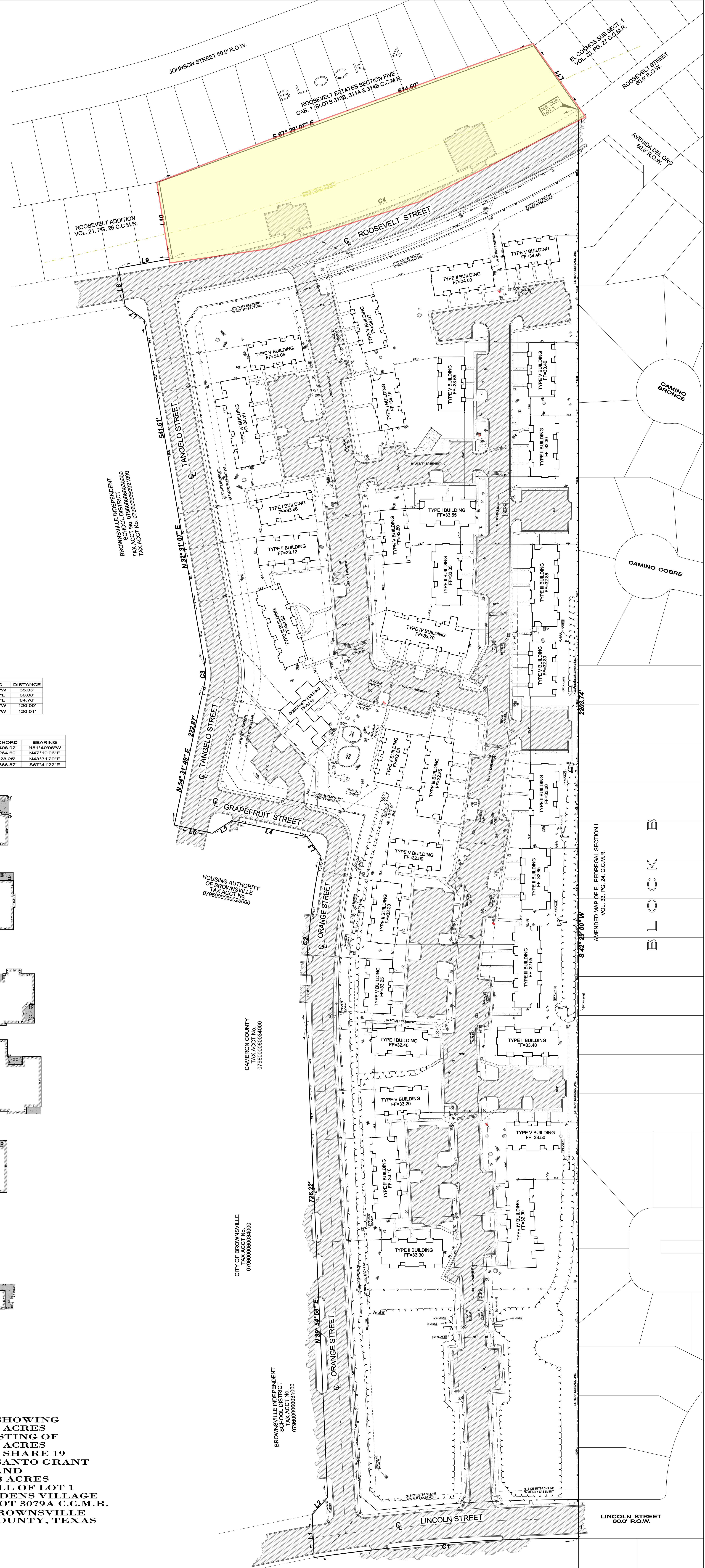
COMMUNITY PANEL NUMBER: 461010009 B  
 EFFECTIVE DATE: DECEMBER 1, 1978

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	N39°54'58"E	66.42'	L7	N12°29'36"W	35.35'
L2	N84°54'58"E	35.36'	L8	N32°29'20"E	60.00'
L3	N07°18'57"E	36.68'	L9	S57°30'40"E	84.76'
L4	N33°31'11"W	119.28'	L10	N32°29'30"W	120.00'
L5	N80°23'13"W	35.44'	L11	S07°18'29"W	120.01'
L6	N35°28'11"W	59.95'			

CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	BEARING
C1	08°18'16"	2823.80'	409.28'	205.00'	408.92'	N51°40'08"W
C2	14°48'16"	1026.00'	265.34'	133.41'	264.60'	N47°19'08"E
C3	22°00'40"	74.00'	28.43'	14.39'	28.25'	N43°31'29"E
C4	22°13'30"	1730.00'	671.07'	339.81'	666.87'	S67°41'22"E



**PLAT SHOWING**  
**26.26 ACRES**  
**CONSISTING OF**  
**2.052 ACRES**  
**OUT OF SHARE 19**  
**ESPIRITU SANTO GRANT**  
**AND**  
**24.208 ACRES**  
**BEING ALL OF LOT 1**  
**CITRUS GARDENS VILLAGE**  
**CABINET 1, SLOT 3079A C.C.M.R.**  
**CITY OF BROWNSVILLE**  
**CAMERON COUNTY, TEXAS**



BROWNSVILLE INDEPENDENT  
 SCHOOL DISTRICT  
 TAX ACCT NO. 079600060021000  
 TAX ACCT NO. 079600060021000

HOUSING AUTHORITY  
 OF BROWNSVILLE  
 TAX ACCT NO.  
 079600060029000

CAMERON COUNTY  
 TAX ACCT NO.  
 079600060034000

CITY OF BROWNSVILLE  
 TAX ACCT NO.  
 079600060034000

BROWNSVILLE INDEPENDENT  
 SCHOOL DISTRICT  
 TAX ACCT NO.  
 079600060031000

AMENDED MAP OF EL PEDREGAL SECTION I  
 VOL. 33, PG. 24, C.C.M.R.

BLOCK B

LINCOLN STREET  
 60.0' R.O.W.

**As-Built Survey**

JOB No.	12011.11	FLOOD ZONE	3/11/2013	J.C.
DRAWING DATE	12/12/2012	PICNIC TABLES, BENCHES & BARBEQUE PITS	3/21/2013	J.C.
DRAWN BY	J.C.	REVISION	DATE	BY
File Name	12011.11 REV			

**MELDEN & HUNT INC.**  
 CONSULTANTS & ENGINEERS - SURVEYORS  
 112 W. BACHTHOFF  
 EDINBURG, TX 78541  
 PH: (361) 381-0881  
 FAX: (361) 381-1822

1e

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action regarding Waiver of 10 TAC §10.201(1)(C), Uniform Multifamily Rules related to Procedural Requirements for Application Submission.

**RECOMMENDED ACTION**

**WHEREAS**, Section §10.201(1)(C) of the Uniform Multifamily Rule (“Rule”), related to Procedural Requirements for Application Submission, requires that Applications be submitted on a CD-R and that “additional files required for Application submission (*e.g.*, Third Party Reports) outside the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant sees fit”;

**WHEREAS**, this requirement was not enforced in the 2014 Tax Credit Cycle due to an oversight, and consequently several Market Studies were accepted via the Department’s FTP server;

**WHEREAS**, Department staff realized that this specific requirement had also not been emphasized in 2015 and subsequently reminded the Development community of the requirement before the Market Analysis Delivery Date; and

**WHEREAS**, several Applicants submitted Market Studies via the Department’s FTP server;

**NOW, therefore, it is hereby**

**RESOLVED**, that §10.201(1)(C) of the Uniform Multifamily Rule, specifically related to the delivery method of the Third Party Reports is waived, and no Applications will be terminated for timely delivering a Market Study via the Department’s FTP Server.

**BACKGROUND**

The Competitive Housing Tax Credit Application process has several important deadlines, each with specific requirements. Each requirement exists to create a manageable and transparent review process.

First, the Pre-Application Final Delivery Deadline is January 8, 2015, which required submission via the online Pre-Application system. This system allowed Department staff to automate much of the Pre-Application review process and quickly identify potential failures in threshold criteria. While a few Pre-Applications did not meet all of the threshold criteria for submitting a Pre-Application, all potential Applicants attempted to use the appropriate system and format for submission. Had any Applicant

attempted to deliver a Pre-Application via another method outside the online system, such a submission would not have been accepted in part because of the amount of work involved in making such a Pre-Application conform to the review process.

The next important deadline is the Full Application Delivery Date. For the Full Application, an Applicant must deliver a “CD-R containing a PDF copy and Excel copy of the complete Application” and must be “in a single file and individually bookmarked in the order required by the Multifamily Programs Procedures Manual.” These requirements, again, exist to facilitate a transparent and efficient review process. Applications that do not meet these requirements are subject to termination because accepting non-conforming Applications could have the potential of making the review process unmanageable due to the numerous statutory deadlines related to the Competitive HTC process.

The Full Application Delivery Date is also the deadline for a number of Third Party Reports, including the Environmental Site Assessments, Appraisals, Property Condition Assessments, and Site Design and Development Feasibility Reports. According to §10.201(1)(C) of the Rules, “additional files required for Application submission (*e.g.*, Third Party Reports) outside the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant see fit.” This delivery requirement ensures that all files are received together at the same time in electronic format, reducing the administrative time that would be needed if files were sent in a piecemeal fashion.

The last deadline related to delivery of sections of the Application is April 1, 2015. This deadline has three components: the Resolutions of Local Government Support scoring item, pursuant to §11.9(d)(1) of the QAP, the State Representative Input scoring item, pursuant to §11.9(d)(5) of the QAP, and delivery of the Market Analysis, a threshold item pursuant to §10.205 of the Rules. The Rule does not speak to how the two scoring items are to be delivered to the Department. Many Applicants choose to upload the resolutions to the Department’s FTP server, and letters from State Representatives often come directly from a staff member of the Representative’s office to Department staff via email or hard copy. In addition, these three items are typically submitted at various times throughout the month of March, unlike the Full Applications, the vast majority of which are submitted in person at the Department on the deadline or via courier within a day or two of the deadline. Because these documents “trickle in,” Department staff is able to accept these documents in a variety of ways and still maintain efficiency and transparency in the process. Therefore, in the 2014 Cycle, staff did not enforce the requirement that the Market Study be submitted via a CD-R due to an oversight and accepted submission via the FTP server.

Early in the 2015 cycle, staff revisited the language in the Rule and concluded that the Market Studies are required to be submitted on a CD-R. Because staff had not emphasized this requirements in any of the application workshops, frequently asked questions, or any other published guidance, staff sent a listserv message on March 17 reminding Applicants of the requirement and requesting that the Market Studies be submitted on a CD-R in order to comply with the Rule.

However, staff is recommending that the Board grant a blanket waiver of the last sentence of §10.201(1)(C) as it relates to the delivery of the Market Analysis. Although the Market Analysis is a Third Party Report and therefore technically required to be delivered on a CD-R, there is no administrative burden placed on the Department if an Applicant fails to meet this delivery requirement. It is staff's position that accepting CD-Rs is actually more burdensome than accepting the files via the FTP server. Staff can easily assess whether or not files submitted via the FTP server were received timely and, although not on a CD-R, files received via the FTP server can just as easily be reviewed by Department staff.

Staff recommends that §10.201(1)(C) of the Rule, specifically related to the delivery method of the Third Party Reports is waived, and no Applications will be terminated for the sole reason of delivering a Market Study via the Department's FTP Server.

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action proposing amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2 Definitions, and directing that they be published for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Chapter 2306 of the Texas Government Code, the Department is authorized to adopt rules governing the administration of the Department and its programs, and

**WHEREAS**, proposed amendments to 10 TAC §5.2 update the definition of Low Income for the Emergency Solutions Grant (“ESG”) program; clarify that the requirement to verify income eligibility for the Homeless Housing and Services Program (“HHSP”) there is no income qualification requirement for persons living on the street (or other places not fit for human habitation) or living in emergency shelter; define terms associated with the deobligation and reobligation of awarded funds in Community Affairs programs; and make minor technical corrections to other definitions.

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2, in the form presented to this meeting, to be published in the *Texas Register* for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

The purpose of the amendments is to clarify income eligibility requirements for the ESG program and the HHSP and to define terms associated with the deobligation and reobligation of awarded funds in Community Affairs programs. The amendment updating the definition of Low Income for the ESG program results from provisions in the Consolidated Appropriations Act of 2014. The amendment regarding the HHSP clarifies that there is no income qualification requirement for persons living on the street (or other places not fit for human habitation) or living in emergency shelter. The amendment regarding the deobligation and reobligation of awarded funds in Community Affairs programs is associated with the proposed new 10 TAC §5.614, Deobligation and Reobligation of Awarded Funds, which the Department is concurrently proposing in order to ensure the timely and appropriate use of funds; compliance with federal

accountability, transparency, and programmatic requirements; and to ensure that funds are expended by required deadlines. Definitions specific to the Weatherization Assistance Program are removed from the General Provisions subchapter and added to Subchapter E, Weatherization Assistance Program General.

Additional rule changes relevant to changes in federal and/or state uniform grants management administrative requirements will be proposed later in the summer.

## **Attachment A: Preamble and proposed amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2**

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.2 Definitions.

The purpose of the amendments is to clarify income eligibility requirements for the ESG program and the HHSP and to define terms associated with the deobligation and reobligation of awarded funds in Community Affairs programs. The amendment updating the definition of Low Income for the ESG program results from provisions in the Consolidated Appropriations Act of 2014. The amendment regarding the HHSP clarifies that there is no income qualification requirement for persons living on the street (or other places not fit for human habitation) or living in emergency shelter. The amendment regarding the deobligation and reobligation of awarded funds in Community Affairs programs is associated with the proposed new 10 TAC §5.614, Deobligation and Reobligation of Awarded Funds, which the Department is concurrently proposing in order to ensure the timely and appropriate use of funds; compliance with federal accountability, transparency, and programmatic requirements; and to ensure that funds are expended by required deadlines. Additionally, the amendment clarifies certain language in other definitions to align with OMB requirements. Finally, definitions specific to the Weatherization Assistance Program are removed from the General Provisions subchapter and added to Subchapter E, Weatherization Assistance Program General.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amendments are effect, the public benefit anticipated as a result of the amendments will be clarity of program requirements and programmatic adherence to federal guidelines. There will not be any economic cost to any individuals required to comply with the amendments.

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

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held May 22, 2015, to June 22, 2015, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us), or by fax to (512) 475-3935. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 22, 2015.**

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

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

## **§5.2. Definitions.**

(a) To ensure a clear understanding of the terminology used in the context of the programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(1) Affiliate--If, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways the Department may determine control include, but are not limited to:

(A) Interlocking management or ownership;

(B) Identity of interests among family members;

(C) Shared facilities and equipment;

(D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

(3) Awarded Funds--The amount of funds committed by the Department's board to a Subrecipient or service area.

(4)(3) Child--Household dependent not exceeding eighteen (18) years of age.

(5)(4) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(6)(5) Collaborative Application--An application from two or more organizations to provide services to the target population.

(7)(6) Community Action Agencies (CAAs)--Local Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(8)(7) Community Action Plan--A plan required by the Community Services Block Grant (CSBG) Act which describes the local Eligible Entity service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other

public and private resources and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.

~~(9)~~(8) Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

~~(10)~~(9) Community Services Block Grant (CSBG)--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

~~(11)~~(10) Comprehensive Energy Assistance Program (CEAP)--A LIHEAP-funded program to assist low-income Households, particularly those with the lowest incomes, that pay a high proportion of Household income for home energy, primarily in meeting their immediate home energy needs.

~~(12)~~(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

(13) Contracted Funds--The amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

~~(14)~~(12) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

~~(15)~~(13) Declaration of Income Statement (DIS)--A Department-approved form for limited use and only when an applicant cannot obtain income documentation requiring the Subrecipient to document income and the circumstances preventing the client from obtaining documentation. The DIS is not complete unless notarized in accordance with §406.014 of the Texas Government Code.

(16) Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG.

~~(17)~~(14) Department--The Texas Department of Housing and Community Affairs.

~~(18)~~(15) Department of Energy (DOE)--Federal department that provides funding for the weatherization assistance program.

~~(19)~~(16) Department of Health and Human Services (HHS)--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

~~(20)~~(17) Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

~~(21)~~(18) Discretionary Funds--Those CSBG funds maintained by the Department, at its discretion, for CSBG allowable uses as authorized by §675C of the CSBG Act, and not designated for distribution on a statewide basis to CSBG Eligible Entities and not designated for state administrative purposes.

~~(22)~~(19) DOE WAP Rules--10 CFR Part 440 describes the Weatherization Assistance for Low Income Persons as administered through the Department of Energy. 10 CFR Part 600 implements OMB requirements on behalf of DOE and establishes administrative requirements for grants and agreements.

~~(23)~~(20) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

~~(24)~~(21) Elderly Person--

(A) for CSBG, a person who is fifty-five (55) years of age or older;

(B) for CEAP, WAP and HHSP, a person who is sixty (60) years of age or older; and

(C) for ESG, a person who is sixty-two (62) years of age or older ~~A person who is sixty (60) year of age or older, except for ESG.~~

~~(25)~~(22) ~~Electric Base Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.~~

~~(25)~~(23) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

~~(26)~~(24) Emergency--Defined by the LIHEAP Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. §8622):

(A) natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, at the discretion of the Secretary, may determine to be appropriate.

(H) This definition does not apply to ESG or HHSP.

~~(27)~~(25) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

~~(29)~~(26) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a Dwelling Unit.

~~(30)~~(27) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular weatherization energy efficiency measures.

~~(28)~~(28) Equipment--Tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit.

(29) Expenditure--Funds having been drawn from the Department through the Contract System. For purposes of this rule, expenditure will include draws requested through the system.

~~(30)~~(29) Families with Young Children--A family that includes a Child age five (5) or younger.

~~(31)~~(30) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income. Determined by dividing a Household's annual home energy costs by the Household's annual gross income.

~~(32)~~(31) High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures, by way of example, at the time of this rulemaking, that amount is \$1,000, but is subject to change.

~~(33)~~(32) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.

~~(34)~~(33) Homeless Housing and Services Program (HHSP)--A state funded program established under §2306.2585 of the Texas Government Code with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.

~~(35)~~(34) Household--Any individual or group of individuals who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.

~~(36)~~(35) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

~~(37)~~(36) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant household could lose their life without the Subrecipient's utility assistance because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by client report) and any member of the Household is dependent upon equipment that is prescribed by a medical professional, operated on electricity or gas and is necessary to sustain the person's life. Examples of life-sustaining equipment include but are not limited to kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not include information regarding the applicant's medical condition but may include certification that such a device is required in the home to sustain life.

~~(38)~~(37) Local Unit of Government--City, county, council of governments, and housing authorities.

~~(39)~~(38) Low Income--Income in relation to family size and that governs eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP, CSBG, and LIHEAP WAP at or below 125% of the HHS Poverty Income guidelines;

(C) For ESG, below 30% of the Median Family Income (MFI) Area Median Income (AMI) as defined by HUD's 30% Income Limits for All Areas ~~Section 8 Income Limits~~ for persons receiving prevention assistance; and

(D) For HHSP, there is no income qualification requirement for persons living on the street (or other places not fit for human habitation) or living in emergency shelter. For all other persons, at or below 30% of the Extremely Low Income Limits as defined by HUD for the Section 8



~~program. all clients assisted. For HHSP, 30% of the AMI as defined by HUD's Section 8 Income Limits for all clients assisted.~~

~~(40)~~(39) Low Income Home Energy Assistance Program (LIHEAP)--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.

~~(41)~~(40) Migrant Farm Worker--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.

~~(42)~~(41) Modified Cost Reimbursement--A contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.

~~(46)~~(42) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

(43) National Performance Indicator--An individual measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.

(44) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

(45) Office of Management and Budget (OMB)--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(46) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(47) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(48) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(49) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;

(B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(50) Population Density--The number of persons residing within a given geographic area of the state.

(51) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(52) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

(53) Production Schedule--A Production schedule signed by the applicable Executive Director/Chief Executive Officer of the Subrecipient, and approved by the Department meeting the requirements of this definition. The Production Schedule shall include the estimated monthly and quarterly performance targets and the estimated monthly and quarterly expenditure targets for all Contracted Funds reflecting achievement of the criteria identified in the specific program sections of this chapter by the end of the contract period..

~~(54)~~(53) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

~~(55)~~(54) Referral--The process of providing information to a client Household about an agency, program, or professional person that can provide the service(s) needed by the client.

~~(60)~~(55) Rental Unit ~~A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.~~

~~(61)~~(56) Renter ~~A person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.~~

(56) Reobligation--The reallocation of deobligated funds to other Subrecipients administering those same program's funds.

(57) Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the Household annualized income must be derived from the agricultural labor or related industry.

~~(64)~~(58) Shelter ~~Defined by the Department as a Dwelling Unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one~~

~~another and who are not living in nursing homes, prisons, or similar institutional care facilities. This definition does not apply to ESG or HHSP.~~

~~(58)~~(59) Single Audit--As defined in the Single Audit Act of 1984 (as amended) or UGMS, a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered federal or state awards during such fiscal year provided that each such audit shall encompass the financial statements and schedule of expenditures of federal or state awards for each such department, agency, and organizational unit.

~~(66)~~(60) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

~~(59)~~(61) State--The State of Texas or the Department, as indicated by context.

~~(60)~~(62) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

~~(61)~~(63) Subgrant--An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

~~(62)~~(64) Subgrantee--The legal entity to which a subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

~~(63)~~(65) Subrecipient--Generally, an organization with whom the Department contracts and provides CSBG, CEAP, ESG, HHSP, DOE WAP, or LIHEAP funds. (Refer to Subchapters B, D - G, J, and K of this chapter for program specific definitions.)

~~(64)~~(66) Supplies--All personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements." A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life.

~~(65)~~(67) System for Award Management (SAM)--Combined federal database that includes the Excluded Parties List System (EPLS).

~~(66)~~(68) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

~~(67)~~(69) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

~~(68)(70)~~ Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

~~(69)(71)~~ Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. In addition, Chapter 2105, Texas Government Code, subjects all subrecipients of federal block grants to the Uniform Grant and Contract Management Standards.

~~(70)(72)~~ Unit of General Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

~~(79) Unit Production~~ A unit is considered "produced" for purposes of this rule when the unit is considered a final unit and the post weatherization inspection and all other requirements have been satisfied.

~~(71)(73)~~ United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

~~(72)(74)~~ Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving ESG and LIHEAP beneficiaries.

~~(73)(75)~~ Weatherization Assistance Program (WAP)--DOE and LIHEAP funded program designed to reduce the energy cost burden of low income households through the installation of energy efficient weatherization materials and education in energy use.

~~(83)(76) Weatherization Assistance Program Policy Advisory Council (WAP PAC)~~ ~~The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the WAP program.~~

~~(84)(77) Weatherization Material~~ ~~The material listed in Appendix A of 10 CFR Part 440.~~

~~(85)(78) Weatherization Project~~ ~~A project conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.~~

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action on proposed repeal of 10 TAC Chapter 5 Community Affairs Programs, Subchapter E, Weatherization Assistance Program General, §5.503 Distribution of WAP Funds; proposed new 10 TAC §§5.503 Definitions; and 5.504 Distribution of WAP Funds; and proposed amendments to 10 TAC §§5.505 Subrecipient Requirements for Appeals Process for Applicants; 5.507 Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria; 5.516 Monitoring of WAP Subrecipients; 5.525 Eligibility for Multifamily Dwelling Units; and 5.528 Health and Safety, and directing that they be published for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Chapter 2306 of the Texas Government Code, the Department is authorized to adopt rules governing the administration of the Department and its programs, and

**WHEREAS**, the proposed repeal of 10 TAC §5.503 moves the existing text to make way for a new section; the proposed new §§5.503 and 5.504 add definitions moved from Subchapter A of this Chapter and re-adopt repealed text; the proposed amendments to §§5.505, 5.525, 5.507, 5.516, 5.525 and 5.528 clarify program requirements of the Weatherization Assistance Program (“WAP”);

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed repeal of Chapter 5 Subchapter E, §5.503; the proposed new §§5.503 and 5.504; and the proposed amendments to §§5.505, 5.525, 5.507, 5.516, 5.525 and 5.528 in the form presented to this meeting, to be published in the *Texas Register* for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

The purpose of proposed repeal of 10 TAC §5.503 is to move the existing text to put definitions in a new section. The purpose of the new sections §§5.503 and 5.504 is to relocate definitions, and to re-adopt repealed text and correct the age used for elderly in the formula to read “sixty (60)” instead of “sixty-five (65)”.

The purpose of the amendment to §5.505 is to delineate where appeal requirements differ for DOE WAP and LIHEAP WAP. The purpose of the amendments to §§5.507 and 5.516 is to

correct citation errors. The purpose of the amendment to §5.525 is to clarify eligibility for multifamily units. The purpose of the amendment to §5.528 is to address the Dwelling Unit weatherization deferral process.

**Attachment A: Preamble and proposed repeal of 10 TAC Chapter 5 Community Affairs Programs, Subchapter E, Weatherization Assistance Program General, §5.503; proposed new 10 TAC §§5.503 and 5.504; and proposed amendments to §§5.505, 5.507, 5.516, 5.525, and 5.528**

The Texas Department of Housing and Community Affairs (the “Department”) proposes repeal of 10 TAC Chapter 5 Community Affairs Programs, Subchapter E, Weatherization Assistance Program General, §5.503 Distribution of WAP Funds; proposed new 10 TAC §§5.503 Definitions and 5.504 Distribution of WAP Funds; and proposed amendments 10 TAC §§5.505 Subrecipient Requirements for Appeals Process for Applicants, 5.507 Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria, 5.516 Monitoring of WAP Subrecipients, 5.525 Eligibility for Multifamily Dwelling Units, and 5.528 Health and Safety.

The purpose of proposed repeal of 10 TAC §5.503 is to move the existing text to move definitions into a new section. The purpose of the new sections §§5.503 and 5.504 is to relocate definitions, and to re-adopt repealed text and correct the age used for elderly in the formula to read “sixty (60)” instead of “sixty-five (65)”. The purpose of the amendment to §5.505 is to delineate where appeal requirements differ for DOE WAP and LIHEAP WAP. The purpose of the amendments to §§5.507 and 5.516 is to correct citation errors. The purpose of the amendment to §5.525 is to clarify eligibility for multifamily units. The purpose of the amendment to §5.528 is to address the Dwelling Unit weatherization deferral process.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amendments and new sections are in effect, the public benefit anticipated as a result of the amendment will be clarity of program requirements and programmatic adherence to federal guidelines. There will not be any economic cost to any individuals required to comply with the amendments and new section.

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

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held May 22, 2015, to June 22, 2015, to receive input on the repeal, amendments, and new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us), or by fax to (512) 475-3935. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 22, 2015.**



STATUTORY AUTHORITY. The repeal, amendments and new section are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

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

§5.503. Definitions

§5.504[3]. Distribution of WAP Funds.

§5.505. Subrecipient Requirements for Appeals Process for Applicants.

§5.506. Subrecipient Reporting Requirements.

§5.507. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

§5.508. Liability Insurance.

§5.516. Monitoring of WAP Subrecipients.

§5.521. Client Education.

§5.522. Mold Work Practices.

§5.523. Presence of Mold-Like Substances.

§5.524. Lead Safe Practices.

§5.525. Eligibility for Multifamily Dwelling Units.

§5.528. Health and Safety and Unit Deferral.

§5.531. Training and Technical Assistance.

§5.532. Training Funds for Conferences.

**§5.503. Definitions**

(a) Energy Audit—The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a Dwelling Unit. The Energy Audit shall be used for any Dwelling Unit weatherized utilizing DOE funds.

(b) Energy Repairs—Weatherization-related repairs necessary to protect or complete regular weatherization energy efficiency measures.

(c) Multifamily Dwelling Unit—A structure containing more than one Dwelling Unit.

(d) Rental Unit—A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.

(e) Renter—A person who pays rent for the use of the Dwelling Unit.

(f) Shelter—Defined by the Department as a Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

(g) Single Family Dwelling Unit—A structure containing no more than one Dwelling Unit.

(h) Weatherization Assistance Program Policy Advisory Council (WAP PAC)–The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the DOE WAP program.

(i) Weatherization Material–The material listed in Appendix A of 10 CFR Part 440.

(j) Weatherization Project–A project conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

**~~§5.503. Distribution of WAP Funds.~~**

~~(a) The Department distributes funds to Subrecipients by an allocation formula.~~

~~(b) The allocation formula allocates funds based on the number of Low Income Households in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. For purposes of this rule, Elderly is defined as a person who is sixty five (65) years of age or older. The five factors used in the formula are calculated as follows:~~

~~–(1) County Non Elderly Poverty Household Factor The number of Non Elderly Poverty Households in the County divided by the number of Non Elderly Poverty Households in the State;~~

~~–(2) County Elderly Poverty Household Factor The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;~~

~~–(3) County Inverse Poverty Household Density Factor—:~~

~~(e) The number of square miles of the county divided by the number of poverty Households of the county (equals the inverse poverty Household density of the county); and~~

~~—(B) Inverse poverty Household density of the county divided by the sum of inverse household densities.~~

~~–(4) County Median Income Variance Factor—:~~

~~(e) State median income minus the county median income (equals county variance); and~~

~~—(B) County variance divided by sum of the State county variances;~~

~~–(5) County Weather Factor—:~~

~~(e) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and~~

~~—(B) County Weather divided by the total sum of the State County Weather.~~

~~—(C) The five factors carry the following weights in the allocation formula: number of Non-Elderly poverty Households (40%), number of poverty Households with at least one member who is sixty five (65) years of age or older (40%), Household density as an inverse ratio (5%), the median income of the county (5%), and a weather factor based on heating degree days and~~

~~cooling degree days (10%). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:~~

- ~~(e) County Non-Elderly Poverty Household Factor (0.40) plus;~~
- ~~—(ii) County Elderly Poverty Household Factor (0.40) plus;~~
- ~~—(iii) County Inverse Poverty Household Density Factor (0.05) plus;~~
- ~~—(iv) County Median Income Variance Factor (0.05) plus;~~
- ~~—(v) County Weather Factor (0.10);~~
- ~~—(vi) Total sum of clauses (i) — (v) of this subparagraph multiplied by total funds allocation equals the county's allocation of funds.~~
- ~~—(vii) The sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.~~

~~(e) To the extent balances remain in Subrecipient contracts that the Subrecipients appear to be unable to utilize, or should additional funds become available, those funds will be allocated using this formula or other method deemed appropriate by the Department to ensure full utilization of funds within a limited timeframe, including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.~~

~~(d) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.~~

#### **§5.504. Distribution of WAP Funds.**

(a) The Department distributes funds to Subrecipients by an allocation formula.

(b) The allocation formula allocates funds based on the number of Low Income Households in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

(1) County Non-Elderly Poverty Household Factor—The number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor—The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;

(3) County Inverse Poverty Household Density Factor--:

(c) The number of square miles of the county divided by the number of poverty Households of the county (equals the inverse poverty Household density of the county); and

(B) Inverse poverty Household density of the county divided by the sum of inverse household densities.

(4) County Median Income Variance Factor--:

(c) State median income minus the county median income (equals county variance); and

(B) County variance divided by sum of the State county variances;

(5) County Weather Factor--:

(c) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(C) The five factors carry the following weights in the allocation formula: number of Non-Elderly poverty Households (40%), number of poverty Households with at least one member who is sixty (60) years of age or older (40%), Household density as an inverse ratio (5%), the median income of the county (5%), and a weather factor based on heating degree days and cooling degree days (10%). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

(c) County Non-Elderly Poverty Household Factor (0.40) plus;

(ii) County Elderly Poverty Household Factor (0.40) plus;

(iii) County Inverse Poverty Household Density Factor (0.05) plus;

(iv) County Median Income Variance Factor (0.05) plus;

(v) County Weather Factor (0.10);

(vi) Total sum of clauses (i) – (v) of this subparagraph multiplied by total funds allocation equals the county's allocation of funds.

(vii) The sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent that Contract funds have been Deobligated, or should additional funds become available, those funds will be allocated using this formula or other method deemed appropriate by the Department to ensure full utilization of funds within a limited timeframe, including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

(d) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.

#### **§5.505. Subrecipient Requirements for Appeals Process for Applicants.**

(a) Subrecipients shall establish a denial of service complaint procedure to address written complaints from program applicants/clients. At a minimum, the procedures described in paragraphs (1) – (8) of this subsection shall be included:

(1) Subrecipients shall provide a written denial of assistance notice to applicant within ten (10) days of the adverse determination. If the denial is for any reason other than DOE reweatherization, as defined in 10 CFR Part 440, the Subrecipient will notify the applicant of the adverse determination. This notification shall include written notice of the right of a hearing and

specific reasons for the denial. The applicants wishing to appeal a decision must provide written notice to Subrecipient within ten (10) days of receipt of the denial notice.

(2) The Subrecipient who receives an appeal shall establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their client files.

(3) The Subrecipient shall hold the appeal hearing within ten (10) business days after the Subrecipient received the appeal request from the applicant.

(4) The Subrecipient shall record the hearing and provide a copy of the recording to the Department in an acceptable digital format, i.e. cd, wmv, mp3, etc.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the notification by close of business on the business day following the decision (one (1) day turn-around).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) – (7) of this subsection do not apply, and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing and no further appeal is afforded to the applicant.

(b) If the applicant is not satisfied, they may further appeal the decision in writing to the Department within ten (10) days of notification of an adverse decision. ~~Appeals will only be accepted if based on one or more of the grounds listed in subsection (c) of this section.~~

(c) For LIHEAP WAP, applicants or clients ~~Applicants/clients~~ who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Texas Government Code, Chapter 2001.

(d) The hearing shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient. The Administrative Law Judge shall issue a Proposal for Decision for consideration and determination by the Board.

(e) If client appeals to the Department or requests a contested hearing, the Subrecipient must retain the maximum allowable cost per unit until the Department renders a decision.

#### **§5.507. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.**

(a) Subrecipients shall establish eligibility and priorities criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipients shall follow the Department rules and established state and federal guidelines for determining eligibility for Multifamily Dwelling Units as referenced in §5.525 of this chapter (relating to Eligibility for Multifamily Dwelling Units).

(c) Subrecipient shall determine applicant income and eligibility in compliance with §5.19 and §5.20 of this chapter (relating to Client Income Guidelines and Determining Income Eligibility).

(d) Social Security numbers are not required for applicants.

### **§5.516. Monitoring of WAP Subrecipients.**

Following the onsite WAP monitoring review, a monitoring report is prepared and submitted to the subrecipients within thirty (30) days outlining any administrative, program, and financial deficiencies. The monitoring report also includes notes, recommended improvements, corrective actions or a corrective action plan. Subrecipients must respond to the monitoring report within thirty (30) calendar days from the date of the monitoring report. Additional monitoring requirements followed by the Department are listed in Subchapter L §5.16 of this chapter (relating to Compliance Monitoring Monitoring of Subrecipients) and in chapter 2 of this part (relating to Enforcement).

### **§5.525. Eligibility for Multifamily Dwelling Units.**

~~(a) The eligibility of dwelling units for WAP services can be found in 10 CFR §440.22.~~

~~(b) A multifamily building is defined by DOE as a group of dwellings under the same roof.~~

(a) A Subgrantee may weatherize a building containing rental units if not less than 66% (50% for duplexes and four-unit buildings) of the Dwelling Units in the building are occupied by Low Income Households, or will become occupied by Low-income Households within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building.

~~(b)(e)~~ In order to weatherize large multifamily buildings containing twenty-five or more Dwelling Units ~~dwelling units~~ or those with shared central heating (i.e. boilers) and/or shared cooling plants (i.e. cooling towers that use water as the coolant) regardless of the number of Dwelling Units ~~dwelling units~~, Subrecipients shall submit in writing a request for approval from the Department. When necessary, the Department will seek approval from DOE. Approvals from DOE must be received prior to the installation of any weatherization measures in this type of structure.

~~(c)(d)~~ In order to weatherize Shelters ~~shelters~~, Subrecipients shall submit a written request for approval from the Department. Approvals from the Department must be received prior to the installation of any weatherization measures.

~~(d)~~(e) If roof replacement is to be considered as part of repair cost under the weatherization process, the expenses must be shared equally by all eligible units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground floor units must be allocated a portion of the roof cost as well as the eligible top floor units. All weatherization measures installed in multifamily units must meet the standards set in 10 CFR ~~§440.18(d)(9)~~ §440.18(c)(9) and (15) and Appendix A—Standards for Weatherization Materials. ~~and meet a savings-to-investment ratio of one or greater on the Energy Audit. DOE specifically addresses the eligibility of multifamily units in 10 CFR §440.22(a) —(d).~~

~~(e)~~(f) WAP Subrecipients shall establish a multifamily master file for each multifamily project in addition to the individual unit requirements found in the record keeping requirement section of the contract. Subrecipients shall maintain a multifamily master file for each complex weatherized. The multifamily master file must include, at a minimum, the forms listed in paragraphs (1) – (6) of this subsection: (Forms available on the Departments website.)

- (c) Multifamily Pre-Project Checklist Form;
- (2) Multifamily Post-Project Checklist Form;
- (3) Permission to Perform an Assessment for Multifamily Project Form;
- (4) Landlord Agreement Form;
- (5) Landlord Financial Participation Form; and
- (6) Significant Data Required in all Multifamily Projects.

(f) For DOE WAP, if a public housing, assisted multi-family or Low Income Housing Tax Credit (LIHTC) building is identified by the U.S. Department of Housing and Urban Development (HUD) and included on a list published by DOE, that building meets certain income eligibility and may meet other WAP requirements without the need for further evaluation or verification. A public housing, assisted housing, and LIHTC building that does not appear on the list using HUD records may still qualify for the WAP. Income eligibility can be made on an individual basis by the Subrecipient based on information supplied by property owners and the Households in accordance with subsection (a) of this section.

(g) For any Dwelling Unit that is weatherized using funding provided under DOE WAP, all weatherization measures installed must be entered into an approved State of Texas Energy Audit. Weatherization measures installed shall begin with repair items, then continue with those measures having the greatest savings-to-investment ratio (SIR) and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per unit expenditures are achieved, and finishing with Health and Safety measures.

#### **§5.528. Health and Safety and Unit Deferral.**

(a) Health and Safety expenditures may not exceed 20% of total unit expenditures (Materials, Labor, Program Support, and Health and Safety) at the end of the contract period.

(b) Subrecipients shall provide weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from weatherization work.

~~(c) If health and safety issues identified on an individual unit (which would be exacerbated by any weatherization work performed) cannot be abated within the allowable WAP limits, the unit exceeds the scope of this program.~~

~~(c)~~(d) Subrecipients must test for high carbon monoxide (CO) levels and bring CO levels to acceptable levels before weatherization work can start. The Department has defined maximum acceptable CO readings as follows:

- (1) 25 parts per million for cook stove burners and unvented space heaters;
- (2) 100 parts per million for vented combustion appliance; and
- (3) 150 parts per million for cook stove ovens.

(d) A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subrecipient's weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from weatherization. The Subrecipient must declare their intent to defer weatherization on an eligible unit on the assessment form. The assessment form should include the client's name and address, dates of the assessment, and the date on which the client was informed of the issue in writing. The written notice to the client must include a clear description of the problem, conditions under which weatherization could continue, the responsibility of all parties involved, and any rights or options the client has. A copy of the notice must be given to the client, and a signed copy placed in the client application file. Only after the issue has been corrected to the satisfaction of the Subrecipient shall weatherization work begin.

(e) If structural concerns or health and safety issues identified (which would be exacerbated by any weatherization work performed) on an individual unit cannot be abated within program rules or within the allowable WAP limits, the unit exceeds the scope of this program.



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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action proposing new 10 TAC Chapter 5 Community Affairs Programs, Subchapter F, Weatherization Assistance Program, Department of Energy, §5.614 Deobligation and Reobligation of Awarded Funds, and directing that it be published for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Chapter 2306 of the Texas Government Code, the Department is authorized to adopt rules governing the administration of the Department and its programs, and

**WHEREAS**, proposed new 10 TAC §5.614 defines requirements associated with the deobligation and reobligation of awarded funds in the Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”);

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed new Chapter 5 Subchapter F, §5.614 in the form presented to this meeting, to be published in the *Texas Register* for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

The proposed new §5.614, Deobligation and Reobligation of Awarded Funds, is being proposed in response to recent guidance from the Department of Energy (“DOE”) in regards to the DOE WAP program. DOE contends that rolling forward a portion of the annual allocation into subsequent contracts means that the Department does not have sufficient real-time knowledge of subrecipient progress on production of weatherized units. These changes are being proposed in order to assure the timely and appropriate use of funds; compliance with federal accountability, transparency, and programmatic requirements; and to ensure that funds are expended by required deadlines and in a way that DOE will find to be more consistent with best practices in contract management.

**Attachment A: Preamble and proposed new 10 TAC Chapter 5 Community Affairs Programs, Subchapter F, Weatherization Assistance Program, Department of Energy, §5.614 Deobligation and Reobligation of Awarded Funds**

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 5, Community Affairs Programs, Subchapter F, §5.614 Deobligation and Reobligation of Awarded Funds.

These changes are being proposed in order to assure the timely and appropriate use of funds; compliance with federal accountability, transparency, and programmatic requirements; and to ensure that funds are expended by required deadlines and in a way that DOE will find to be more consistent with best practices in contract management.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is effect, the public benefit anticipated as a result of the new section will be clarity of program requirements and programmatic adherence to federal guidelines. There will not be any economic cost to any individuals required to comply with the new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 22, 2015, to June 22, 2015, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us), or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 22, 2015.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter F, which authorizes the Department to administer its Community Affairs programs.

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

**§5.614. Deobligation and Reobligation of Awarded Funds.**

(a) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria noted in subsection (l) of this section relating to criteria for deobligation of funds, notification must be provided to the Department unless excepted under subsection (m) of this section.

(b) A written "Notification of Possible Deobligation" will be sent to the Board of Directors and Executive Director of the Subrecipient by the Department as soon as a criterion listed in

subsection (l) of this section is at risk of being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met.

(c) Within fifteen (15) days of the date of the "Notification of Possible Deobligation" referenced in subsection (b) of this section, a Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department unless excepted under subsection (m) of this section.

(d) A Mitigation Action Plan is not limited to but must include:

(1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.

(2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Period. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full and timely execution of the contract.

(3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be revised, going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds and revised Production Schedule reflecting the reduced Contracted Funds.

(e) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite-visits or other assessment or engage in any other oversight of the Subrecipient that is believed appropriate by the Department under the facts and circumstances.

(f) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other concern.

(g) After the Department's receipt of the Mitigation Action Plan, the Department will provide the Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to deobligation and other mitigating actions) or other acceptable solutions or remedies.

(h) The Subrecipient has seven (7) calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

- (1) Request to retain for the full Fund Award if Partial Deobligation was indicated;
- (2) Request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice;
- (3) Request for other lawful action consistent with the timely and full completion of the contract and Production Schedule for all Contracted Funds.

(i) In the event that an appeal is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, continued operation of a Contract, authorize Deobligation, or take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

(j) In the event the Executive Director denies an appeal, the Subrecipient will have the opportunity to have their appeal presented at the next Department Board meeting for which the matter may be posted in accordance with law and submitted for final determination by the Board.

(k) In the event an appeal is not submitted within seven (7) calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the contract with the Subrecipient to effectuate the Corrective Action Notice.

(l) The criteria noted in this subsection will prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for their 2015 Contract by July 15, 2015. The Production Schedule must be signed by the Subrecipient Executive Director/Chief Executive Officer and approved by the Department;

(2) By the September 15, 2015 program reporting deadline, Subrecipient must report at least one unit weatherized and inspected by a certified Quality Control Inspector (“QCI”);

(3) By the November 15, 2015 program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the January 15, 2016 program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended;

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual results on Production Schedule criteria;

(m) Notification of deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following are satisfied:

(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 85% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient’s forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 85% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(3) The Subrecipient's monthly reports as reported in the Community Affairs contract system, for the prior two months, as required under the contract between the Department and the Subrecipient, reflects unit production that is 90% or more of the unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.

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**BOARD ACTION REQUEST**  
**HOME PROGRAMS DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action proposing the repeal of 10 TAC Chapter 23 Single Family HOME Program, Subchapter A, General Guidance; Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds; Subchapter C, Homeowner Rehabilitation Assistance Program; Subchapter D, Homebuyer Assistance Program; Subchapter E, Contract for Deed Conversion Program; Subchapter F, Tenant-Based Rental Assistance Program; and Subchapter G, Single Family Development Program, and proposing new 10 TAC Chapter 23 Single Family HOME Program, Subchapter A, General Guidance; Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds; Subchapter C, Homeowner Rehabilitation Assistance Program; Subchapter D, Homebuyer Assistance Program; Subchapter E, Contract for Deed Conversion Program; Subchapter F, Tenant-Based Rental Assistance Program; and Subchapter G, Single Family Development Program, and directing their publication for public comment in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Chapter 2306 of the Texas Government Code, the Department is authorized to adopt rules governing the administration of the Department and its programs;

**WHEREAS**, the Department's Governing Board adopted amendments to 10 Texas Administrative Code ("TAC") Chapter 23, concerning HOME Investment Partnerships Program ("HOME") Single Family rules on December 13, 2013, and those rules became effective on January 4, 2014;

**WHEREAS**, the Department is proposing to repeal all sections of 10 TAC Chapter 23, Single Family HOME Program and proposing all new 10 TAC Chapter 23, Single Family HOME Program, to improve compliance with federal and state requirements, conform with the federal HOME Program regulations at 24 CFR Part 92, as amended, and provide for consistency with other provisions of the rule.

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed repeal of 10 TAC Chapter 23, Single Family HOME Program, and new 10 TAC Chapter 23 regarding the Single Family HOME Program are approved for publication in the *Texas Register* for public comment and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed repeal of 10 TAC Chapter 23, Single Family HOME Program, and new 10 TAC Chapter 23, Single Family HOME Program in the form presented to this meeting to be published



in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

## **BACKGROUND**

The Department held three roundtable discussions between February and April, 2015, regarding the Single Family HOME Program. Roundtable discussions included proposed 2015 allocation methodology, HOME Reservation System, and proposed revisions to 10 TAC Chapter 23, HOME Single Family Program. The roundtables were well attended and attendees provided valuable feedback. An early (unofficial) draft of the proposed amended HOME Rule was made available to the public prior to the last roundtable through an on-line public forum established to receive comments on the HOME Rule. Staff did not receive comments through the on-line forum, but did accept comments received at the roundtables. Comments and suggestions were taken into consideration during the preparation of the proposed HOME Rule as presented at this meeting.

The purpose of repealing 10 TAC Chapter 23, Single Family HOME Program rule (“HOME Rule”) and proposing a new 10 TAC Chapter 23, HOME Rule is to codify new procedures, update and clarify current rules, and streamline processes. Changes were made to every Subchapter; therefore, the Department is repealing and proposing a new Chapter instead of amending the existing Chapter. Staff has summarized the significant changes proposed to be made to the State HOME Rule at 10 TAC Chapter 23 below. A black line version with all changes will be available on the Department’s website during the public comment period.

### **Subchapter A General Guidance**

#### ***§23.1 Applicability and Purpose***

Deletes the option for Administrators with an active Contract to opt into the HOME Reservation System; this provision is outdated.

#### ***§23.2 Definitions***

Deletes definitions for Affiliate, Affiliated Party, and Control; these terms are defined in 10 TAC Chapter 20. Definitions require renumbering.

### **Subchapter B Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds**

#### ***§23.20 Availability of Funds and Regional Allocation Formula***

Clarifies the process for the allocation of funds subject to the Regional Allocation Formula (“RAF”) and proposes a lottery process for applications resulting in a tied score. This will allow details to be defined in a Notice of Funding Availability (“NOFA”).

#### ***§23.21 Application Forms and Materials and Deadlines***

Removes the application deadline requirements, and codifies that the deadline requirements will be established in the NOFA.

***§23.22 Contract Award Application Review Process for Open and Competitive Application Cycles***

Clarifies how open and competitive applications will be processed. Clarifies that applications for contract awards will be scored and ranked. Strikes administrative deficiency rule for contract applications, now addressed under the new §23.24.

***§23.23 Reservation System Participant Review Process***

Clarifies the review and approval for Reservation System Participant (“RSP”) applications. Strikes the recertification of RSP Agreements. Strikes the administrative deficiency process, and is addressed under the new §23.24.

***§23.24 Administrative Deficiency Process***

Codifies the administrative deficiency process under a competitive application cycle and open application cycle for contract award and RSP applications. This section encompasses the process to cure an administrative deficiency, provides deadlines, penalties and termination procedures for contract award and RSP applications.

***§23.25 General Threshold and Selection Criteria***

Revises the section number as a result of adding §23.24 Administrative Deficiency Process. Subsection 23.25(2)(c) strikes the detailed match methodology and documentation requirement to be stated in the Resolution. This information is not required to be stated in the Resolution. Subsection 23.25(3) strikes information not relative to single family programs regarding partnership agreements concerning the CHDO set-aside. Subsection 23.25(5) strikes all language regarding the percentage for commitment of funds or households for contract award applicants.

***§23.26 Contract Benchmarks and Limitations***

Revises the section number as a result of adding §23.24 Administrative Deficiency Process. Removes the maximum award limits for contract awards from rule and defers to the NOFA. This section also reduces the contract benchmark for submission of project set-up information to commit funds for all single family activities, except Tenant-Based Rental Assistance (“TBRA”), from twelve months to six months from the effective date of the contract. TBRA remains at 12 months. Clarifies that voluntary deobligation of funds by an Administrator will not impact participation in open cycle NOFAs. Grants the Department the ability to suspend funds rather than issue a deficiency if Administrator does not respond timely to Department’s request for status or update relative to Agreement. Subsection 23.26(f) allows for reimbursement, as pre-contract costs, additional eligible administrative and project soft costs for up to 90 days prior to contract effective date.

***§23.27 Procurement of Contractor***

Deletes this section in its entirety as this section allowed the Department to directly procure contractors to provide services for the administration of the HOME Program. This option is not relevant to the current focus and direction of the HOME Program.

### ***§23.27 Reservation System Participant (RSP) Agreement***

Revises this section number as a result of adding §23.24 Administrative Deficiency Process. This section reduces the number of reservations an Administrator may have in the pipeline for approval from 5 to 4 for Homeowner Rehabilitation (HRA), Homebuyer Assistance (HBA), Contract for Deed Conversion (CFDC) and Single Family Development (SFD). This section also reduces the number of Reservations, at any given time, for TBRA from 30 to 20; clarifies the definition of extremely-low income for reporting purposes; and requires Match to be provided on a per unit basis rather than for every fourth household under an RSP Agreement.

### ***§23.28 General Administrative Requirements***

Changes include §23.28(3), granting the authority to US Comptroller to examine records. Subsection 23.28(8)(C) allows relocation for reasons other than relocating out of a floodplain. Subsection 23.28(9) codifies that the HOME Program will use HUD Handbook 4350 to determine Part 5 Income. Subsection 23.28(11) restricts disaster relief set-aside funds to be utilized only in the case of a natural disaster that occurred within the previous 3 years from Administrator's Agreement effective date. Currently the disaster set-aside funds may be used for any type of disaster. Subsection 23.28(13) codifies the requirement that projects submitted under the reservation system must be substantially complete in order for funds to be reserved.

### ***§23.29 Resale and Recapture Provisions***

Changes include establishing that recapture is the primary method the Department will use to recoup HOME funds. Subsection 23.29(b)(1) specifies that the loan may be assumed or forgiveness continues as applicable, as long as at least one member of the household remains in the unit, and clarifies that the Department will include loan payments when calculating amount subject to recapture. This section also clarifies that a purchaser of a HOME assisted unit must be qualified as low-income. Subsection 23.29(c), clarifies the requirements if the Department must impose the resale provisions. Subsection 23.29(f), added language to allow annual forgiveness of the amount of a conditional grant agreement.

## **Subchapter C Homeowner Rehabilitation Assistance Program**

### ***§23.30 Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria***

Changes include establishing new Match requirements for HRA to 0% match if population of Administrator's service area is equal to or less than 3,000 persons, and for Administrators whose service area is 1% match for every 1,000 persons in the Administrator's service area, up to 15%, and excludes TBRA, Disaster Relief set aside, and Persons with Disabilities set aside. Also states specific guidance on which population figures to use to determine match requirement; Cash reserves requirement reduced from \$80,000 to \$40,000, and support documentation for application is limited to a line of credit or Applicant's financial statements and a letter from financial institution indicating sufficient balance to meet cash reserve requirement. The submission of the CPA letter from Applicant's latest audit and separate statement from CPA stating that applicant has financial capacity and best practices to administer a HOME grant is deleted. The CPA letter option does not provide sufficient proof that the applicant has cash reserves available as required by the program. This section also includes that the selection criteria will be stated in the applicable NOFA.

### ***§23.31 Homeowner Rehabilitation Assistance (HRA) Program Requirements***

Increases maximum amount for replacement of a manufactured housing unit (MHU) with an energy efficient MHU from \$65,000 to \$75,000. The increase is due to the MHU energy efficiency requirement. Redefines the use of the additional \$5,000 in direct project costs allowed for environmental mitigation as identified during the environmental review process, or if the homeowner requests accessibility features. Subsection 23.31(l) revises language to include requirements for reconstruction and new construction as stated in the amended HUD HOME Final Rule at 24 CFR Part 92. Subsection 23.31(m) adds language for design and quality requirements which conform to requirements under Single Family Development. Subsection 23.31(n) adds requirement that housing constructed under HRA must be certified by an architect or engineer and also meet the requirements of the energy efficiency rule. This requirement has historically been required by HOME and was removed in prior rule amendments.

### ***§23.32 Homeowner Rehabilitation Assistance (HRA) Administrative Requirements***

Streamlines administrative requirements to meet alterations to program administration, accommodates the Department's new environmental module, clarifies processes, and codifies existing practices of the Division. Language added in §23.32(a)(6) to submit project cost estimates and construction contracts necessary to ensure applicable property standard requirements will be met at completion. Under §23.32(a)(12) title commitments for loans must not be older than 30 days from date of submission and not have adverse changes before closing. Subsection 23.32(a)(14)-(15) moves the requirement to the commitment section from the loan closing section. Subsection 23.32(b) moves the appraisal submission requirement from commitment requirements to loan closing requirements. This change is made to alleviate the financial burden of paying for appraisals for projects that may not ultimately be funded. Subsection 23.31(b)(1)-(3) Loan closing or grant agreement documentation required for commitment or reservation of funds such as title commitment, MHU information to issue Statement of Ownership (SOL), and life event documentation. This language moved to commitment requirements to codify existing Division practices. Subsection 23.32(c)(12) adds language requiring submission of the title policy if the policy is purchased with HOME funds.

## **Chapter D Homebuyer Assistance Program**

### ***§23.40 Homebuyer Assistance (HBA) Threshold and Selection Criteria***

In addition to the requirements under §23.25, the Match 5% requirement for HBA is clarified, and includes that match incentives may be established in the NOFA. §23.40(2) Cash reserves requirement reduced from \$80,000 to \$20,000, and supporting documentation for application is limited to a line of credit or Applicant's financial statements and a letter from financial institution indicating sufficient balance to meet cash reserve requirement. The submission of the CPA letter from Applicant's latest audit and separate statement from CPA stating that applicant has financial capacity and best practices to administer a HOME grant is deleted. The CPA letter option does not provide sufficient proof that the applicant has cash reserves available as required by the program. Subsection 23.41(h) forgiveness of the loan, defers to §23.29 of this Chapter for process.

### ***§23.41 Homebuyer Assistance (HBA) Program Requirements***

Relocates the process for forgiveness of a loan to §23.29. This change is made for consistency across programs that may require a loan. Subsection 23.41(j) clarifies the construction standards for rehabilitation and added the reference to 10 TAC Chapter 21 for energy efficiency requirements.

### ***§23.42 Homebuyer Assistance (HBA) Administrative Requirements***

Streamlines administrative requirements to meet alterations to program administration, accommodates the Department's new environmental module, clarifies processes, and codifies existing practices of the Division. Subsection 23.42(a) no longer requires an address, environmental clearance, lead-based paint identification, flood insurance quotes, purchase contract, or appraisal, to reserve funds. These are now required before a commitment of funds can occur to allow for a pre-approval process. Subsection 23.42(b) commitment of funds, requires that documentation required for the commitment of funds, address, environmental clearance, identification of lead-based paint, flood insurance quote, title commitment, executed sales contract, appraisal, and good faith estimate, be submitted within 90 days of approval of the reservation of funds.

## **Chapter E Contract for Deed Conversion Program**

### ***§23.50 Contract for Deed Conversion (CFDC) Threshold and Selection Criteria***

Cash reserves requirement reduced from \$80,000 to \$40,000, and support documentation for Application is limited to a line of credit or Applicant's financial statements and a letter from financial institution indicating sufficient balance to meet cash reserve requirement. The submission of the CPA letter from Applicant's latest audit and separate statement from CPA stating that applicant has financial capacity and best practices to administer a HOME grant is deleted. The CPA letter option does not provide sufficient proof that the applicant has cash reserves available as required by the program.

### ***§23.51 Contract for Deed Conversion (CFDC) Program Requirements***

Adds a provision stating that the HOME assisted project must be located in a Colonia as defined in Texas Government Code Chapter 2306, and the Colonia must be registered with the Secretary of the State Office. Subsection 23.51(f)(3) is a cost increase from \$65,000 to \$75,000 for replacement of a manufactured housing unit (MHU) with an energy efficient MHU. The increase is due to the MHU energy efficiency requirement. Subsection 23.51(g) redefines the use of the additional \$5,000 in direct project costs allowed for environmental mitigation as identified during the environmental review process, or if the homeowner requests accessibility features. Subsection 23.51(l) Language was revised to include requirements for reconstruction and new construction as stated in the amended HUD HOME Final Rule at 24 CFR Part 92. Subsection 23.51(m) adds language for design and quality requirements which conform to requirements under Single Family Development. Subsection 23.51(n) adds requirement that housing constructed under HRA must be certified by an architect or engineer and also meet the requirements of the energy efficiency rule.

### ***§23.52 Contract for Deed Conversion (CFDC) Administrative Requirements***

Streamlines the administrative requirements to meet alterations to program administration, accommodates the Department's new environmental module, clarifies processes, and codifies existing practices of the Division. Subsection 23.52(a)(6) language is added to submit project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion. Subsection 23.52(a)(11) moves title commitment requirement from loan closing to commitment requirements, title commitments for loans must not be older than 30 days from date of submission and not have adverse changes before closing. Subsection 23.52(a)(12)-(15), moves the requirement to the commitment of funds section from the loan closing section. Documentation required for commitment or reservation of funds such as title commitment, MHU information to issue Statement of Ownership (SOL), life event documentation, copy of the recorded contract for deed and current payoff statement, and any other documentation necessary to evidence the project meet program requirements. Subsection 23.32(b), Loan Closing, is struck in its entirety. This language moved to commitment of funds requirements to codify existing Division practices.

## **Subchapter F Tenant-Based Rental Assistance**

### ***§23.60 Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria***

Changes to this section are made to streamline the administrative requirements to meet alterations to program administration, accommodate the Department's new environmental module, clarify processes, and codify existing practices of the Division.

Cash reserves support documentation for Application is limited to a line of credit or Applicant's financial statements and a letter from financial institution indicating sufficient balance to meet cash reserve requirement. The submission of the CPA letter from Applicant's latest audit and separate statement from CPA stating that applicant has financial capacity and best practices to administer a HOME grant is deleted. The CPA letter option does not provide sufficient proof that the applicant has cash reserves available as required by the program.

### ***§23.61 Tenant-Based Rental Assistance (TBRA) Program Requirements***

Allows households to be assisted for more than 24 months, establishes total lifetime assistance as 36 months with the exception of an additional 24 months assistance if the criteria stated in §23.61(e)(1)(A)-(D), which adds Section 811 Project Rental Assistance Demonstration to the list of programs that qualify applicants for additional assistance, is met. Subsection 23.61(f), payment standard, allows specific authorization to utilize HUD's Small Area Fair Market rent as the Fair Market Rent, where applicable. Subsection 23.61(k) adds provision requiring landlords to notify Administrator if a tenant moves out of the unit prior to end date of lease. This was added to reduce possibility of payment on an unoccupied unit. Subsection 23.61(l) adds requirement for Administrators to comply with the Multi-Family tenant selection criteria. Subsection 23.61(m) adds provision requiring Administrators to reserve funds prior to issuing a certificate of eligibility. This change requires administrators to utilize the TBRA pre-approval process for a reservation so that the tenant does not execute a lease for a unit that may ultimately not be funded.

**§23.62 *Tenant-Based Rental Assistance (TBRA) Administrative Requirements***

Requires Administrators to provide a project address within 90 days of pre-approving a tenant. This codifies existing Division practices. Subsection 23.62(b)(2) removes the requirement for inspections to be signed and dated. The HUD inspection form does not have a signature block or line. The inspector must sign and date the Rental Coupon Contract, attesting the date the unit passed inspection. Subsection 23.62(b)(7), allows a Household Commitment Contract to be signed after the end date of a RSP Agreement, for reservations submitted prior to the end date of the RSP Agreement. This codifies existing Division practices.

**Subchapter G Single Family Development**

**§23.71 *Single Family Development (SFD) Program Requirements***

Adds requirements that units must be certified by an architect and meet the requirement of the energy efficiency rule; adds language allowing additional project funds in the amount of \$5,000 for environmental mitigation and accessibility; adds a 15% limitation for contractor fee inclusive of contractor fee paid to a prime contractor; adds a minimum of three months to the interim construction loan term to allow additional time to close homebuyer loans; clarifies which funds are included in the interim loan; adds a grant to the developer for closing costs for the homebuyer loan; limits downpayment assistance to 10% of total development cost; increases the earnest money limitations to \$1,000 and states that it cannot be reimbursed to the buyer; and specifies that the contractor fee must be included in the budget and removes the reference to soft costs.

Attached are the proposed preambles, the proposed repeal and proposed new 10 TAC Chapter 23, Single Family HOME Program rules.

## **Attachment 1: Preamble for repeal of 10 TAC Chapter 23**

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 23, concerning Single Family HOME Program

The purpose of the proposed repeal is to restructure the program rules to improve compliance with federal and state requirements, conform to the federal HOME Program regulations at 24 CFR Part 92 and provide for consistency with other provisions of the rule.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be to avoid redundancy in and clarify Department rules. There will not be any economic cost to any individuals required to comply with the repeal.

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

**REQUEST FOR PUBLIC COMMENT.** Written comments may be submitted to the Texas Department of Housing and Community Affairs, Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; by email to [HOME@tdhca.state.tx.us](mailto:HOME@tdhca.state.tx.us); or by fax to (512) 475-0220. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 22, 2015**

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

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

### Subchapter A General Guidance

§23.1 Purpose

§23.2 Definitions

### Subchapter B Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds

§23.20 Availability of Funds and Regional Allocation Formula

§23.21 Application forms and Materials and Deadlines

§23.22 Contract Award Application Review Process

§23.23 Reservation System Participant Review Process

§23.24 General Threshold and Selection Criteria

§23.25 Contract Limitations

§23.26 Reservation System Participant (RSP) Agreement

§23.27 Procurement of Contractor

§23.28 General Administrative Requirements



## §23.29 Resale and Recapture Provisions

### Subchapter C Homeowner Rehabilitation Assistance Program

§23.30 Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria,

§23.31 Homeowner Rehabilitation Assistance (HRA) Program Requirements

§23.32 Homeowner Rehabilitation Assistance (HRA) Administrative Requirements

### Subchapter D Homebuyer Assistance Program

§23.40 Homebuyer Assistance (HBA) Threshold and Selection Criteria

§23.41 Homebuyer Assistance (HBA) Program Requirements

§23.42 Homebuyer Assistance (HBA) Administrative Requirements

### Subchapter E Contract for Deed Conversion Program

§23. 50 Contract for Deed Conversion (CFDC) Threshold and Selection Criteria

§23. 51 Contract for Deed Conversion (CFDC) Program Requirements

§23. 52 Contract for Deed Conversion (CFDC) Administrative Requirements

### Subchapter F Tenant-Based Rental Assistance Program

§23.60 Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria

§23.61 Tenant-Based Rental Assistance (TBRA) Program Requirements

§23.62 Tenant-Based Rental Assistance (TBRA) Administrative Requirements

### Subchapter G Single Family Development Program

§23.70 Single Family Development (SFD) Threshold and Selection Criteria

§23.71 Single Family Development (SFD) Program Requirements

§23.72 Single Family Development (SFD) Administrative Requirements

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 23 Single Family HOME Program, concerning Single Family HOME Program.

The purpose of the proposed new Chapter 23 is to codify new procedures, update and clarify current rules, streamline processes, and to improve compliance with federal and state requirements, conform with the federal HOME Program regulations at 24 CFR Part 92, as amended, and provide consistency with other provisions of the rule.

### **Subchapter A General Guidance**

#### ***§23.1 Applicability and Purpose***

Deletes the option for Administrators with an active Contract to opt into the HOME Reservation System; this provision is outdated.

#### ***§23.2 Definitions***

Deletes definitions for Affiliate, Affiliated Party, and Control; these terms are defined in 10 TAC Chapter 20. Definitions require renumbering.

### **Subchapter B Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds**

#### ***§23.20 Availability of Funds and Regional Allocation Formula***

Clarifies the process for the allocation of funds subject to the Regional Allocation Formula ("RAF") and proposes a lottery process for applications resulting in a tied score. This will allow details to be defined in a Notice of Funding Availability ("NOFA").

#### ***§23.21 Application Forms and Materials and Deadlines***

Removes the application deadline requirements, and codifies that the deadline requirements will be established in the NOFA.

#### ***§23.22 Contract Award Application Review Process for Open and Competitive Application Cycles***

Clarifies how open and competitive applications will be processed. Clarifies that applications for contract awards will be scored and ranked. Strikes administrative deficiency rule for contract applications, now addressed under the new §23.24.

#### ***§23.23 Reservation System Participant Review Process***

Clarifies the review and approval process for Reservation System Participant ("RSP") applications. Strikes the recertification of RSP Agreements. Strikes the administrative deficiency process, and is addressed under the new §23.24.

#### ***§23.24 Administrative Deficiency Process***

Codifies the administrative deficiency process under a competitive application cycle and open application cycle for contract award and RSP applications. This section encompasses the process

to cure an administrative deficiency, provides deadlines, penalties and termination procedures for contract award and RSP applications.

### ***§23.25 General Threshold and Selection Criteria***

Revises the section number as a result of adding §23.24 Administrative Deficiency Process. Subsection 23.25(2)(c) strikes the detailed match methodology and documentation requirement to be stated in the Resolution. This information is not required to be stated in the Resolution. Subsection 23.25(3) strikes information not relative to single family programs regarding partnership agreements concerning the CHDO set-aside. Subsection 23.25(5) strikes all language regarding the percentage for commitment of funds or households for contract award applicants.

### ***§23.26 Contract Benchmarks and Limitations***

Revises the section number as a result of adding §23.24 Administrative Deficiency Process. Removes the maximum award limits for contract awards from rule and defers to the NOFA. This section also reduces the contract benchmark for submission of project set-up information to commit funds for all single family activities, except Tenant-Based Rental Assistance (“TBRA”), from twelve months to six months from the effective date of the contract. TBRA remains at 12 months. Clarifies that voluntary deobligation of funds by an Administrator will not impact participation in open cycle NOFAs. Grants the Department the ability to suspend funds rather than issue a deficiency if Administrator does not respond timely to Department’s request for status or update relative to Agreement. Subsection 23.26(f) allows for reimbursement, as pre-contract costs, additional eligible administrative and project soft costs for up to 90 days prior to contract effective date.

### ***§23.27 Procurement of Contractor***

Deletes this section in its entirety as this section allowed the Department to directly procure contractors to provide services for the administration of the HOME Program. This option is not relevant to the current focus and direction of the HOME Program.

### ***§23.27 Reservation System Participant (RSP) Agreement***

Revises this section number as a result of adding §23.24 Administrative Deficiency Process. This section reduces the number of reservations an Administrator may have in the pipeline for approval from 5 to 4 for Homeowner Rehabilitation (HRA), Homebuyer Assistance (HBA), Contract for Deed Conversion (CFDC) and Single Family Development (SFD). This section also reduces the number of Reservations, at any given time, for TBRA from 30 to 20; clarifies the definition of extremely-low income for reporting purposes; and requires Match to be provided on a per unit basis rather than for every fourth household under an RSP Agreement.

### ***§23.28 General Administrative Requirements***

Changes include §23.28(3), granting the authority to US Comptroller to examine records. Subsection 23.28(8)(C) allows relocation for reasons other than relocating out of a floodplain. Subsection 23.28(9) codifies that the HOME Program will use HUD Handbook 4350 to determine Part 5 Income. Subsection 23.28(11) restricts disaster relief set-aside funds to be utilized only in the case of a natural disaster that occurred within the previous 3 years from Administrator’s Agreement effective date. Currently the disaster set-aside funds may be used for

any type of disaster. Subsection 23.28(13) codifies the requirement that projects submitted under the reservation system must be substantially complete in order for funds to be reserved.

### ***§23.29 Resale and Recapture Provisions***

Changes include establishing that recapture is the primary method the Department will use to recoup HOME funds. Subsection 23.29(b)(1) specifies that the loan may be assumed or forgiveness continues as applicable, as long as at least one member of the household remains in the unit, and clarifies that the Department will include loan payments when calculating amount subject to recapture. This section also clarifies that a purchaser of a HOME assisted unit must be qualified as low-income. Subsection 23.29(c), clarifies the requirements if the Department must impose the resale provisions. Subsection 23.29(f), added language to allow annual forgiveness of the amount of a conditional grant agreement.

## **Subchapter C Homeowner Rehabilitation Assistance Program**

### ***§23.30 Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria***

Changes include establishing new Match requirements for HRA to 0% match if population of Administrator's service area is equal to or less than 3,000 persons, and for Administrators whose service area is 1% match for every 1,000 persons in the Administrator's service area, up to 15%, and excludes TBRA, Disaster Relief set aside, and Persons with Disabilities set aside. Also states specific guidance on which population figures to use to determine match requirement; Cash reserves requirement reduced from \$80,000 to \$40,000, and support documentation for application is limited to a line of credit or Applicant's financial statements and a letter from financial institution indicating sufficient balance to meet cash reserve requirement. The submission of the CPA letter from Applicant's latest audit and separate statement from CPA stating that applicant has financial capacity and best practices to administer a HOME grant is deleted. The CPA letter option does not provide sufficient proof that the applicant has cash reserves available as required by the program. This section also includes that the selection criteria will be stated in the applicable NOFA.

### ***§23.31 Homeowner Rehabilitation Assistance (HRA) Program Requirements***

Increases maximum amount for replacement of a manufactured housing unit (MHU) with an energy efficient MHU from \$65,000 to \$75,000. The increase is due to the MHU energy efficiency requirement. Redefines the use of the additional \$5,000 in direct project costs allowed for environmental mitigation as identified during the environmental review process, or if the homeowner requests accessibility features. Subsection 23.31(l) revises language to include requirements for reconstruction and new construction as stated in the amended HUD HOME Final Rule at 24 CFR Part 92. Subsection 23.31(m) adds language for design and quality requirements which conform to requirements under Single Family Development. Subsection 23.31(n) adds requirement that housing constructed under HRA must be certified by an architect or engineer and also meet the requirements of the energy efficiency rule. This requirement has historically been required by HOME and was removed in prior rule amendments.

### ***§23.32 Homeowner Rehabilitation Assistance (HRA) Administrative Requirements***

Streamlines administrative requirements to meet alterations to program administration, accommodates the Department's new environmental module, clarifies processes, and codifies existing practices of the Division. Language added in §23.32(a)(6) to submit project cost estimates and construction contracts necessary to ensure applicable property standard requirements will be met at completion. Under §23.32(a)(12) title commitments for loans must not be older than 30 days from date of submission and not have adverse changes before closing. Subsection 23.32(a)(14)-(15) moves the requirement to the commitment section from the loan closing section. Subsection 23.32(b) moves the appraisal submission requirement from commitment requirements to loan closing requirements. This change is made to alleviate the financial burden of paying for appraisals for projects that may not ultimately be funded. Subsection 23.31(b)(1)-(3) Loan closing or grant agreement documentation required for commitment or reservation of funds such as title commitment, MHU information to issue Statement of Ownership (SOL), and life event documentation. This language moved to commitment requirements to codify existing Division practices. Subsection 23.32(c)(12) adds language requiring submission of the title policy if the policy is purchased with HOME funds.

## **Chapter D Homebuyer Assistance Program**

### ***§23.40 Homebuyer Assistance (HBA) Threshold and Selection Criteria***

In addition to the requirements under §23.25, the Match 5% requirement for HBA is clarified, and includes that match incentives may be established in the NOFA. §23.40(2) Cash reserves requirement reduced from \$80,000 to \$20,000, and supporting documentation for application is limited to a line of credit or Applicant's financial statements and a letter from financial institution indicating sufficient balance to meet cash reserve requirement. The submission of the CPA letter from Applicant's latest audit and separate statement from CPA stating that applicant has financial capacity and best practices to administer a HOME grant is deleted. The CPA letter option does not provide sufficient proof that the applicant has cash reserves available as required by the program. Subsection 23.41(h) forgiveness of the loan, defers to §23.29 of this Chapter for process.

### ***§23.41 Homebuyer Assistance (HBA) Program Requirements***

Relocates the process for forgiveness of a loan to §23.29. This change is made for consistency across programs that may require a loan. Subsection 23.41(j) clarifies the construction standards for rehabilitation and added the reference to 10 TAC Chapter 21 for energy efficiency requirements.

### ***§23.42 Homebuyer Assistance (HBA) Administrative Requirements***

Streamlines administrative requirements to meet alterations to program administration, accommodates the Department's new environmental module, clarifies processes, and codifies existing practices of the Division. Subsection 23.42(a) no longer requires an address, environmental clearance, lead-based paint identification, flood insurance quotes, purchase contract, or appraisal, to reserve funds. These are now required before a commitment of funds can occur to allow for a pre-approval process. Subsection 23.42(b) commitment of funds, requires that documentation required for the commitment of funds, address, environmental clearance, identification of lead-based paint, flood insurance quote, title commitment, executed

sales contract, appraisal, and good faith estimate, be submitted within 90 days of approval of the reservation of funds.

## **Chapter E Contract for Deed Conversion Program**

### ***§23.50 Contract for Deed Conversion (CFDC) Threshold and Selection Criteria***

Cash reserves requirement reduced from \$80,000 to \$40,000, and support documentation for Application is limited to a line of credit or Applicant's financial statements and a letter from financial institution indicating sufficient balance to meet cash reserve requirement. The submission of the CPA letter from Applicant's latest audit and separate statement from CPA stating that applicant has financial capacity and best practices to administer a HOME grant is deleted. The CPA letter option does not provide sufficient proof that the applicant has cash reserves available as required by the program.

### ***§23.51 Contract for Deed Conversion (CFDC) Program Requirements***

Adds a provision stating that the HOME assisted project must be located in a Colonia as defined in Texas Government Code Chapter 2306, and the Colonia must be registered with the Secretary of the State Office. Subsection 23.51(f)(3) is a cost increase from \$65,000 to \$75,000 for replacement of a manufactured housing unit (MHU) with an energy efficient MHU. The increase is due to the MHU energy efficiency requirement. Subsection 23.51(g) redefines the use of the additional \$5,000 in direct project costs allowed for environmental mitigation as identified during the environmental review process, or if the homeowner requests accessibility features. Subsection 23.51(l) Language was revised to include requirements for reconstruction and new construction as stated in the amended HUD HOME Final Rule at 24 CFR Part 92. Subsection 23.51(m) adds language for design and quality requirements which conform to requirements under Single Family Development. Subsection 23.51(n) adds requirement that housing constructed under HRA must be certified by an architect or engineer and also meet the requirements of the energy efficiency rule.

### ***§23.52 Contract for Deed Conversion (CFDC) Administrative Requirements***

Streamlines the administrative requirements to meet alterations to program administration, accommodates the Department's new environmental module, clarifies processes, and codifies existing practices of the Division. Subsection 23.52(a)(6) language is added to submit project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion. Subsection 23.52(a)(11) moves title commitment requirement from loan closing to commitment requirements, title commitments for loans must not be older than 30 days from date of submission and not have adverse changes before closing. Subsection 23.52(a)(12)-(15), moves the requirement to the commitment of funds section from the loan closing section. Documentation required for commitment or reservation of funds such as title commitment, MHU information to issue Statement of Ownership (SOL), life event documentation, copy of the recorded contract for deed and current payoff statement, and any other documentation necessary to evidence the project meet program requirements. Subsection 23.32(b), Loan Closing, is struck in its entirety. This language moved to commitment of funds requirements to codify existing Division practices.

## **Subchapter F Tenant-Based Rental Assistance**

### ***§23.60 Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria***

Changes to this section are made to streamline the administrative requirements to meet alterations to program administration, accommodate the Department's new environmental module, clarify processes, and codify existing practices of the Division.

Cash reserves support documentation for Application is limited to a line of credit or Applicant's financial statements and a letter from financial institution indicating sufficient balance to meet cash reserve requirement. The submission of the CPA letter from Applicant's latest audit and separate statement from CPA stating that applicant has financial capacity and best practices to administer a HOME grant is deleted. The CPA letter option does not provide sufficient proof that the applicant has cash reserves available as required by the program.

### ***§23.61 Tenant-Based Rental Assistance (TBRA) Program Requirements***

Allows households to be assisted for more than 24 months, establishes total lifetime assistance as 36 months with the exception of an additional 24 months assistance if the criteria stated in §23.61(e)(1)(A)-(D), which adds Section 811 Project Rental Assistance Demonstration to the list of programs that qualify applicants for additional assistance, is met. Subsection 23.61(f), payment standard, allows specific authorization to utilize HUD's Small Area Fair Market rent as the Fair Market Rent, where applicable. Subsection 23.61(k) adds provision requiring landlords to notify Administrator if a tenant moves out of the unit prior to end date of lease. This was added to reduce possibility of payment on an unoccupied unit. Subsection 23.61(l) adds requirement for Administrators to comply with the Multi-Family tenant selection criteria. Subsection 23.61(m) adds provision requiring Administrators to reserve funds prior to issuing a certificate of eligibility. This change requires administrators to utilize the TBRA pre-approval process for a reservation so that the tenant does not execute a lease for a unit that may ultimately not be funded.

### ***§23.62 Tenant-Based Rental Assistance (TBRA) Administrative Requirements***

Requires Administrators to provide a project address within 90 days of pre-approving a tenant. This codifies existing Division practices. Subsection 23.62(b)(2) removes the requirement for inspections to be signed and dated. The HUD inspection form does not have a signature block or line. The inspector must sign and date the Rental Coupon Contract, attesting the date the unit passed inspection. Subsection 23.62(b)(7), allows a Household Commitment Contract to be signed after the end date of a RSP Agreement, for reservations submitted prior to the end date of the RSP Agreement. This codifies existing Division practices.

## **Subchapter G Single Family Development**

### ***§23.71 Single Family Development (SFD) Program Requirements***

Adds requirements that units must be certified by an architect and meet the requirement of the energy efficiency rule; adds language allowing additional project funds in the amount of \$5,000 for environmental mitigation and accessibility; adds a 15% limitation for contractor fee inclusive of contractor fee paid to a prime contractor; adds a minimum of three months to the interim construction loan term to allow additional time to close homebuyer loans; clarifies which funds

are included in the interim loan; adds a grant to the developer for closing costs for the homebuyer loan; limits downpayment assistance to 10% of total development cost; increases the earnest money limitations to \$1,000 and states that it cannot be reimbursed to the buyer; and specifies that the contractor fee must be included in the budget and removes the reference to soft costs.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the new Chapter is in effect, the public benefit anticipated as a result of the new Chapter will be assurance of Subrecipient compliance with federal rules. There are no anticipated additional new economic costs to individuals required to comply with the Chapter as a result of this action.

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

**REQUEST FOR PUBLIC COMMENT.** Written comments may be submitted to the Texas Department of Housing and Community Affairs, Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to [HOME@tdhca.state.tx.us](mailto:HOME@tdhca.state.tx.us) or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 22, 2015. A blackline version with all changes will be available on the Department's website at <http://www.tdhca.state.tx.us/home-division/manuals-rules.htm> during the public comment period.

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

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



TITLE 10.                  COMMUNITY DEVELOPMENT  
PART 1.                  TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 23.          SINGLE FAMILY HOME PROGRAM  
SUBCHAPTER A.  GENERAL GUIDANCE

§23.1          Applicability and Purpose.

§23.2          Definitions.

**§23.1. Applicability and Purpose**

(a) Applicability. This chapter governs the use and administration of all HOME Single Family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§12701 - 12839) and HUD regulations at 24 CFR, Part 92 as amended. Chapter 20 of this title (relating to Single Family Programs Umbrella Rule) and other chapters will apply to all Single Family activities, including Single Family Development. Unless otherwise noted herein or required by law, all provisions of this chapter apply to any Application including Recertification received on or after the date of adoption of this chapter. Existing Agreements executed within the preceding twelve (12) months from the date of adoption of this chapter or current pending Applications may be amended in writing at the request of the Administrator or Applicant, and with Department approval, so that all provisions of this chapter apply to the Agreement or Application. Amendments proposing only partial adoption of this chapter are prohibited. No amendment adopting this chapter shall be granted if, in the discretion of the Department, any of the provisions of this chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement was awarded or Application was submitted.

(b) Purpose. The State's HOME Program is designed to:

- (1) focus on the areas with the greatest housing need described in the State Consolidated Plan;
- (2) provide funds for home ownership and rental housing through acquisition, new construction, rehabilitation, and tenant-based rental assistance;
- (3) promote partnerships among all levels of government and the private sector, including non-profit and for-profit organizations; and
- (4) provide low, very low, and extremely low income families with affordable, decent, safe, and sanitary housing.

**§23.2. Definitions**

These words when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in Texas Government Code, Chapter 2306 or Chapter 20 of this title (relating to Single Family Programs Umbrella Rule).

(1) CFR--Code of Federal Regulations.

(2) Commitment of Funds--Occurs when the Activity or a Project is approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.

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

(4) Direct Project Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs, rental and utility subsidy and deposits, and Match Funds.

(5) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(6) Homeownership--Ownership in fee simple title in a 1 to 4 unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made).

(7) Match--Funds contributed to a Project that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to a Project or Activity does not include mortgage revenue bonds, non HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.

(8) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(9) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

(10) Predevelopment Costs--Costs related to a specific eligible Project including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

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

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

(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a 10 percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(12) Project--A single housing unit with a unique physical address. A Project may also refer to an individual Project, Development, or site.

(13) Reservation System Participant (RSP)--Administrator who has executed a written agreement with the Department that allows for participation in the Reservation System.

(14) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.

(15) Texas Minimum Construction Standard (TMCS)--The program standard used to determine the minimum acceptable housing condition for the purposes of rehabilitation.

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

(A) an Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) an Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) a Person receiving any portion of the administration, contractor fee, or developer fee.

TITLE 10. COMMUNITY DEVELOPMENT  
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 23. SINGLE FAMILY HOME PROGRAM  
SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS,  
REVIEW AND AWARD PROCEDURES, GENERAL  
ADMINISTRATIVE REQUIREMENTS, AND RESALE AND  
RECAPTURE OF FUNDS

§23.20. Availability of Funds and Regional Allocation Formula.

§23.21. Application Forms and Materials and Deadlines.

§23.22. Contract Award Application Review Process for Open and Competitive Application Cycles.

§23.23. Reservation System Participant Review Process.

§23.24. Administrative Deficiency Process under Open and Competitive Application Cycles.

§23.25. General Threshold and Selection Criteria.

§23.26. Contract Benchmarks and Limitations.

§23.27. Reservation System Participant (RSP) Agreement.

§23.28. General Administrative Requirements.

§23.29. Resale and Recapture Provisions.

**§23.20. Availability of Funds and Regional Allocation Formula**

Funds subject to regional allocation formula shall be made available as described in paragraphs (1) - (3) of this rule:

- (1) Applicants applying in response to a competitive application cycle will be ranked highest to lowest by region and subregion. If funding is made available to multiple Activities under one NOFA, the funds remaining after awarding all eligible Applications shall collapse and be directed to the next Application across all regions and subregion regardless of Activity, based on descending scoring order;
- (2) Funds made available through an open application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide; and
- (3) In the event of a tie between rankings of two or more Applicants, the Department reserves the right to determine which Application will receive a recommendation for funding, or as otherwise specified in the NOFA. Tied Applicants may also receive a partial recommendation for funding or may be awarded through a lottery process.

**§23.21. Application Forms and Materials and Deadlines**

- (a) The Department will produce an Application, which if properly completed in accordance herein by an eligible Applicant and approved by the Department, can satisfy the Department's requirements to be qualified to administer HOME activities.

(b) The Department must receive all Applications by the deadline specified in the NOFA.

### **§23.22. Contract Award Application Review Process for Open and Competitive Application Cycles**

(a) An Application received by the Department in response to an open application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." An Application with outstanding administrative deficiencies may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(b) For Applications received by the Department in response to a Competitive Application Cycle NOFA, the Department will accept Applications on an ongoing basis during the application acceptance period as specified in the NOFA. Applications will be reviewed and scored then ranked based on the score of the Application.

### **§23.23. Reservation System Participant Review Process**

(a) An application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under subsection 1.5 of this Part as amended or superseded and not denied under subsection 23.24 of this chapter, will be drafted and processed in the order in which it was accepted by to be executed and made effective.

### **§23.24. Administrative Deficiency Process**

(a) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses are required to be submitted electronically. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Director of the HOME Program, Executive Director, and Board, as applicable.

(b) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(c) Administrative deficiencies for HOME Applications under an open application cycle. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 pm CT on the fifth business day following the date of the deficiency notice, the application shall be terminated. Applicants that have been terminated may reapply.

(d) Administrative deficiencies for HOME Applications under a competitive application cycle NOFA. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 pm on the fifth business day following the date of the deficiency notice, then one (1) point shall be deducted from the selection criteria score for each additional business day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 pm CT on the seventh business day following the date of the deficiency notice, then the Application shall be terminated.

### **§23.25. General Threshold and Selection Criteria.**

All Applicants and Applications must submit or comply with:

- (1) an Applicant certification of compliance with state and federal laws, rules and guidance governing the HOME Program;
- (2) a Resolution signed and dated within the six (6) months preceding the Application submission date from the Applicant's direct governing body which includes:
  - (A) authorization of the submission of the Application;
  - (B) commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;
  - (C) source of funds for Match obligation and Match dollar amount, if applicable.
  - (D) name and title of the person authorized to represent the organization; and
  - (E) name and title of the person with signature authority to execute a contract and grant agreement or loan documents, as applicable;
- (3) any Applicant requesting \$25,000 or more must be registered in the System for Award Management (SAM) and have a current Data Universal Numbering System (DUNS) number;
- (4) an Application fee, to be defined in the NOFA or in this Chapter;
- (5) an Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive

omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application.

### **§23.26.Contract Benchmarks and Limitations.**

- (a) Project Funds Limits. Project funds for Contract awards will be established in the NOFA.
- (b) Contract Award Terms. With the exception of Tenant-Based Rental Assistance, all Activity Contract awards will have a Contract term of up to twenty-four (24) months exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance Activity Contract awards will have a Contract term of up to thirty-six (36) months.
- (c) Contract Award Benchmarks. Except for Tenant-Based Rental Assistance, all Contract Administrators must submit to the Department complete Project setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within six (6) months from the effective date of the Contract. Tenant-Based Rental Assistance Contract Administrators must submit to the Department complete Project setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within twelve (12) months from the effective date of the Contract. All remaining funds will be deobligated and returned to the Department.
- (d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.
- (e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.
- (f) Pre-Contract Costs. The Administrator may be reimbursed for eligible administrative and Project Soft Costs incurred before the effective date of the HOME contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six (6) months prior to the Department's Governing Board approval of the Administrator's award.

**§23.27. Reservation System Participant (RSP) Agreement.**

- (a) Terms of Agreement. RSP Agreements will have up to a twenty-four (24) month term for all Activities. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system.
- (b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to four (4) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to twenty (20) at any given time. All required documentation for the reservation of funds must be submitted to the Department twenty (20) business days prior to the end of RSP Agreement term.
- (c) Extremely Low-Income Households. Except for Households served with disaster relief, Homebuyer Assistance or Single Family Development assistance, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30% area median family income for the county in which they will reside without the increase for poverty guidelines or have an income that is lower than the statewide 30% income limit without adjustments to HUD limits. ).
- (d) Match. An RSP must meet the Match requirement per Project approved for assistance.
- (e) Completion of Construction. For Projects involving construction, an RSP must complete construction within twelve (12) months from the Commitment of Funds for the Project.
- (f) Extensions. The Executive Director or his/her designee or the HOME Program Director may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction.
- (g) An RSP must remain in good standing with the Department, the state of Texas, and HUD. If an RSP is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

**§23.28. General Administrative Requirements.**

Unless otherwise provided in this chapter, the Administrator, or Developer, must comply with the requirements described in paragraphs (1) - (20) of this section, for the administration and use of HOME funds:

- (1) complete training, as applicable;
- (2) provide all applicable Department Housing Contract System access request information and documentation requirements;



- (3) establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor of Texas, the Comptroller of Public Accounts of the State of Texas, or any of their duly authorized representatives, throughout the applicable record retention period;
- (4) for non-development Activities, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:
- (A) develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;
  - (B) develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;
  - (C) ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;
  - (D) ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;
  - (E) ensure that building construction contractors are procured in accordance with State and Federal regulations for Single Family HOME Activities;
  - (F) ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and
  - (G) ensure that any Request for Proposals or Invitation for Bid include:
    - (i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;
    - (ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;
    - (iii) a conflict of interest disclosure;
    - (iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;
    - (v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;
    - (vi) must not have a term of services greater than five years; and
    - (vii) for competitive proposals, disclose the specific election/evaluation criteria;
- (5) in instances where a potential conflict of interest exists, follow procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made,

and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household until HUD has granted an exception to the conflict of interest provisions;

- (6) perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable;
- (7) develop and comply with written applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan;
- (8) complete applicant intake and applicant selection. Notify each applicant Household in writing of either acceptance or denial of HOME assistance within sixty (60) days following receipt of the intake application. For Homeowner Rehabilitation Assistance and Contract for Deed Conversion the Administrator must:

  - (A) provide rehabilitation as an available option to Households, provide Households with a general cost estimate, and to the extent that rehabilitation would not meet the program requirements, explain these program requirements;
  - (B) unless not allowed by local code, provide replacement of an existing housing unit with a new MHU as an available option; and
  - (C) explain relocation as an available option under applicable Activities;
- (9) determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350, and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income;
- (10) except for Single Family Development, complete an updated income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the HOME assistance is provided to the Household. For Single Family Development, complete income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the contract to purchase the housing unit is executed with the Household;
- (11) for disaster relief set-aside activities, provide evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a natural disaster that occurred less than three years prior to Administrator's Agreement begin date;
- (12) for single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and the Administrator;

- (13) submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of ten (10) business days beginning at the start of the first business day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds;
- (14) submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Projects when program documents are not executed timely, in the Department's sole and reasonable discretion;
- (15) not proceed or allow a contractor to proceed with construction, including demolition, on any Project or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable;
- (16) submit any Program Income received by the Administrator or Developer to the Department within ten (10) business days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Project address and Project number, and must be sent to the Departments accounting division;
- (17) submit required documentation, for project completion reports no later than sixty (60) days after the completion of the Project;
- (18) for Contract awards, submit certificate of Contract Completion within ten (10) business days of the Department's request;
- (19) submit to the Department reports or information regarding the operations related to HOME funds provided by the Department; and
- (20) if required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award.

**§23.29. Resale and Recapture Provisions.**

- (a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).
  
- (b) The Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection to ensure affordability as defined in 24 CFR §92.254(a)(5)(ii).
  - (1) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.
  - (2) In the event that a federal affordability period is required and the unit is sold, including through a short sale or foreclosure, prior to the end of the affordability period, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and as outlined in the State's One Year Action Plan.
  - (3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the subsequent homebuyer. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.
  - (4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.
  
- (c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).
  - (1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.
  - (2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.
  - (3) In the event that a federal affordability period is required and the assisted property is sold, foreclosed, or transferred in lieu of foreclosure to a qualified low income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

- (4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.
- (5) The Household is required to sell the home at an affordable price to a reasonable range of low income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent of the area median family income and meet all program requirements.

  - (A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of \$500.
  - (B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.
- (6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

  - (A) If appreciated value is zero, or less than zero, then no appreciated value exists.
  - (B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.
- (7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.
- (d) In the event that a federal affordability period is not required and the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the grant amount under the conditional grant agreement may be forgiven, if the new Household qualifies for assistance in accordance with this subchapter.
- (e) Forgiveness of installment payments under the loan may continue until maturity or the grant amount under conditional grant agreement may be forgiven if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this chapter.
- (f) Grants subject to conditional grant agreements may be forgiven annually during the Department's affordability period and are not subject to recapture of the entire grant

amount in the event the property is no longer the Principal Residence of any Household member. The outstanding amount owed will be based on the remaining affordability term.

TITLE 10. COMMUNITY DEVELOPMENT  
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 23. SINGLE FAMILY HOME PROGRAM.  
SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE PROGRAM.

§23.30. Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria.

§23.31. Homeowner Rehabilitation Assistance (HRA) Program Requirements.

§23.32. Homeowner Rehabilitation Assistance (HRA) Administrative Requirements.

**§23.30. Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria.**

(1) Match requirement. Excluding Applications under the disaster relief and persons with disabilities set asides, Match shall be required based on the tiers described in subparagraphs (A) – (C) of this paragraph:

(A) zero percent of Direct Project Costs, exclusive of Match, is required as Match if the population of Administrator’s service area is less than or equal to 3,000; and

(B) for Administrators whose service area population is greater than 3,000, one percent of Direct Project Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 15 percent.

The Department shall use population figures from the most recently available U.S. census bureau’s American Community Survey (ACS) to determine the applicable Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA and may be different for each Activity;

(2) Documentation is required of a commitment of at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant’s resolution. To meet this requirement, Applicants must submit:

(A) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant’s bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in (2) of this subchapter;

(3) Selection criteria for this activity will be outlined in the NOFA.

**§23.31. Homeowner Rehabilitation Assistance (HRA) Program Requirements.**

(a) Eligible Projects are limited to:

(1) the Rehabilitation or Reconstruction of existing owner-occupied housing on the same site. The Rehabilitation of a Manufactured Housing Unit (MHU) is not an eligible Project;

(2) the New Construction of site-built housing on the same site to replace an existing owner-occupied MHU;

(3) the replacement of existing owner-occupied housing with an MHU or New Construction of site-built housing on another site contingent upon written approval of the Department;

(4) if a housing unit is uninhabitable, within the previous five (5) years from requested assistance, as a result of a natural or man-made disaster or a condemnation order from the unit of local government, or presents an imminent threat to the life, health, or safety of occupants as determined by the local government with jurisdiction over the property, the Household is eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification. If a housing unit is destroyed due to a disaster (housing unit may no longer be standing on the site), that unit is eligible for reconstruction provided that the HOME funds are committed within twelve (12) months of the date of destruction; or

(5) if allowable under the NOFA, the refinance of an existing mortgage meeting the federal requirements at 24 CFR §92.206(b) and any additional requirements in the NOFA.

(b) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien position if the existing mortgage loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) a federal affordability period is required; or

(2) any existing mortgage has been in place for less than three (3) years from the date the Household applies for assistance; or

(3) the HOME loan is structured as a repayable loan.

(c) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(d) Direct Project Costs, exclusive of Match funds, and are limited to:

(1) Reconstruction and New Construction of site-built housing: the lesser of \$78 per square foot or \$85,000, or for Households of five or more Persons the lesser of \$78 per square foot or \$90,000;

(2) replacement with energy efficient MHU: \$75,000;

(3) rehabilitation that is not Reconstruction: \$40,000; and

(4) refinancing of existing mortgages: in addition to the costs limited under paragraphs (1) - (3) of this subsection, the cost to refinance an existing mortgage is limited to \$35,000. To qualify, a Household's current total housing payment must be greater than 30 percent of their monthly gross income or their total monthly recurring debt payments must be greater than 45 percent of their gross monthly income.

(e) In addition to the Direct Project Costs allowable under subsection (d) of this section, a sum not to exceed \$5,000 maybe requested and if approved, used to pay for any of the following:



(1) necessary environmental mitigation as identified during the Environmental review process;  
or

(2) homeowner requests for accessibility features.

(f) Project Soft Costs are limited to:

(1) Reconstruction or New Construction: no more than \$9,000 per housing unit;

(2) replacement with an MHU: no more than \$3,500 per housing unit;

(3) rehabilitation that is not Reconstruction: \$5,000 per housing unit. This limit may be exceeded for lead-based paint remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project Soft Costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977; and

(4) third-party Project Soft Costs related to requirements under this section, such as appraisals, title reports or insurance, tax certificates, recording fees, and surveys are not subject to a maximum per Project.

(g) Funds for administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(h) In the instances described in paragraphs (1) - (4) of this subsection, the assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Project Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(1) An MHU being replaced with newly constructed housing (site-built) on the same site;

(2) Any housing unit being replaced on an another site;

(3) Any housing unit that is being relocated out of the floodplain or replaced due to uninhabitability as allowed under subsection (a)(4) of this section; and

(4) Any Project that requires a federal affordability period.

(i) For any Project involving refinancing described in subsection (d)(4) of this section, the HOME funds used for refinancing shall be structured as a fully amortizing, repayable loan at zero percent interest. The loan term shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to 20 percent of the Household's gross monthly income. The term shall not exceed thirty (30) years. Total debt service (back-end ratio) may not exceed 45 percent. Any Direct Project Costs, exclusive of refinancing costs and Match funds, shall be structured as a deferred, forgivable loan with a 15-year term.

(j) In all other instances not described in subsections (h) and (i) of this section, the assistance to an eligible Household will be in the form of a grant agreement with a 5-year affordability period.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and

zoning requirements. In addition, reconstruction and new construction housing is required to meet §92.251(a)(2) as applicable. Housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(4) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this Activity must meet the requirements of chapters 20 and 21 of this title and must be certified by a licensed architect or engineer.

(A) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

### **§23.32. Homeowner Rehabilitation Assistance (HRA) Administrative Requirements.**

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (17) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, Soft Costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Project Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) when assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property for the rehabilitation or reconstruction Projects;

(8) in the instance of relocation and in accordance with §23.31(a)(3) of this chapter (relating to Homeowner Rehabilitation Assistance (HRA) Program Requirements), the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Project funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Project under this paragraph, the Administrator Match obligation may be reduced by the cost of such demolition without any Contract amendment;

(9) identification of any Lead-Based Paint (LBP);

(10) for housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(11) consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(12) if applicable, documentation to address or resolve any potential conflict of interest, identity of interest, duplication of benefit, or floodplain mitigation;

(13) a title commitment or policy or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ninety-nine (99) year leasehold. For loan projects, the title commitment must be no older than 30 days old as of the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. For assistance provided in the form of a grant agreement, a title report may be submitted in lieu of a title commitment or policy. In instances of an MHU, a Statement of Ownership and Location (SOL) must be submitted. Together, these documents must evidence the definition of Homeownership is met;

(14) tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(15) in the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

(16) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship; and

(17) any other documentation necessary to evidence that the Project meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under section (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post rehabilitation or reconstruction value of improvements for Projects involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) – (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) – (12) of this subsection, may be required with a request for disbursement:

(1) for construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) for construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least forty (40) days after the date of construction completion;

(3) if applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(4) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(5) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(6) the executed grant agreement or original, executed, legally enforceable loan documents and statement of location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(7) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures

submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all Program Rules;

(8) the request for funds for administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction;

(10) for final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation;

(11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Agreement in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) for costs associated with Title Policies charged as Project costs, the Title Policy must be submitted with the retainage request.

TITLE 10. COMMUNITY DEVELOPMENT  
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 23. SINGLE FAMILY HOME PROGRAM  
SUBCHAPTER D. HOMEBUYER ASSISTANCE PROGRAM

§23.40. Homebuyer Assistance (HBA) Threshold and Selection Criteria.

§23.41. Homebuyer Assistance (HBA) Program Requirements.

§23.42. Homebuyer Assistance (HBA) Administrative Requirements.

**§23.40 Homebuyer Assistance (HBA) Threshold and Selection Criteria.**

(1) Except for Applications under the disaster relief and Persons with Disabilities set-asides, the amount of Match required must be at least 5 percent of Direct Project Costs, exclusive of Match, requested. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA and may be different for each Activity.

(2) Documentation of a commitment of at least \$20,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in (2) of this subchapter.

(3) Selection Criteria for this activity will be outlined in the NOFA.

**§23.41. Homebuyer Assistance (HBA) Program Requirements.**

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.

(b) The Household must complete a homebuyer counseling program/class.

(c) First lien purchase loans must comply with the requirements described in paragraphs (1) - (7) of this subsection:

(1) No adjustable rate mortgage loans or temporary interest rate buy-down loans are allowed;

(2) No first lien mortgage loans with a total loan to value equal to or greater than 100 percent are allowed;

(3) No subprime mortgage loans are allowed;

(4) For conforming mortgage loans, the debt to income ratio (back-end ratio) may not exceed 45 percent;

(5) Fees charged by third party mortgage lenders are limited to the greater of 2 percent of the mortgage loan amount or \$3,500, including but not limited to origination, application, and/or underwriting fees. Fees associated with the origination of Single Family Mortgage Revenue Bond and Mortgage Credit Certificate programs will not be included in the limit. Fees paid to parties other than the first lien lender and reflected on the HUD-1 will not be included in the limit. Fees collected by the first lien lender at closing to be paid to other parties by the first lien lender that are supported by an invoice and reflected on the HUD-1 will not be included in the limit;

(6) No identity of interest relationship between the lender and the Household is allowed; and

(7) If an identity of interest exists between the Household and the seller, the Department may require additional documentation that evidences that the sales price is equal to or less than the appraised value of the property as documented by a Third-Party appraisal ordered by the first lien lender. If an identity of interest exists between the builder and Administrator, the Administrator must provide documentation that evidences that the sales price does not provide for a profit of more than 15 percent of the total hard construction costs and does not exceed the current appraised value as documented by a Third-Party appraisal ordered by the first lien lender.

(d) Direct Project Costs, exclusive of Match funds, are limited to:

(1) acquisition and closing costs: the lesser of \$20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 20 percent of the Household's gross monthly income based on a thirty (30) year amortization schedule. If the estimated housing payment will be less than 20 percent, the Department shall reduce the amount of downpayment assistance to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income; or

(2) closing costs and downpayment: the lesser of \$6,000 or the total estimated settlement charges shown on the good faith estimate that are paid by the buyer at closing which are not paid by the buyer's contribution. Households assisted under this paragraph who, at the time of application, have assets which may be liquidated without a federal income tax penalty and which exceed three months of estimated principal, interest, property tax, and property insurance payments for the unit to be purchased as shown in the truth-in-lending statement must contribute the excess funds to the total estimated settlement charges as shown on the good faith estimate; and

(3) rehabilitation for accessibility modifications: \$20,000,

(4) No funds shall be disbursed to the assisted Household at closing. The HOME assistance shall be reduced in the amount necessary to prevent the Household's direct receipt of funds if the HUD-1 settlement statement shows funds to be provided to the buyer at closing.

(5) Total assistance to the Household must be in an amount of no less than \$1,000. Households who are not eligible for at least \$1,000 in total homebuyer assistance are ineligible for assistance under this subchapter.

(e) Project Soft Costs are limited to:

(1) acquisition and closing costs: no more than \$1,500 per housing unit; and

(2) rehabilitation for accessibility modifications: \$5,000 per housing unit.

(f) Funds for Administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(g) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Project Costs, excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(h) Any forgiveness of the loan must follow Section 23.29 of this Chapter.

(i) To ensure affordability, the Department will impose the recapture provisions established in this chapter.

(j) Housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule, and Chapter 21 of this Part. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

#### **§23.42. Homebuyer Assistance (HBA) Administrative Requirements.**

(a) Reservation of Funds. The Administrator must submit true and complete information, certified as such, with a request for the Reservation of Funds, as described in paragraphs (1) – (7) of this subsection:

(1) head of Household name;

(2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, Soft Costs and administrative costs requested. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) a copy of the Household's intake application on a form prescribed by the Department;

(4) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent area median family income, all documentation used to determine the income of the Household;

(5) if applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, or duplication of benefit; and

(6) if applicable, construction cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) any other documentation necessary to evidence that the Project meets the program requirements.



(b) Commitment of Funds. In addition to the documents required under section (a) of this section, the Administrator must submit the documents described in paragraphs (1) – (8) of this subsection, with a request for the Commitment of Funds within ninety (90) days of approval of the Reservation:

(1) address of housing unit for which assistance is being requested;

(2) verification of environmental clearance;

(3) identification of Lead-Based Paint (LBP);

(4) for housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(5) a title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(6) executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(7) appraisal which includes post rehabilitation or reconstruction improvements for Projects involving construction; and

(8) a good faith estimate that is, or letter from the lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien mortgage loan requirements, and the requirements of this chapter.

(c) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (10) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are a part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) If applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) The property inspection must be signed and dated by the inspector and the Administrator or Developer;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement

of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for Administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for Soft Costs being paid at closing;

(9) For Activities involving Rehabilitation, include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction and until submission of documentation required for Project completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

TITLE 10. COMMUNITY DEVELOPMENT  
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 23. SINGLE FAMILY HOME PROGRAM.  
SUBCHAPTER E. CONTRACT FOR DEED CONVERSION PROGRAM.

§23. 50. Contract for Deed Conversion (CFDC) Threshold and Selection Criteria.

§23. 51. Contract for Deed Conversion (CFDC) Program Requirements.

§23. 52. Contract for Deed Conversion (CFDC) Administrative Requirements.

**§23.50. Contract for Deed Conversion (CFDC) Threshold and Selection Criteria.**

(1) Documentation of a commitment of at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in (1) of this subchapter.

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**§23.51. Contract for Deed Conversion (CFDC) Program Requirements.**

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units.

(b) A new Manufactured Housing Unit (MHU) is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed 60 percent area median family income (AMFI) and the Household must complete a homebuyer counseling program/class.

(d) The property assisted must be located in a Colonia as defined in Texas Government Code, Chapter 2306. The Colonia must have a Colonia Classification Number, as assigned by the Texas Secretary of the State Office.

(e) The Department will require a first lien position.

(f) Direct Project Costs, exclusive of Match funds, are limited to:

(1) acquisition and closing costs: \$35,000. In the case of a contract for deed conversion housing unit that involves the acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of \$78 per square foot or \$85,000, or for Households of five or more Persons the lesser of \$78 per square foot or \$90,000;

(3) replacement with an energy efficient MHU: \$75,000; and

(4) rehabilitation that is not Reconstruction: \$40,000.

(g) In addition to the Direct Project Costs allowable under subsection (d) of this section, a sum not to exceed \$5,000 may be used to pay for any of the following:

(1) necessary environmental mitigation as identified during the Environmental review process;  
or

(2) homeowner requests for accessibility features.

(h) Project Soft Costs are limited to:

(1) acquisition and closing costs: no more than \$1,500 per housing unit;

(2) Reconstruction or New Construction: no more than \$9,000 per housing unit;

(3) replacement with an MHU: no more than \$3,500 per housing unit; and

(4) rehabilitation that is not Reconstruction: \$5,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project Soft Costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Project Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet §92.25 1(a)(2) as applicable. Housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

- (1) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;
- (2) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;
- (3) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and
- (4) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this Activity must meet the requirements of chapters 20 and 21 of this title and must be certified by a licensed architect or engineer.

(A) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

### **§23.52. Contract for Deed Conversion (CFDC) Administrative Requirements.**

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, Soft Costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and Soft Costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) for housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(9) if applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation;

(10) appraisal which includes post rehabilitation or reconstruction improvements for Projects involving construction; and

(11) a title commitment to issue a title policy not older than thirty (30) days when submitted that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) in the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) A copy of the recorded contract for deed and a current payoff statement; and

(15) any other documentation necessary to evidence that the Project meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) if applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement

of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) the request for funds for administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(8) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for Soft Costs being paid at closing;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction;

(10) for final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

(11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

TITLE 10. COMMUNITY DEVELOPMENT  
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 23 SINGLE FAMILY HOME PROGRAM  
SUBCHAPTER F TENANT-BASED RENTAL ASSISTANCE PROGRAM

§23.60. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

§23.61. Tenant-Based Rental Assistance (TBRA) Program Requirements.

§23.62. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

**§23.60. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.**

All Applicants and Applications must submit Documentation of a commitment of at least \$15,000 for cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in paragraph (1) of this section.

**§23.61. Tenant-Based Rental Assistance (TBRA) Program Requirements.**

(a) The Household must participate in a self-sufficiency program.

(b) The amount of assistance will be determined using the Housing Choice Voucher method.

(c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's gross monthly income.

(e) Project funds are limited to:

(1) rental subsidy: Each rental subsidy term is limited to no more than twenty-four (24) months. Total lifetime assistance to a Household may not exceed thirty-six (36) month cumulatively, except that up to an additional twenty-four (24) months of assistance, for a total of sixty (60) months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration or, HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration or HUD Section 202 Supportive Housing



for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and

(C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration or, HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration ,or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available;

(2) security deposit: no more than the amount equal to two (2) month's rent for the unit.

(3) utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard must be the current U.S. Department of Housing and Urban Development (HUD) "Fair Market Rent for the Housing Choice Voucher Program" at the time the household is income certified (or the rental coupon is executed, as applicable). The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or supported by HUD's Small Area Fair Market Rents (SAFMR). Administrators requesting to use HUD's SAFMR must agree to use the SAFMR for all Households under the Contract or Reservation System Agreement. For HOME-assisted units, the payment standard must be no greater than the current HOME rent applicable for the unit.

(g) The lease agreement start date must correspond to the date of the TBRA rental coupon contract. The dates may be different only upon prior approval of the Executive Director or his/her designee.

(h) Project Soft Costs are limited to \$1,200 per Household assisted for determining household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area.

(i) Funds for administrative costs are limited to 4 percent of Direct Project Costs, excluding Match funds. Funds for administrative costs may be increased an additional 1 percent of Direct Project Costs if Match is provided in an amount equal to 5 percent or more of Direct Project Costs.

(j) Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with HQS established by HUD.

(k) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one (1) month if a tenant moves out of an assisted unit prior to the lease end date.

(l) Administrators must maintain its waitlist in accordance with the Tenant Selection Criteria established in section 10.610 of chapter 10 of this Part except that where the terms Owner or Development are used Administrator will be substituted.

(m) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the project.

**§23.62. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.**

(a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (9) of this subsection, with a request for the Commitment or Reservation of Funds:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Direct Project Costs, Project Soft Costs, administrative costs requested, Match to be provided, evidence that Direct Project Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;

(6) identification of Lead-Based Paint (LBP);

(7) if applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;

(8) project address within ninety (90) days of preliminary set up approval, if applicable; and

(9) any other documentation necessary to evidence that the Project meets the Program Rules.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (8) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (8) of this subsection may be required with a request for disbursement.

(1) If required or applicable, up to 50 percent of Direct Project Costs for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct Project Costs disbursed;

(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth

herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(4) With the exception of up to 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(5) Requests may come in up to ten (10) days in advance of the first day of the following month;

(6) For final disbursement requests, submission of documentation required for Project completion reports;

(7) Household commitment contracts may be signed after the end date of a RSP only in cases where the Department has approved a project set-up with a project address to be determined at a later time; and

(8) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

TITLE 10. COMMUNITY DEVELOPMENT  
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 23. SINGLE FAMILY HOME PROGRAM  
SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT PROGRAM

§23.70. Single Family Development (SFD) Threshold and Selection Criteria.

§23.71. Single Family Development (SFD) Program Requirements.

§23.72. Single Family Development (SFD) Administrative Requirements.

**§23.70 .Single Family Development (SFD) Threshold and Selection Criteria.**

All Applicants and Applications must submit or comply with this section.

(1) An Application for Community Housing Development Organization (CHDO) certification.

(2) If the total of the Department's loan equals more than 50 percent of the total development cost, except for developments also financed with U.S. Department of Agriculture (USDA) funds, the Applicant must provide:

(A) evidence of a line of credit or equivalent tool of at least \$80,000 from a financial institution that will be available for use during the proposed development activities; or

(B) a letter from a third party Certified Public Accountant (CPA) verifying the capacity of the owner or developer to provide at least \$80,000 as a short term loan for development; and

(C) a letter from the developer's or owner's bank(s) confirming funds amounting to at least \$80,000 is available.

(3) A proposed development plan that is consistent with the requirements of this chapter, all other federal and state rules, and includes:

(A) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(B) a FEMA Issued Flood Map that identifies the location of the proposed site(s);

(C) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(D) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least one hundred-twenty (120) days from the date of application submission; and

(E) an "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must comply with the Identity of Interest transfer requirements in chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policy).

(4) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of units developed with funds provided under this subchapter.

**§23.71. Single Family Development (SFD) Program Requirements.**

(a) Eligible activities include the acquisition and New Construction or acquisition and Rehabilitation of single family housing. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254.

(b) This Activity is a CHDO-eligible activity.

(c) The Household's income must not exceed 80 percent area median family income (AMFI) and the Household must complete a homebuyer counseling program/class. The Household must be income qualified as of the date of signature of the homebuyer's purchase contract.

(d) Each unit must meet the design and quality requirements described in paragraphs (1) - (5) of this subsection:

(1) for New Construction and Reconstruction, current applicable International Residential Code, local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the 24 CFR§92.251(a);

(2) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(3) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(4) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(5) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(e) Housing proposed to be constructed under this Activity must meet the requirements in chapters 20 and 21 of this title and must be certified by a licensed architect or engineer.

(f) The total hard construction costs are limited as described in paragraphs (1) and (2) of this subsection:

(1) Reconstruction and New Construction of site-built housing: The hard construction costs are limited to \$78 per square foot and \$85,000 or for Households of five or more Persons \$90,000; and

(2) Rehabilitation that is not Reconstruction: \$40,000.

(g) In addition to the Direct Project Costs allowable under subsection (d) of this section, a sum not to exceed \$5,000 may be used to pay for any of the following:

(1) necessary environmental mitigation as identified during the Environmental review process; or

(2) homeowner requests for accessibility features.

(h) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs.

(i) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction or rehabilitation of an entire development Project, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (1) and (2) of this paragraph:

(1) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(2) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(j) Construction period financing for each unit shall be structured as a zero percent interest loan with a nine (9) month term, or with a term that coincides with the end date of the Household commitment contract under a Reservation System Participation Agreement. The maximum construction loan amount may not exceed the total development cost less developer fees/profit, homebuyer closing costs, and ineligible Project costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(k) In the instance that the Combined Loan to Value equals more than 100 percent of the appraised value, the portion of the sales price that exceeds 100 percent of the appraised value will be granted to the developer to buy down the purchase price if the homebuyer is receiving downpayment assistance or a first lien mortgage from the Department. The cost to the Developer to close the homebuyer loan may be provided as a grant to the Developer.

(l) The HOME assistance to the homebuyer shall be structured as a first and/or second lien loan(s):

(1) the downpayment assistance is limited to ten (10) percent of the total development costs and shall be structured as a ten (10) year deferred, forgivable loan with a subordinate lien; and

(2) a first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements applicable to §23.41 of this chapter (relating to Homebuyer Assistance

(HBA) Program Requirements). If the Department is providing the first lien mortgage with HOME financing, the loan will be fully amortizing with a thirty (30) year term. The Department will require a debt to income ratio (back-end ratio) not to exceed 45 percent. The total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no less than 20 percent and no greater than 30 percent of the Household's gross monthly income. Should the estimated housing payment be less than 20 percent of the Household's gross income, the Department shall reduce the amount of downpayment assistance and/or charge an interest rate to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income. In no instance shall the interest rate charged to the homebuyer exceed 5 percent. The Department shall use to the Household's income certification to make this determination.

(m) Earnest money is limited to no more than \$1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs (n) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within ninety (90) days of the end of the construction period, all additional funding closings and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(o) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(p) To ensure affordability, the Department will impose resale or recapture provisions established in this chapter.

### **§23.72. Single Family Development (SFD) Administrative Requirements.**

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (11) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Project funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) if applicable, documentation to address or resolve any potential conflict of interest, identity of interest, duplication of benefit, or floodplain mitigation;

(10) appraisal, which includes post rehabilitation or reconstruction improvements for Projects involving construction; and

(11) any other documentation necessary to evidence that the Project meets the Program Rules.

(b) Loan closing. The Administrator or Developer must submit the documents described in paragraphs (1) - (3) of this subsection, with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) a title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(2) within ninety (90) days after the loan closing date, the Administrator or Developer must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the loan closing date will result in the Department withholding payment for disbursement requests; and

(3) a draft settlement statement that is consistent with the executed sales contract, the first lien mortgage loan requirements (as applicable), and the terms of this Contract will be provided to Department.

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (10) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) if required or applicable, up to 50 percent of Direct Project Costs for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;



(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator or Developer;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(7) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for costs being paid at closing;

(8) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction;

(9) for final disbursement requests, submission of documentation required for Project completion reports; and

(10) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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**BOARD ACTION REQUEST**

**REAL ESTATE ANALYSIS DIVISION**

**MAY 7, 2015**

Presentation, Discussion, and Possible Action on an order adopting proposed amendments to 10 TAC Chapter 10, §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4) concerning Underwriting and Loan Policy and directing the publication of the amendments in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Chapter 2306 of the Texas Government Code, the Department is authorized to adopt rules governing the administration of the Department and its programs;

**WHEREAS**, at the November 4, 2014, Governing Board meeting a new 10 TAC, Chapter 10, Subchapter D, concerning Underwriting and Loan Policy (the “Underwriting Rules”) was approved and subsequently adopted and published in the *Texas Register*;

**WHEREAS**, Staff continued to receive input and questions regarding the applicability of certain aspects of the newly adopted Underwriting Rules at cost certification and proposed clarifications and changes to the existing rules to address this input;

**WHEREAS**, at the March 12, 2015, Governing Board meeting proposed amendments to 10 TAC Chapter 10, §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4), concerning Underwriting and Loan Policy were approved for publication in the *Texas Register* for public comment and certain public comment was received; and

**WHEREAS**, Staff proposes adoption of the amendments with changes to the amendments as published;

**NOW, therefore, it is hereby**

**RESOLVED**, that the referenced amendments to the Underwriting Rules are hereby adopted and the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the adoption of the amendments to 10 TAC Chapter 10, §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4), concerning Underwriting and Loan Policy and preamble, in the forms presented to this meeting, to be published in the *Texas*

*Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

### **BACKGROUND**

On November 4, 2014, the Department's Governing Board adopted new Underwriting and Loan Policy rules in order to move forward with their timely implementation in conjunction with the Department's QAP. However, certain issues with regard to the Underwriting in conjunction with the cost certification review (issuance of IRS forms 8609) caused the developer and investor communities to express concern.

Several focused group discussions, including an open roundtable discussion, were held to engage the public on these matters. In addition, Staff received constructive input proposing changes that would address the concerns but determined that the changes would also have an impact in several other areas of the rules.

As a result of the input and to address these concerns, on March 12, 2015, the Board approved the publication of seven proposed amendments to the Underwriting Rules for official public comment. The proposed changes are intended to address industry concerns by providing limited instances in which different underwriting feasibility criteria would be applied at cost certification and to create, with appropriate limitations and controls, two options for using funds to benefit tenants residing at developments in cases in which a gap issue has occurred between underwriting at award and underwriting at cost certification.

On March 27, 2015, the proposed amendments were published in the *Texas Register*. Upon publication, an official public comment period commenced on March 27, 2015, and ended on April 27, 2015. In addition to publishing the amendments to the rule in the *Texas Register*, a copy was published on the Department's website.

Staff received five (5) written comments on the proposed amendments during the public comment period. In keeping with the requirements of the Administrative Procedures Act, Staff has reviewed the comments received and is providing a reasoned response to each comment herein. As part of each response, Staff also provides a recommendation as to accepting the comment or not accepting the comment.

**Attachment A: Preamble, Reasoned Response and adoption of amendments to 10 TAC Chapter 10, §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4), Underwriting and Loan Policy**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 10, §§10.302 (c)(2), 10.302 (d)(3), 10.302 (d)(4)(D), 10.302 (e)(9), 10.302 (e)(11), 10.302 (e)(12), and 10.302 (i)(4), concerning Underwriting and Loan Policy, with changes to the proposed text as published in the March 27, 2015 issue of the *Texas Register* (40 TexReg 1779).

**REASONED JUSTIFICATION FOR THE RULE:** The purpose of the adoption of the amendments is to implement changes that will improve the underwriting that occurs at the time of cost certification associated with the Housing Tax Credit Program. The amended sections include changes related to gap method analysis, reserves, acceptable debt coverage ratio, additional amenities, feasibility criteria and the underwriting process at cost certification.

**SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS:** The Department accepted public comments between March 27, 2015, and April 27, 2015. Comments regarding the amended sections were accepted in writing and by facsimile. Written comments were received from:

- (1) Frank Jackson & Mike Sugrue, Texas Affiliation of Affordable Housing Providers;
- (2) Joy Horak-Brown, New Hope Housing, Inc.;
- (3) Terri L. Anderson, Anderson Development and Construction, LLC;
- (4) Brad McMurray, Housing and Community Services, Inc.;
- (5) Sarah Andre, Structure Texas.

**GENERAL COMMENT:** Commenter 4 expressed: "We are in support of the proposed changes and especially appreciate both the use of actual NOI and the increased maximum allowable DCR at Cost Certification."

No other comments were received on: §10.302 (c)(2) Gap/DCR Method; §10.302 (d)(3) Net Operating Income ("NOI"); §10.302 (e)(9) Reserves; §10.302 (e)(11) Additional Tenant Amenities; §10.302 (e)(12) Special Reserve Account; and §10.302(i)(4) Initial Feasibility.

§10.302 (d)(4)(D) Acceptable Debt Coverage Ratio Range:

Commenter 1 suggests that the maximum debt coverage ratio ("DCR") be changed from the current 1.35 times to 1.50 times. The amendment as proposed increases the current 1.35 times to 1.45 times. Commenter states that the additional increase of the DCR to 1.50 times over that proposed in the amendment provides: (1) "...room to help offset utility allowance and tax increases as well as other operating expenses that rise faster than rents."; and, (2) "From the syndication perspective, if there is an adjustment on credit amount, having to re-negotiate an investment with the upper tier investor after a couple of years, is not only cumbersome, but may cause some investors to look to other states for investments that do not have the potential adjustment."

Commenters 2 and 3 also suggest that the maximum DCR be changed from the current 1.35 times to 1.50 times but did not provide a specific reason in their written comment.

Commenter 4 supports the proposed change to a 1.45 times maximum.

Commenter 5 suggests that the DCR ceiling be removed entirely.

#### STAFF RESPONSE:

Staff accepts the preponderance of comment and notes the proposed legislation moving through the process in both chambers of the 84<sup>th</sup> Texas Legislature and accepts the 1.50 times DCR to be used at cost certification for credit sizing purposes particularly given that the other recommended amendments to the rule impact the final underwriting at cost certification in a positive way.

Staff recommends the change in the maximum DCR to 1.50 times with regard to the proposed amendment to §10.302(d)(4)(D) Acceptable Debt Coverage Ratio Range in response to these comments.

**OTHER COMMENTS:** In addition to the elimination of a maximum DCR, Commenter 5 suggests that "...TDHCA should not re-underwrite deals at Cost Certification at all with the exception of ensuring that basis is met to qualify for the credits received and that there is long term viability (over 1.15 DCR for 15 years). By the time we are at cost cert, a lender and an investor have underwritten a deal and signed a loan agreement and partnership agreement which codifies the economic elements that they require. A developer has little to no control over changes in those documents, once they are signed. The rules, guidelines, and even preferences of banks and investors are typically much more stringent than TDHCA. I understand not wanting to over allocate credits when they are not needed, but it is a rare case in which a deal will not make use of the credits. The re-underwriting is creating extra work, delaying 8609s which adds cost in terms of construction carry interest, and is in general not a good use of TDHCA's limited resources."

#### STAFF RESPONSE:

IRC §42(m)(2)(A) of the Code requires the Department to allocate tax credits to a project in an amount not to exceed the amount that is necessary for the financial feasibility of the project throughout the credit period.

Among other factors, IRC §42(m)(2)(B) of the Code requires the Department to evaluate the total sources and uses of the capital structure and the reasonableness of the developmental and operational costs of the project.

IRC §42(m)(2)(c)(i) requires the Department to make a determination about the amount of tax credit allocated to a project at three points in time: Application; allocation (Carryover); and, placement in service (Cost Certification).

As previously indicated, the Department uses three methods to arrive at an allocation amount. Each method was designed to meet the requirements of Section 42 of the Code as well as the Department's obligations under Texas Government Code Chapter 2306. All three methods are used at the required three stages of underwriting to meet Section 42 requirements.

In addition to this Federal requirement to evaluate (underwrite) at placement in service (Cost Certification), significant differences often occur in the financing source and total development cost uses after initial application but prior to Cost Certification. Typically at Application, the development plan is very preliminary (plans, cost budgets, rents, etc.). The development and finance plan is underwritten by the Department based on these preliminary assumptions and if deemed feasible a Commitment Letter is issued based on the amount necessary for feasibility. At Carryover, the Applicant is required to indicate any changes to the Application. If the Applicant certifies that there are no changes, the Department continues to assume that the Application underwriting remains valid for Carryover purposes.

After Carryover and assuming there are no amendments or other needs for a re-underwriting, the Department will not see the development plan for underwriting purposes again until Cost Certification. At Cost Certification, the development is completed, financing terms and costs are known and operations are at least underway.

Between Carryover and Cost Certification, the lenders and equity providers underwrote the development based on their parameters with substantially firm budgets and terms, closed the transaction and funded the capital. Typically, their underwriting at closing assumes that the amount of tax credits made at Carryover is available to the project. This is generally true except in situations when there are changes to the development plan or financing that would impact one of the three allocation methodologies. At closing, these changes are known to all parties except for the Department since re-underwriting is not required under Section 42 of the Code and is generally not requested by the owner or conducted by the Department. Significantly higher syndication rates, lower permanent debt interest rates or development costs could all impact the allocation and would be known at closing.

The Department understands the risks of many unforeseen circumstances that can occur post closing of a transaction: market based cost overruns, market issues, operating expense increases, changes to utility allowances, etc. But changes that occur prior to or at closing of the transaction (evidenced in the transactional documents) that could potentially impact one of the three allocation methodologies are the developer's and finance participant's risk. If at or prior to closing there is a change or the possibility of a change that could impact the allocation, the developer can always approach the Department and request a re-underwriting at that time. A re-underwriting at that time may result in a credit adjustment but at least the risk of that adjustment at Cost Certification would be significantly reduced.

The comment that the Department not re-underwrite at Cost Certification violates Section 42 of the code and therefore no change to the proposed rule amendments is recommended by this comment.

The amendments are adopted under the authority of Texas Government Code §2306.053 which authorizes the Department to adopt rules. No other codes, statutes or laws are affected by this rulemaking.



1k

BOARD ACTION REQUEST

BOND FINANCE DIVISION

MAY 7, 2015

Presentation, Discussion and Possible Action regarding publication of a Request For Proposal ("RFP") for a Market Rate To Be Announced ("TBA") Program Administrator for the My First Texas Home Program.

RECOMMENDED ACTION

WHEREAS, in October 2012 the Department implemented the My First Texas Home Program ("TMP-79") for the origination, sale, securitization, and forward delivery of mortgage backed securities ("MBS") in order to provide down payment and closing cost assistance for low and moderate income homebuyers;

WHEREAS, the Department's current TBA Program Administrator contract expires September 30, 2015; and

WHEREAS, the Department has determined that a TBA Program Administrator is essential to the continued operation of TMP-79;

NOW, therefore it is hereby

RESOLVED, that the Executive Director be authorized, empowered, and directed, for and on behalf of the Department, to publish an RFP for a Market Rate TBA Program Administrator, to select a Program Administrator and to report the selection to the Board.

BACKGROUND

In October 2012, the Department implemented TMP-79, a down payment and closing cost assistance program based on a private sector mortgage banking model. Through this program, the Department sells mortgage-backed securities (backed by mortgage loans not yet originated) into the forward delivery market at a premium that is used to fund down payment and closing cost assistance for low and moderate income homebuyers. This program is known as a To-Be-Announced or "TBA" program because mortgage rates and loan pricing are established daily for an unspecified par amount of mortgage loans to be closed, securitized, and delivered to the MBS purchaser in the future.

The Department is seeking a TBA Program Administrator to (i) manage and hedge its pipeline, (ii) estimate pipeline fallout, and (iii) purchase mortgage-backed securities from TDHCA or pair out of pipeline hedges (allow TDHCA to purchase), as directed by TDHCA. The Program Administrator will agree to purchase mortgage-backed securities at predetermined prices and will bear the financial risks and costs associated with pipeline fallout.

First Southwest Company has served as the Department's Program Administrator since the inception of TMP-79 in October 2012.

Staff will develop and publish an RFP to identify qualified TBA Program Administrators and will report the selection to the Board.

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BOARD ACTION REQUEST

BOND FINANCE DIVISION

MAY 7, 2015

Presentation, Discussion and Possible Action regarding publication of a Request For Proposal ("RFP") for a Master Servicer for the Texas First Time Homebuyer Program and the My First Texas Home Program.

RECOMMENDED ACTION

WHEREAS, the Department implemented the My First Texas Home Program ("TMP-79") in order to provide financing, including down payment and closing cost assistance, to low and moderate income homebuyers;

WHEREAS, the Department has historically provided financing to first-time homebuyers through the issuance of single family mortgage revenue bonds within the Texas First Time Homebuyer Program;

WHEREAS, the Department's current Master Servicer contract expires September 30, 2015; and

WHEREAS, a Master Servicer is a requirement for the continued operation of the My First Texas Home Program and for the Texas First Time Homebuyer Program if the Department issues single family mortgage revenue bonds;

NOW, therefore it is hereby

RESOLVED, that the Executive Director be authorized, empowered, and directed, for and on behalf of the Department, to publish an RFP for a Master Servicer, to select a Master Servicer and to report the selection to the Board.

BACKGROUND.

Implemented in October 2012, the Department's My First Texas Home Program provides down payment and closing cost assistance, as well as a newly-added refinance option, to low and moderate income homebuyers. These loans are originated by participating lenders and are sold to a servicer (the "Master Servicer") that pools the loans into mortgage-backed securities ("MBS") and delivers the securities to the MBS investor(s). The Master Servicer continues to service the first mortgages on behalf of the MBS investor(s), and services the second mortgages on behalf of the Department.

Similarly, the Texas First Time Homebuyer Program, which is used for bond program origination, uses a Master Servicer to purchase and pool loans originated by participating lenders into MBS that are delivered to the Trustee for the bonds.

The Master Servicer is required to be a qualified GNMA issuer/servicer, a Fannie Mae seller/servicer, and a Freddie Mac seller/servicer, as well as an FHA-approved mortgagee, a VA-

approved lender, and a USDA-RD approved lender. In addition to general loan servicing duties, Master Servicer responsibilities include securing commitments from GNMA, Fannie Mae, and/or Freddie Mac, reviewing program documents and loan files, training participating lenders, purchasing and pooling loans and issuing and delivering MBS as described above, and on-going reporting.

The current Master Servicer for the Department's single family programs is U.S. Bank National Association, most recently selected as Master Servicer in October 2012.

Staff will develop and publish an RFP to identify qualified Master Servicers, select a Master Servicer and report the selection to the Board.

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## TDHCA Outreach Activities, April 2015

*A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public*

<b>Event</b>	<b>Location</b>	<b>Date</b>	<b>Division</b>	<b>Purpose</b>
Public Hearing/Competitive Housing Tax Credit Applications	El Paso	April 2	Multifamily Finance	Public Hearing
Lender Training/Affiliated Bank Mortgage	Arlington	April 2	Homeownership	Training
Public Hearing/Competitive Housing Tax Credit Applications	Lubbock	April 7	Multifamily Finance	Public Hearing
Public Hearing/Competitive Housing Tax Credit Applications	Houston	April 8	Multifamily Finance	Public Hearing
Housing and Health Services Coordination Council Meeting	Austin	April 8	Housing Resource Center	Presentation, Participant
Public Hearing/Competitive Housing Tax Credit Applications	Dallas	April 9	Multifamily Finance	Public Hearing
Community Council of South Central Texas/HOME Assistance Training	Austin	April 9	HOME	Training
Groundbreaking/Orchard Estates	Alton	April 10	Multifamily Finance	Participant
HOME Roundtable	Austin	April 13	HOME	Roundtable
Public Hearing/Competitive Housing Tax Credit Applications	Austin	April 13	Multifamily Finance	Public Hearing
USDA/Informational Fair	Laredo	April 16	Office of Colonia Initiatives	Presentation
Affordable Housing Seminar	Grapevine	April 16	Policy & Public Affairs	Presentation
Promoting Independence Advisory Committee Meeting	Austin	April 17	Housing Resource Center	Participant
Public Hearing/Competitive Housing Tax Credit Applications	Harlingen	April 23	Multifamily Finance	Public Hearing
TX. Assoc. of Realtors Region 11 Meeting	Corpus Christi	April 24	Homeownership	Exhibitor
Council for the Prevention and Treatment of Mental Health and Substance Use Disorders Meeting	Austin	April 25	Housing Resource Center	Presentation, Participant
Intellectual and Developmental Disabilities System Redesign Advisory Council – Housing Subcommittee Meeting	Austin	April 29	Housing Resource Center	Participant
Housing & Economic Development Meeting	Bellmead	April 30	Policy & Public Affairs	Presentation

## Internet Postings of Note, April 2015

*A list of new or noteworthy documents posted to the Department's website*

**2015 Post Bond Closure Submission Packet** — detailing material required for submission by the owner of a development financed through a bond transaction, including affirmative marketing plan, management plan, Agreement of Assignment and Assumption of LURA, and other required documents:

[www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm)

**2015 HOME/TCAP Multifamily Development Program Application Log** —listing applicants seeking financing for multifamily affordable rental properties through the Department's HOME Program in conjunction with TCAP funds:

[www.tdhca.state.tx.us/multifamily/home/index.htm](http://www.tdhca.state.tx.us/multifamily/home/index.htm)



**2015 Community Services Block Grant Program Allocation** — detailing agencies administering funds through the Department's CSBG Program and award amount:

[www.tdhca.state.tx.us/community-affairs/csbg/index.htm](http://www.tdhca.state.tx.us/community-affairs/csbg/index.htm)

**Texas Bootstrap Loan Program Nonprofit Owner-Builder Housing Providers** — listing nonprofits currently certified to administer the Department's Bootstrap self-help housing program:

[www.tdhca.state.tx.us/oci/bootstrap.htm](http://www.tdhca.state.tx.us/oci/bootstrap.htm)

**HOME Single Family Rules – Staff Draft: April 6, 2015** — providing blacklined language regarding rules administering single-family activities under the Department's HOME Program:

[www.tdhca.state.tx.us/home-division/manuals-rules.htm](http://www.tdhca.state.tx.us/home-division/manuals-rules.htm)

**2015 Housing Tax Credit Program: Scoring Log** — reflecting letters received and reviewed by the Department for points under Quantifiable Community Participation sorted by application number with points assigned:

[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm)

**2015 Housing Tax Credit Program: State Representative and Local Government Support** — reflecting points awarded under the QAP related to community support from elected officials sorted by application number:

[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm)

**2015 Housing Tax Credit Program: Site Challenges** — detailing challenges to applications based on undesirable site features and/or undesirable neighborhood characteristics:

[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm)

**2015 Comprehensive Energy Assistance Program: Subrecipient List** — listing entities currently administering CEAP funds, including name, address, contact information, and counties served:

[www.tdhca.state.tx.us/community-affairs/ceap/index.htm](http://www.tdhca.state.tx.us/community-affairs/ceap/index.htm)

**HOME Announcements Page** — updated to reflect new details regarding a proposed April release of funds for HOME Single-Family activities:

<http://www.tdhca.state.tx.us/home-division/announcements.htm>

**2015 HOME Single Family Program Application Documents** — providing material required for submission by entities seeking funding for single family activities under the Department's HOME Program:

<http://www.tdhca.state.tx.us/home-division/applications.htm>

**2015 HOME Reservation System Participant Application** — for eligible entities seeking to participate in HOME Single-Family activities through the program's reservation system:

<http://www.tdhca.state.tx.us/home-division/applications.htm>

2b

**BOARD REPORT ITEM**  
**FINANCIAL ADMINISTRATION DIVISION**  
**MAY 7, 2015**

Report on the Department's 2<sup>nd</sup> Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")

**BACKGROUND**

The Department's investment portfolio consists of two distinct parts. One part is related to bond funds under trust indentures which are not subject to the PFIA, and the remaining portion is related to accounts excluded from the indentures but covered by the PFIA. The Department's total investment portfolio is \$806,852,075 of which \$776,303,669 is not subject to the PFIA. This report addresses the remaining \$30,548,406 (See Page 1 of the Internal Management Report) in investments covered by the PFIA. These investments are deposited in the General Fund, Housing Trust Fund, Compliance, and Housing Initiative accounts which are all held at the Texas Treasury Safekeeping Trust Company ("TTSTC"), primarily in the form of overnight repurchase agreements which are fully collateralized and secured by the U.S. Government Securities. A repurchase agreement is the purchase of a security with an agreement to repurchase that security at a specific price and date which in this case was February 27, 2015, with an effective interest rate of 0.03%. These investments safeguard principal while maintaining liquidity.

**Below is a description of each fund group and its corresponding accounts.**

- The **General Fund** accounts maintain funds for administrative purposes to fund expenses related to the Department's ongoing operations. These accounts contain balances related to bond residuals, fee income generated from the Mortgage Credit Certificate ("MCC") Program, escrow funds, single family and multifamily bond administration fees, and balances associated with the Below Market Interest Rate ("BMIR") Program.
- The **Housing Trust Fund** accounts maintain funds related to programs set forth by the Housing Trust Fund funding plan. The Housing Trust Fund provides loans and grants to finance, acquire, rehabilitate, and develop decent and safe affordable housing.
- The **Compliance** accounts maintain funds from compliance fees and asset management fees collected from multifamily developers. The number of low income units and authority to collect these fees is outlined in the individual Land Use Restriction Agreements ("LURAs") that are issued to each Developer. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the monitoring and administration of these properties.

- The **Housing Initiative** accounts maintain funds from fees collected from Developers in connection with the Department's Tax Credit Program. The majority of fees collected are application fees and commitment fees. The authority for the collection of these fees is outlined in the Department's Multifamily Rules. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the administration of the Tax Credit Program.

This report is in the prescribed format and detail required by the Public Funds Investment Act. It shows in detail the types of investments, their maturities, their carrying (face amount) values, and fair values at the beginning and end of the quarter. The detail for investment activity is on Pages 1 and 2.

During the 2<sup>nd</sup> Quarter, as it relates to the investments covered by the PFIA, the carrying value decreased by \$161,793 (See Page 1) for a total of \$30,548,406. The decrease is described below by fund groups.

**General Fund:** The General Fund decreased by \$656,615. This consists primarily of \$223,332 received in bond administration fees, and \$332,592 in MCC Fees. Disbursements included \$1,185,943 transferred to fund the operating budget and \$227,027 in bond related expenses.

**Housing Trust Fund:** The Housing Trust Fund decreased \$1,144,848. This consists primarily of \$669,646 received in loan repayments, offset by disbursements of \$1,679,946 for loans and grants.

**Compliance:** Compliance funds increased \$1,752,623. This consists primarily of \$3,348,895 received in compliance fees, offset by disbursements of \$1,655,851 transferred to fund the operating budget.

**Housing Initiative:** Housing Initiative funds decreased \$112,953. This consists primarily of \$767,170 received in fees related to tax credit activities, offset by disbursements of \$908,065 transferred to fund the operating budget.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING FINANCE DIVISION**

**PUBLIC FUNDS INVESTMENT ACT  
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)  
QUARTER ENDING FEBRUARY 28, 2015**

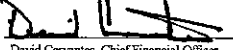
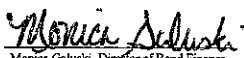
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING FINANCE DIVISION  
PUBLIC FUNDS INVESTMENT ACT  
Internal Management Report (Sec. 2256.023)  
Quarter Ending February 28, 2015

Investment Type	FAIR VALUE	CARRYING	ACCRETION / PURCHASES	CHANGE IN CARRYING VALUE			CARRYING	FAIR VALUE	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 02/28/15	RECOGNIZED GAIN	
	(MARKET) @ 11/30/14	VALUE @ 11/30/14		AMORTIZATION/ SALES	MATURITIES	TRANSFERS		VALUE @ 02/28/15				(MARKET) @ 02/28/15
<b>NON-INDENTURE RELATED:</b>												
General Fund	Mortgage-Backed Securities	712,583.47	675,327.92	-	-	(43,600.99)	-	631,926.93	665,086.39	(3,896.09)	3,364.15	-
General Fund	Repurchase Agreements	8,201,846.63	8,201,846.63	365,538.31	(978,552.39)	-	-	7,588,832.55	7,588,832.55	-	3,503.14	-
Housing Trust Fund	Repurchase Agreements	7,301,557.07	7,301,557.07	1,061,365.22	(2,206,214.28)	-	-	6,156,709.01	6,156,709.01	-	21.16	-
Compliance	Repurchase Agreements	5,979,383.94	5,979,383.94	1,752,623.26	-	-	-	7,732,007.20	7,732,007.20	-	27.08	-
Housing Initiatives	Repurchase Agreements	8,551,883.77	8,551,883.77	264,776.43	(377,729.66)	-	-	8,438,930.54	8,438,930.54	-	29.90	-
		<u>30,747,254.88</u>	<u>30,710,199.33</u>	<u>3,444,304.22</u>	<u>(3,562,496.33)</u>	<u>(43,600.99)</u>	<u>0.00</u>	<u>30,548,406.23</u>	<u>30,581,565.69</u>	<u>(3,896.09)</u>	<u>6,945.43</u>	<u>-</u>

(b) (3) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:

David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 15, 2014  
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 20, 2015

	Date 4/27/15
David Cervantes, Chief Financial Officer	
	Date 4/27/15
Monica Galuski, Director of Bond Finance	

**Texas Department of Housing and Community Affairs  
Non-Indenture Related Investment Summary  
For Period Ending February 28, 2015**

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 11/30/14	Beginning Market Value 11/30/14	Accretions/Purchases	Amortizations/Sales	Maturities	Transfers	Ending Carrying Value 02/28/15	Ending Market Value 02/28/15	Change In Market Value	Recognized Gain
Repo Agmt	General Fund	0.03	02/27/15	03/02/15	1,615,345.73	1,615,345.73	1,728.43				1,617,074.16	1,617,074.16		
Repo Agmt	General Fund	0.03	02/27/15	03/02/15	32,033.95	32,033.95		(371.57)			31,662.38	31,662.38		
Repo Agmt	General Fund	0.03	02/27/15	03/02/15	226,261.44	226,261.44		(20,624.58)			205,636.86	205,636.86		
Repo Agmt	General Fund	0.03	02/27/15	03/02/15			1,000.00				1,000.00	1,000.00		
Repo Agmt	General Fund	0.03	02/27/15	03/02/15	2,858,947.29	2,858,947.29		(923,088.80)			1,935,858.49	1,935,858.49		
Repo Agmt	General Fund	0.03	02/27/15	03/02/15	341,423.20	341,423.20		(34,467.44)			306,955.76	306,955.76		
Repo Agmt	General Fund	0.03	02/27/15	03/02/15	408,340.36	408,340.36	54,309.92				462,650.28	462,650.28		
GNMA	General Fund	7.50	08/31/89	07/20/18	69,358.45	73,857.04			(4,812.35)		64,546.10	68,551.19	(493.50)	
GNMA	General Fund	7.50	10/31/89	09/20/18	117,399.31	124,628.76			(9,607.88)		107,791.43	114,123.10	(897.78)	
GNMA	General Fund	7.50	01/01/90	11/20/18	65,610.93	69,576.45			(10,597.08)		55,013.85	58,182.10	(797.27)	
GNMA	General Fund	7.50	01/01/90	12/20/18	52,476.55	55,978.83			(3,440.60)		49,035.95	52,049.21	(489.02)	
GNMA	General Fund	7.50	02/27/90	12/20/18	7,046.43	7,075.81			(387.10)		6,659.33	6,689.03	0.32	
GNMA	General Fund	7.50	03/30/90	01/20/19	73,636.02	78,705.12			(4,957.69)		68,678.33	73,136.24	(611.19)	
GNMA	General Fund	7.50	04/26/90	03/20/19	58,630.70	62,605.86			(3,547.38)		55,083.32	58,600.39	(458.09)	
GNMA	General Fund	7.50	05/29/90	04/20/19	73,051.61	77,848.18			(5,330.54)		67,721.07	71,971.24	(546.40)	
GNMA	General Fund	2.65	01/29/13	12/15/42	47,023.90	47,029.07			(348.21)		46,675.69	46,826.92	146.06	
GNMA	General Fund	3.20	01/29/13	10/15/42	111,294.02	115,278.35			(572.16)		110,721.86	114,956.97	250.78	
Repo Agmt	General Fund	0.03	02/27/15	03/02/15	2,719,494.66	2,719,494.66	308,499.96				3,027,994.62	3,027,994.62		
<b>General Fund Total</b>					8,877,374.55	8,914,430.10	365,538.31	(978,552.39)	(43,600.99)	0.00	8,220,759.48	8,253,918.94	(3,896.09)	0.00
Repo Agmt	Housing Trust Fund	0.03	02/27/15	03/02/15	57,602.66	57,602.66	58,664.91				116,267.57	116,267.57		
Repo Agmt	Housing Trust Fund	0.03	02/27/15	03/02/15	4,750.79	4,750.79		(4,737.66)			13.13	13.13		
Repo Agmt	Housing Trust Fund	0.03	02/27/15	03/02/15	416,779.14	416,779.14		(307,533.56)			109,245.58	109,245.58		
Repo Agmt	Housing Trust Fund				116,568.12	116,568.12		(116,568.12)						
Repo Agmt	General Revenue Appn	0.03	02/27/15	03/02/15	279.18	279.18	270.19				549.37	549.37		
Repo Agmt	General Revenue Appn	0.03	02/27/15	03/02/15	210,989.07	210,989.07		(103,552.14)			107,436.93	107,436.93		
Repo Agmt	General Revenue Appn	0.03	02/27/15	03/02/15	341,911.26	341,911.26	388,912.95				730,824.21	730,824.21		
Repo Agmt	General Revenue Appn	0.03	02/27/15	03/02/15	223,987.98	223,987.98		(173,538.80)			50,449.18	50,449.18		
Repo Agmt	Housing Trust Fund-GR	0.03	02/27/15	03/02/15	2,119,309.91	2,119,309.91	613,518.17				2,732,828.08	2,732,828.08		
Repo Agmt	Bootstrap -GR	0.03	02/27/15	03/02/15	3,342.08	3,342.08					3,342.08	3,342.08		
Repo Agmt	Bootstrap -GR				546.47	546.47		(546.47)						
Repo Agmt	Bootstrap -GR	0.03	02/27/15	03/02/15	3,370,490.41	3,370,490.41		(1,493,237.53)			1,877,252.88	1,877,252.88		
Repo Agmt	Contract for Deed Conversion	0.03	02/27/15	03/02/15	435,000.00	435,000.00		(6,500.00)			428,500.00	428,500.00		
<b>Housing Trust Fund Total</b>					7,301,557.07	7,301,557.07	1,061,366.22	(2,206,214.28)	0.00	0.00	6,156,709.01	6,156,709.01	0.00	0.00
Repo Agmt	Multi Family	0.03	02/27/15	03/02/15	931,042.85	931,042.85	6,796.39				937,839.24	937,839.24		
Repo Agmt	Multi Family	0.03	02/27/15	03/02/15	473,492.35	473,492.35	72,305.80				545,798.15	545,798.15		
Repo Agmt	Low Income Tax Credit Prog.	0.03	02/27/15	03/02/15	4,574,848.74	4,574,848.74	1,673,521.07				6,248,369.81	6,248,369.81		
<b>Compliance Total</b>					5,979,383.94	5,979,383.94	1,752,623.26	0.00	0.00	0.00	7,732,007.20	7,732,007.20	0.00	0.00
Repo Agmt	Low Income Tax Credit Prog.	0.03	02/27/15	03/02/15	536,378.21	536,378.21	264,776.43				801,154.64	801,154.64		
Repo Agmt	Low Income Tax Credit Prog.	0.03	02/27/15	03/02/15	7,623,211.33	7,623,211.33		(367,237.08)			7,255,974.25	7,255,974.25		
Repo Agmt	Low Income Tax Credit Prog.	0.03	02/27/15	03/02/15	392,294.23	392,294.23		(10,492.58)			381,801.65	381,801.65		
<b>Housing Initiatives Total</b>					8,551,883.77	8,551,883.77	264,776.43	(377,729.66)	0.00	0.00	8,438,930.54	8,438,930.54	0.00	0.00
<b>Total Investment Summary</b>					30,710,199.33	30,747,254.88	3,444,304.22	(3,562,496.33)	(43,600.99)	0.00	30,548,406.23	30,581,565.69	(3,896.09)	0.00

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BOARD REPORT ITEM  
BOND FINANCE DIVISION  
MAY 7, 2015

REPORT ITEM

Report on the Department's 2<sup>nd</sup> Quarter Investment Report relating to funds held under Bond Trust Indentures.

BACKGROUND

- The Department's Investment Policy was revised and approved at the Board Meeting of April 11, 2013, to exclude funds invested under a bond trust indenture for the benefit of bond holders because each trust indenture controls the authorized investments under that particular trust indenture. Management of assets within an indenture is the responsibility of the Trustee. This internal management report is for informational purposes only and while not required under the Public Funds Investment Act, it is consistent with the prescribed format and detail as required by the Public Funds Investment Act. It shows in detail the types of investments, their maturity, their carrying (face amount) value and their fair value at the beginning and end of the quarter.
- The detail for investment activity can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.
- Overall, the portfolio carrying value decreased by \$43.9 million (See Page 4) for a total of \$776,303,669. The decrease reflects loan repayments and bond redemptions.

The portfolio consists of those investments described in the attached Bond Trust Indenture Supplemental Management Report.

	<u>Beginning Quarter</u>	<u>Ending Quarter</u>
<b>Mortgage Backed Securities ("MBS")</b>	84%	86%
<b>Guaranteed Investment Contract/ Investment Agreement ("GIC/IA")</b>	5%	4%
<b>Repurchase Agreements</b>	5%	5%
<b>Money Markets and Mutual Funds</b>	6%	5%

The 1% decrease in GIC/IA and 1% decrease in money markets and mutual funds is the result of bond redemptions. This reduction in invested funds caused the proportional share of MBS to increase 2%.

The portfolio activity for the quarter:

- The maturities in MBS this quarter were \$27 million which represents loan repayments or payoffs. The table below shows the trend in new loans and loan payoffs.

	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	
	FY 14	FY 14	FY 14	FY 15	FY 15	Total
Purchases	-	-	-	-	-	-
Sales	-	-	-	-	-	-
Maturities	36,063,849	32,111,580	38,527,660	40,322,810	27,713,951	174,739,850

- The process of valuing investments at fair value (market value) identifies unrealized gains and losses. These gains or losses do not impact the overall portfolio because the Department does not typically liquidate these investments (mortgage backed securities) but holds them until maturity.
- The fair value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) decreased \$1.8 million (See Pages 1 and 2), with fair value being greater than the carrying value. The national average for a 30-year fixed rate mortgage, as reported by the Freddie Mac Primary Mortgage Market Survey as of February 28, 2015, was 3.80%, down from 3.97% at the end of November 2014. There are various factors that affect the fair value of these investments, but there is a correlation between the prevailing mortgage interest rates and the change in market value.
- Given the current financial environment, this change in market value is to be expected. However, the change is cyclical and is reflective of the overall change in the bond market as a whole.
- The ability of the Department's investments to provide the appropriate cash flow to pay debt service and eventually retire the related bond debt is more important than the relative value in the bond market as a whole.
- The more relevant measures of indenture parity, projected future cash flows, and the comparison of current interest income to interest expense are reported on page 3 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indentures with assets greater than liabilities in a range from 99.47% to 144.57% which would indicate the Department has sufficient assets to meet its obligations. The interest comparison reflects interest income greater than interest expense and indicates a positive cash flow.

**Texas Department of Housing and Community Affairs**  
**Bond Finance Division**  
**Executive Summary**  
As of February 28, 2015

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Collateralized Home Mortgage Revenue Bond Indenture Funds	Taxable Mortgage Program	Multi-Family Indenture Funds	Combined Totals
<b>PARITY COMPARISON:</b>						
PARITY ASSETS						
Cash	\$ 17,756,864	\$ 6,315			\$ 9,085,666	\$ 26,848,845
Investments <sup>(1)</sup>	\$ 46,551,630	\$ 16,870,184	\$ 306,083	\$ 2,730,117	\$ 78,055,605	\$ 144,513,620
Mortgage Backed Securities <sup>(1)</sup>	\$ 369,471,532	\$ 252,082,035	\$ 4,165,352	\$ 5,349,995	\$ -	\$ 631,068,914
Loans Receivable <sup>(2)</sup>	\$ 1,291,519				\$ 974,110,813	\$ 975,402,332
Accrued Interest Receivable	\$ 1,606,557	\$ 949,279	\$ 24,534	\$ 11,938	\$ 9,409,055	\$ 12,001,363
<b>TOTAL PARITY ASSETS</b>	<b>\$ 436,678,103</b>	<b>\$ 269,907,813</b>	<b>\$ 4,495,969</b>	<b>\$ 8,092,050</b>	<b>\$ 1,070,661,139</b>	<b>\$ 1,789,835,074</b>
PARITY LIABILITIES						
Bonds Payable <sup>(1)</sup>	\$ 382,800,000	\$ 235,965,000	\$ 3,100,000		\$ 974,282,106	\$ 1,596,147,106
Accrued Interest Payable	\$ 7,480,200	\$ 1,433,927	\$ 9,962		\$ 9,502,038	\$ 18,426,127
Other Non-Current Liabilities <sup>(3)</sup>					\$ 92,604,306	\$ 92,604,306
<b>TOTAL PARITY LIABILITIES</b>	<b>\$ 390,280,200</b>	<b>\$ 237,398,927</b>	<b>\$ 3,109,962</b>	<b>\$ -</b>	<b>\$ 1,076,388,450</b>	<b>\$ 1,707,177,539</b>
PARITY DIFFERENCE	\$ 46,397,903	\$ 32,508,886	\$ 1,386,007	N/A	\$ (5,727,312)	\$ 82,657,535
<b>PARITY</b>	<b>111.89%</b>	<b>113.69%</b>	<b>144.57%</b>	<b>N/A</b>	<b>99.47%</b>	<b>104.84%</b>
<b>INTEREST COMPARISON For the <i>sixth</i> Fiscal Month Only (not Fiscal Year to Date) :</b>						
INTEREST INCOME						
Interest & Investment Income	\$ 1,823,062	\$ 953,293	\$ 25,126		\$ 3,361,297	\$ 6,162,778
<b>TOTAL INTEREST INCOME</b>	<b>\$ 1,823,062</b>	<b>\$ 953,293</b>	<b>\$ 25,126</b>	<b>\$ -</b>	<b>\$ 3,361,297</b>	<b>\$ 6,162,778</b>
INTEREST EXPENSE						
Interest on Bonds	\$ 1,249,494	\$ 707,347	\$ 16,090		\$ 3,361,295	\$ 5,334,226
<b>TOTAL INTEREST EXPENSE</b>	<b>\$ 1,249,494</b>	<b>\$ 707,347</b>	<b>\$ 16,090</b>	<b>\$ -</b>	<b>\$ 3,361,295</b>	<b>\$ 5,334,226</b>
NET INTEREST INTEREST RATIO	\$ 573,568 <b>145.90%</b>	\$ 245,946 <b>134.77%</b>	\$ 9,036 <b>156.16%</b>	N/A <b>N/A</b>	\$ 2 <b>100.00%</b>	\$ 828,552 <b>115.53%</b>

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value.

This adjustment is consistent with indenture cashflows prepared for rating agencies.


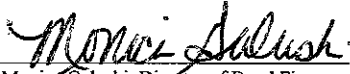
(2) Loans Receivable include whole loans only. Special mortgage loans are excluded.

(3) Other Non-Current Liabilities include "Due to Developers" (for insurance, taxes and other operating expenses) and "Earning Due to Developers" (on investments).

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS  
 BOND FINANCE DIVISION  
 BOND TRUST INDENTURES  
 Supplemental Management Report  
 Quarter Ending February 28, 2015

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 11/30/14	CARRYING VALUE @ 11/30/14	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 02/28/15	FAIR VALUE (MARKET) @ 02/28/15	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
<b>INDENTURE RELATED:</b>										
Mortgage-Backed Securities	760,912,756.98	692,977,471.04	-	-	(27,713,951.30)	-	665,263,519.74	731,320,155.79	(1,878,649.89)	-
Guaranteed Inv Contracts	36,351,540.02	36,351,540.02	33,080.63	(8,521,648.92)	-	-	27,862,971.73	27,862,971.73	-	-
Investment Agreements	4,712,347.05	4,712,347.05	120,312.11	(3,573,769.31)	-	-	1,258,889.85	1,258,889.85	-	-
Treasury-Backed Mutual Funds	48,293,235.56	48,293,235.56	9,015,248.23	(4,144,368.20)	-	-	43,164,115.59	43,164,115.59	-	-
Repurchase Agreements	37,931,815.34	37,931,815.34	7,808,947.07	(6,986,590.61)	-	-	38,754,171.80	38,754,171.80	-	-
	<b>888,201,694.95</b>	<b>820,266,409.01</b>	<b>16,977,588.04</b>	<b>(33,226,377.04)</b>	<b>(27,713,951.30)</b>	<b>0.00</b>	<b>776,303,668.71</b>	<b>842,360,304.76</b>	<b>(1,878,649.89)</b>	<b>-</b>

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:  
 David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 15, 2014  
 Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 20, 2015

 David Cervantes, Chief Financial Officer	Date <u>4/28/15</u>
 Monica Galuski, Director of Bond Finance	Date <u>4/28/15</u>


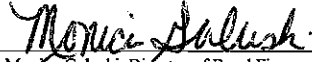
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 BOND FINANCE DIVISION  
 BOND TRUST INDENTURES  
 Supplemental Management Report  
 Quarter Ending February 28, 2015

	FAIR VALUE	CARRYING	CHANGE IN CARRYING VALUE				CARRYING	FAIR VALUE	CHANGE	ACCRUED	RECOGNIZED
	(MARKET) @ 11/30/14	VALUE @ 11/30/14	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	VALUE @ 02/28/15	(MARKET) @ 02/28/15	IN FAIR VALUE (MARKET)	INT RECVBL @ 02/28/15	
<b>INDENTURE RELATED:</b>											
Single Family	479,687,566.24	437,701,755.39	6,007,092.80	(11,268,832.24)	(17,456,436.51)	-	414,983,579.44	454,092,671.97	(2,876,718.32)	4,074,355.49	-
RMRB	308,180,140.30	284,325,061.97	1,031,976.55	(6,963,572.82)	(9,562,141.18)	-	268,831,324.52	293,558,900.40	872,497.55	1,909,123.13	-
CHMRB	5,495,251.02	5,060,558.37	37,014.51	(433,307.41)	(190,334.21)	-	4,473,931.26	4,885,901.02	(22,722.89)	49,641.61	-
Taxable Mortgage Program	7,814,831.72	7,709,214.39	765,943.84	-	(395,045.81)	-	8,080,112.42	8,382,599.54	196,869.79	36,687.01	-
Multi Family	87,023,905.67	85,469,818.89	9,135,560.34	(14,560,664.57)	(109,993.59)	-	79,934,721.07	81,440,231.83	(48,576.02)	-	-
	<u>888,201,694.95</u>	<u>820,266,409.01</u>	<u>16,977,588.04</u>	<u>(33,226,377.04)</u>	<u>(27,713,951.30)</u>	<u>0.00</u>	<u>776,303,668.71</u>	<u>842,360,304.76</u>	<u>(1,878,649.89)</u>	<u>6,069,807.24</u>	<u>-</u>

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:

David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 15, 2014

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 20, 2015

	Date <u>4/28/15</u>
David Cervantes, Chief Financial Officer	
	Date <u>4/28/15</u>
Monica Galuski, Director of Bond Finance	

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**BOARD REPORT ITEM**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 7, 2015**

Report on the Program Year 2015 Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”) State Plan and Awards

**BACKGROUND**

At the Board Meeting of April 16, 2015, the Governing Board authorized Department staff to submit the 2015 Department of Energy (“DOE”) Weatherization Assistance Program (“WAP”) State Plan, together with such grammatical and non-substantive technical corrections as they may deem necessary or advisable, to DOE. At the time of submission to the Board the Plan did not include any prior-year funds that would be carried over into the new program year. In previous years, staff had included these “carryover” funds in the budget but did not do so this year because the Plan is required to be submitted to DOE at a point in time when the amount of funds that might be carried into the next program year is hard to estimate. Staff removed the carryover this year with the intent of providing a realistic figure as an amendment to the Plan after the program year ended and a full accounting of expended funds could be completed.

After the April 16, 2015 Board approval, in a discussion of the plan with the Department’s program DOE liaison, DOE requested that the program budget included in the plan be adjusted to include any prior-year funds that will be carried over into the new program year, regardless of the carryover figure being a rough estimate.

In response to DOE’s request, staff revised the total 2015 program budget and the amounts to be awarded to Subgrantees from that presented at the April 16, 2015 Board Meeting. This report, attached, includes the revised information that was transmitted to DOE. The formula utilized for calculating Subgrantee awards was not changed. As DOE continues to give feedback on the plan, staff may continue to make adjustments relating to the carryover and/or between budget categories to be responsive to DOE’s feedback.

**BUDGET INFORMATION - Non-Construction Programs**

1. Program/Project Identification No. EE0006186		2. Program/Project Title Weatherization Assistance Program	
3. Name and Address State of Texas P.O. BOX 13941 Austin, TX 787113941		4. Program/Project Start Date 07/01/2015	5. Completion Date 06/30/2016

**SECTION A - BUDGET SUMMARY**

Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. 2015 WAP Formula Funds	81.042	\$ 2,000,000.00		\$ 4,657,454.00		\$ 6,657,454.00
2. STATE			\$ 0.00		\$ 0.00	\$ 0.00
3.						
4.						
5. TOTAL		\$ 2,000,000.00	\$ 0.00	\$ 4,657,454.00	\$ 0.00	\$ 6,657,454.00

**SECTION B - BUDGET CATEGORIES**

6. Object Class Categories	Grant Program, Function or Activity				Total (5)
	(1) GRANTEE ADMINISTR ATION	(2) SUBGRANTE E ADMINISTR	(3) GRANTEE T&TA	(4) SUBGRANT EE T&TA	
a. Personnel	\$ 125,273.00	\$ 0.00	\$ 120,835.00	\$ 0.00	\$ 246,108.00
b. Benefits	\$ 31,318.00	\$ 0.00	\$ 30,209.00	\$ 0.00	\$ 61,527.00
c. Travel	\$ 12,090.00	\$ 0.00	\$ 38,490.00	\$ 0.00	\$ 50,580.00
d. Equipment	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
e. Supplies	\$ 2,000.00	\$ 0.00	\$ 722.00	\$ 0.00	\$ 2,722.00
f. Contract	\$ 0.00	\$ 417,234.00	\$ 0.00	\$ 187,500.00	\$ 6,174,581.00
g. Construction	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
h. Other	\$ 5,820.00	\$ 0.00	\$ 5,367.00	\$ 0.00	\$ 11,187.00
i. Total Direct Charges	\$ 176,501.00	\$ 417,234.00	\$ 195,623.00	\$ 187,500.00	\$ 6,546,705.00
j. Indirect	\$ 56,373.00	\$ 0.00	\$ 54,376.00	\$ 0.00	\$ 110,749.00
k. Totals	\$ 232,874.00	\$ 417,234.00	\$ 249,999.00	\$ 187,500.00	\$ 6,657,454.00
7. Program Income	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00



**BUDGET INFORMATION - Non-Construction Programs**

1. Program/Project Identification No. EE0006186		2. Program/Project Title Weatherization Assistance Program	
3. Name and Address State of Texas P.O. BOX 13941 Austin, TX 787113941	4. Program/Project Start Date 07/01/2015		
	5. Completion Date 06/30/2016		

SECTION A - BUDGET SUMMARY						
Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.						
2.						
3.						
4.						
5. TOTAL		\$ 2,000,000.00	\$ 0.00	\$ 4,657,454.00	\$ 0.00	\$ 6,657,454.00

SECTION B - BUDGET CATEGORIES						
6. Object Class Categories	Grant Program, Function or Activity				Total (5)	
	(1) PROGRAM OPERATION S	(2) HEALTH AND SAFETY	(3) LIABILITY INSURANCE	(4) FINANCIAL AUDITS		
a. Personnel	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 246,108.00	
b. Benefits	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 61,527.00	
c. Travel	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 50,580.00	
d. Equipment	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	
e. Supplies	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 2,722.00	
f. Contract	\$ 4,332,645.00	\$ 1,083,161.00	\$ 134,041.00	\$ 20,000.00	\$ 6,174,581.00	
g. Construction	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	
h. Other	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 11,187.00	
i. Total Direct Charges	\$ 4,332,645.00	\$ 1,083,161.00	\$ 134,041.00	\$ 20,000.00	\$ 6,546,705.00	
j. Indirect	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 110,749.00	
k. Totals	\$ 4,332,645.00	\$ 1,083,161.00	\$ 134,041.00	\$ 20,000.00	\$ 6,657,454.00	
7. Program Income	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	

**U.S. Department of Energy  
WEATHERIZATION ASSISTANCE PROGRAM (WAP)  
WEATHERIZATION ANNUAL FILE WORKSHEET**

**(Grant Number: EE0006186, State: TX, Program Year: 2015)**

**IV.1 Subgrantees**

<b>Subgrantee (City)</b>	<b>Planned Funds/Units</b>
Alamo Area Council of Governments (San Antonio)	\$506,535.00 52
Big Bend Community Action Committee (Marfa)	\$87,872.00 8
Brazos Valley Community Action Agency (College Station)	\$204,006.00 20
Combined Community Action, Inc. (Giddings)	\$134,445.00 13
Community Action Committee of Victoria Texas (Victoria)	\$184,738.00 18
Community Action Corporation of South Texas (Alice)	\$507,992.00 53
Community Council of South Central Texas, Inc (Seguin)	\$123,300.00 12
Community Services, Inc. (Corsicana)	\$355,701.00 37
Concho Valley Community Action Agency (San Angelo)	\$112,352.00 11
Dallas County Health & Human Services (Dallas)	\$488,116.00 51
Economic Opportunities Advancement Corporation (Waco)	\$118,858.00 11
El Paso Community Action Program, Project Bravo (El Paso)	\$279,038.00 28
Fort Worth, City of (Fort Worth)	\$299,790.00 30
Greater East Texas Community Action Program (Nacogdoches)	\$352,729.00 36
Hill Country Community Action Association, Inc. (San Saba)	\$165,910.00 16
Neighborhood Centers Inc. (Houston)	\$772,182.00 81
Nueces County Community Action Agency (Corpus Christi)	\$100,996.00 10
Panhandle Community Services (Amarillo)	\$168,959.00 16
Rolling Plains Management Corporation (Crowell)	\$229,394.00 23
South Plains Community Action Association, Inc. (Levelland)	\$153,398.00 15
TBD (Reserved for Cameron and Willacy counties)	\$188,493.00 18
Texoma Council of Governments (Sherman)	\$182,206.00 18
Travis County Health and Human Services and Veterans Services (Austin)	\$185,972.00 18
Tri-County Community Action, Inc. (Center)	\$104,416.00 10

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West Texas Opportunities (Lamesa)	\$167,183.00 16
<b>Total:</b>	<b>\$6,174,581.00 621</b>

**IV.2 WAP Production Schedule**

Weatherization Plans	Units
Total Units (excluding reweatherized)	621
Reweatherized Units	0

Note: Planned units by quarter or category are no longer required, no information required for persons.

Average Unit Costs, Units subject to DOE Project Rules	
VEHICLE & EQUIPMENT AVERAGE COST PER DWELLING UNIT (DOE RULES)	
A Total Vehicles & Equipment (\$5,000 or more) Budget	\$0.00
B Total Units Weatherized	621
C Total Units Reweatherized	00
D Total Dwelling Units to be Weatherized and Reweatherized (B + C)	621
E Average Vehicles & Equipment Acquisition Cost per Unit (A divided by D)	\$0.00
AVERAGE COST PER DWELLING UNIT (DOE RULES)	
F Total Funds for Program Operations	\$4,332,645.00
G Total Dwelling Units to be Weatherized and Reweatherized (from line D)	621
H Average Program Operations Costs per Unit (F divided by G)	\$6,976.88
I Average Vehicles & Equipment Acquisition Cost per Unit (from line E)	\$0.00
J Total Average Cost per Dwelling (H plus I)	\$6,976.88

**IV.3 Energy Savings**

Method used to calculate savings:  WAP algorithm  Other (describe below)

Method used to calculate savings description:  
\_\_\_\_\_

This year estimated energy savings (MBtus):

Prior year estimated energy savings (MBtus):  Actual:

**IV.4 DOE-Funded Leveraging Activities**

N/A

**IV.5 Policy Advisory Council Members**

Check if an existing state council or commission serves in this category and add name below

Combined Community Action Inc.	Type of organization: Non-profit (not a financial institution) Contact Name: Kelly Franke Phone: (979)540-2985 Email: <a href="mailto:KJFranke@ccaction.com">KJFranke@ccaction.com</a>
Greater East Texas Community Action Program	Type of organization: Non-profit (not a financial institution) Contact Name: Karen Swenson, Executive Director Phone: (936)564-2491

**U.S. Department of Energy  
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Railroad Commission of Texas, Alt. Fuels Div.	Email: <a href="mailto:kswenson@sbcglobal.net">kswenson@sbcglobal.net</a> Type of organization: Unit of State Government Contact Name: Heather Ball, Dir. Marketing & Public Education Phone: (512)463-7359 Email: <a href="mailto:heather.ball@rrc.state.tx.us">heather.ball@rrc.state.tx.us</a>
Texas Department of Aging and Disability Services	Type of organization: Unit of State Government Contact Name: Toni Packard Phone: (512)438-4290 Email: <a href="mailto:toni.packard@dads.state.tx.us">toni.packard@dads.state.tx.us</a>
Ysleta del Sur Pueblo Housing Department	Type of organization: Indian Tribe Contact Name: Al Joseph Phone: 9158599196 Email: <a href="mailto:ajoseph@ydsp-nsn.gov">ajoseph@ydsp-nsn.gov</a>

**IV.6 State Plan Hearings (Note: attach notes and transcripts to the SF-424)**

Date Held	Newspapers that publicized the hearings and the dates the notice ran
03/12/2015	The TDHCA Board of Directors authorized release of the draft plan for public comment.
03/19/2015	Draft plan and Notice of Public Hearing posted on the Department's website; public listserv announcement sent announcing availability of the plan and public hearing details. (See Attachment to SF-424 for Notice of Public Hearing)
03/20/2015	Announcement of Public Hearing sent for publication in the Texas Register.
04/06/2015	Public Hearing for the 2015 Texas WAP Plan held; public comment period closed. There were no attendees at the public hearing, and no public comment was received.
04/06/2015	WAP PAC conference call held to discuss plan. Council voted unanimously in favor of the plan. (See SF424 for transcript of the WAP PAC conference call)
04/16/2015	TDHCA Board approved plan and Subgrantee awards for submission to DOE.

**IV.7 Miscellaneous**

**Recipient Business Officer**

Michael De Young  
[Michael.deyoung@tdhca.state.tx.us](mailto:Michael.deyoung@tdhca.state.tx.us)  
 221 East 11th Street  
 Austin, Texas 78701  
 (512) 475--2125

**Recipient Principal Investigator**

Michael De Young  
[Michael.deyoung@tdhca.state.tx.us](mailto:Michael.deyoung@tdhca.state.tx.us)  
 221 East 11th Street  
 Austin, Texas 78701  
 (512) 475--2125

**Policy Advisory Council**

The Policy Advisory Council ("PAC") is broadly representative of organizations and agencies and provides balance, background, and sensitivity with respect to solving the problems of low-income persons, including weatherization and energy conservation problems. Historically, the PAC has met annually after the public hearing for the DOE plan.

The low-income elderly population is represented by the PAC members from Combined Community Action and the Greater East Texas Community Action Association. The low-income persons with disabilities population is represented by the PAC member from the Texas Department of Aging and Disability Services. The low-income Native American population is represented by the PAC member from the Ysleta del Sur Pueblo Housing Department.

**Liability Insurance**

The liability insurance separate line item includes pollution occurrence insurance in addition to the general liability insurance. Most regular liability insurance policies do not provide coverage for pollution occurrence. If Subgrantees require additional funding for liability insurance, they must first provide the Department with three price quotes. When approved, additional liability insurance costs may be paid from administrative or program support categories. The Department strongly recommends the Subgrantees require their contractors to carry pollution occurrence insurance to avoid liability for any mistakes the contractors may make. Each Subgrantee should get a legal opinion regarding the best course to take for implementing the pollution occurrence insurance coverage.

**U.S. Department of Energy**  
**WEATHERIZATION ASSISTANCE PROGRAM (WAP)**  
**WEATHERIZATION ANNUAL FILE WORKSHEET**

**(Grant Number: EE0006186, State: TX, Program Year: 2015)**

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3

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action regarding a Program Year (“PY”) 2015 Community Services Block Grant Program Conditional Award for Urban League of Greater Dallas and North Central Texas and Possible Action Authorizing the Department to Issue a Notice of Hearing to Initiate Proceedings to Reduce or Eliminate CSBG Funding and to Remove Eligible Entity Status should it be deemed necessary

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (“the Department” or “TDHCA”) has received notification of awards from the U.S. Department of Health and Human Services (“HHS”) for the FFY 2015 Community Services Block Grant (“CSBG”) award;

**WHEREAS**, the CSBG funds are allocated based on the formula detailed in 10 TAC §5.203, Distribution of CSBG Funds and the FFY 2015 CSBG awards were authorized by the Board in December 2014;

**WHEREAS**, the award of funds to the Urban League of Greater Dallas and North Central Texas (“ULGD”) were held at the time of those awards pending a response from the entity and submission of its A-133 single audit and upon review of the received audit, conditioned on the resolution of any issues revealed;

**WHEREAS**, the Department has received a single audit, which upon review, has raised further concerns for management and the Executive Award and Review Advisory Committee (“EARAC”);

**WHEREAS**, management of TDHCA previously communicated to ULGD numerous items that ULGD needed to address, but to date ULGD has not addressed them;

**WHEREAS**, the EARAC has identified a series of deliverables and conditions which it recommends are necessary to be satisfied prior to ULGD being granted access to a new award of CSBG funds;

**WHEREAS**, the Department thinks that the deliverables and conditions should be matters ULGD can address quickly, and if not accomplished timely, thinks that the CSBG funds for the Dallas County area may better serve the community if administered by another entity, a result which can be accomplished via an extended process requiring, among other things, opportunity for hearings, or by agreement; and

**WHEREAS**, Texas Government Code, Section 2105.203, HHS IM-116, and the CSBG Act require that adequate notice and opportunity for a hearing are provided in the event that the Department seeks to terminate or reduce funding;

**NOW, therefore, it is hereby**

**RESOLVED**, that an award to ULGD for PY 2015 CSBG in the amount of \$2,824,779 be and is hereby approved conditioned on immediate suspension of the contract, with suspension to be removed upon satisfactory fulfillment of all conditions set forth in this Board Action Item, which are incorporated into this resolution by reference for all purposes, by May 27, 2015; and

**FURTHER RESOLVED**, that in the interest of minimizing the time that assistance will not be provided to the community should ULGD fail to satisfy the conditions by May 27, 2015, the Chief of Staff of the Department is authorized to determine whether to provide additional time beyond May 27, 2015, and/or will provide adequate notice as specified in Tex. Gov't Code, §2105.203 and by HHS IM-116 to initiate proceedings to remove of ULGD's eligible entity status.

### **BACKGROUND**

At the Board Meeting of December 18, 2014, the Governing Board approved awards for the PY 2015 CSBG subrecipients recommended by EARAC. At that time, the award for ULGD was not recommended for Board action because staff was still working with the subrecipient to address concerns identified by EARAC primarily relating to the A-133 single audits for the entity. EARAC asked that ULGD request an extension of the single audit submission deadline for Fiscal years ("FY") 2013 and 2014 from its federal cognizant agency and provide response to the Department by February 20, 2015; provide outstanding documentation for completion of its FY 2013 audit to its auditor by February 3, 2015, with confirmation of receipt; and provide a completed FY 2013 audit to the Department by March 5, 2015.

The actions requested by EARAC were not timely achieved. Since that time the Department has met with ULGD's leadership and along with ULGD has been in contact with its independent auditor. The Department is unable to award new federal funds without a single audit in place so no new award of CSBG funds has been made to ULGD. However, with eligible entity status designated to ULGD under the CSBG Act, funds cannot be swiftly redistributed. On January 16, 2015, ULGD leadership committed to a timely submission of the single audit and agreed to several date-specific deliverables from ULGD to their single auditor which was not achieved.

In February, ULGD was notified that the Department would be proceeding with the appropriate next steps required by IM-116. At that time, the next step was to offer technical assistance or determine that technical assistance was not appropriate. Based on the nature of the concern, an outstanding audit, the Department determined that technical assistance was not beneficial nor required and notified HHS of this determination.



The FY 2013 audit was finally received by the Department on March 24, 2015; however the content of the audit, upon review, raised additional concerns for management and for EARAC. Several of the concerns were identified for ULGD in a communication from the Department to ULGD on March 26, 2015. Initially, in a June 2014 correspondence, TDHCA noted that there were findings in the FY 2012 A-133 audit that warranted resolution. The FY 2013 Single Audit did not provide results for the findings identified in the the prior year (FY 2012) audit. Also, in discussions with ULGD and its auditor a serious concern was raised regarding charging of costs under an indirect cost rate which had not been properly approved. This issue and any implications to the financials of ULGD were not treated in the 2013 single audit. As a result of those findings, management of the Department recommends that ULGD ask its independent auditor to address those items. Furthermore, because ULGD has been charging the Department under an indirect cost rate that was not properly approved, the auditor should include its review and findings in this regard.

Through a series of written correspondence and in meetings, TDHCA has identified multiple issues that it needed addressed. In most cases, those requests have not been responded to, or in the instances where they were responded to, the responses were inadequate.

EARAC is recommending Urban League of Greater Dallas for an award of PY 2015 CSBG funds, with immediate suspension, in the approximate amount of \$2,824,779 with the following conditions to be achieved by May 27, 2015. Staff will provide the technical assistance requested by ULGD. It should be noted that all of these items have been raised previously by the Department. The conditions must be met to the Department's satisfaction as determined by the Department's Chief of Staff:

1. Provide a Cost Allocation Plan consistent with the technical assistance provided by TDHCA staff. This was discussed at the April 7, 2015, meeting between staff and the ULGD. Identify and make any necessary adjusting entries (if any) resulting from a correct treatment of the costs erroneously charged under an indirect cost rate.
2. Provide a list of current Advisory Board members, identify those members who are Executive Board members and provide evidence that the tripartite board requirement of the CSBG Act is being satisfied. This request was initially made on April 15, 2015. We note that the management letter expressed concern over board attendance and involvement. Provide an explanation of the measures that are being taken to ensure this is addressed.
3. Provide the document or report generated by volunteer Calvin Person, who has been represented by ULGD to be a qualified accountant, that assesses whether the issues identified in the 2012 single audit have been sufficiently addressed. As Mr. Person is, presumably, not a properly procured independent auditor, this is informational only and will not be relied upon as conclusive of the status of any of the items covered.
4. Provide the timeline, no longer than 60 days, by which ULGD will have an employee in place to supervise the financial area. In addition, the Department believes that more aggressive recruitment could and should occur to fill the position. The ULGD has indicated that the only effort to fill this position has been notifying the Texas Workforce Commission of the opening. This position should be filled by a competent individual no

later than sixty days from the date of this resolution and must be filled before ULGD will have access to any additional CSBG funds.

5. Provide the status of the single audit for fiscal year ending 2014. Indicate whether the prior issues (status of 2012 findings and review of improper use of an indirect cost rate) will be covered by a supplement to the 2013 audit or in the 2014 audit. The former is strongly preferred. See condition 7, below.
6. Provide a copy of the notice of the meeting at which the ULGD board accepted the 2013 A-133 audit, a list of the board members, a list of the attendees, and a copy of the current ULGD bylaws, reflecting quorum requirements. If there is a transcript or recording of the meeting, provide those as well. This request was initially made on March 25, 2015.
7. Based on the FY 2013 Single Audit, ULGD, in consultation with its independent auditor, should be engaged to address these issues no later than 60 days from now.
  - The FY 2013 single audit does not appear to address the entire status of efforts or actions to address the material deficiencies raised in the 2012 single audit. Why were these matters not covered and what is their status?
  - ULGD has been utilizing an indirect cost rate that was not properly approved and, accordingly, amounts so charged would be disallowed. They could possibly be corrected by ledger adjustments if supported by eligible direct costs. Why did McConnell Jones not address this issue in the report?
8. Provide a statement or letter from ULGD's single auditor indicating that the indirect cost rate that has been used, has not identified any disallowed costs or adjustments under the CSBG federal or state rules.
9. If ULGD's single audit provider identifies disallowed costs due to the use of an inappropriate indirect cost rate, repay the disallowed amounts.

If the Department's Chief of Staff does not deem the conditions to be sufficiently satisfied, he may grant an extension or give notice of an opportunity for a hearing, which is a required step prior to taking other action under IM-116 or Chapter 2105 of the Texas Government Code. Staff is requesting this authority for the Chief of Staff so that the protracted amount of time that transpires during the IM-116 process is somewhat under way. If the ULGD is not able to meet the conditions, rather than proceeding with the hearing, the entity also has the option of voluntarily relinquishing the CSBG funds, as other subrecipients have done in the past. This would ensure less disruption of services to the community.

# **ACTION ITEMS**

4a

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 7, 2015**

Report on Staff Determinations regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, Applicants are required to disclose to the Department the existence of certain characteristics of a proposed Development Site;

**WHEREAS**, staff received 14 such disclosures, four of which are associated with Applications that are under review; and

**WHEREAS**, pursuant to 10 TAC §10.101(a)(4)(A), staff has conducted a further review of the proposed sites and the surrounding neighborhoods and prepared a report for the Board with recommendation with respect to the eligibility of the sites;

**NOW, therefore, it is hereby,**

**RESOLVED**, that the Board accepts this report in satisfaction of the requirements of 10 TAC §10101(a)(4) of the Uniform Multifamily Rules.

**BACKGROUND**

Pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, Applicants are required to disclose to the Department the existence of certain characteristics of a proposed Development Site. These characteristics include high poverty rates, high crime rates, and environmental issues presented in the Environmental Site Assessment. Upon disclosure, staff conducted a further review of the site, which included some desk review of demographic information as well as site visits for some of the sites. Staff determined that the four Applications for which these reviews were conducted are eligible under the rule. A detailed report regarding each site assessment is attached. Staff received additional disclosures, but the Applications for which they were received are not under review because they do not appear to be competitive. Should the competitive posture of any of those Applications change, resulting a review, staff will present a supplement to this report at a later date.

## **Report on Staff Determinations regarding 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics**

The following tables constitute the staff determinations for 2015 Competitive Housing Tax Credit (“HTC”) applications that included disclosures related to §10.101(a)(4) of the 2015 Uniform Multifamily Rules (the “Rules”), related to Undesirable Neighborhood Characteristics. Pursuant to the rule, such disclosures are required if one of three undesirable neighborhood characteristics exists where the proposed Development Site is located.

Each entry identifies the HTC development/application identification number (TDHCA ID#), the name of the development, city, region, and application review status, along with staff’s recommendation with respect to eligibility of the site. A brief summary of each disclosure has been included and is followed by Department staff’s analysis of the site.

Where staff is recommending that a site be found ineligible, the applicants have already been notified and given the opportunity to appeal the staff determination. In addition, where staff is recommending in this report that a site be found eligible, the Department’s Governing Board has final decision making authority, and thus these determinations are subject to change. Pursuant to 10 TAC §10.101(a)(4), should the Board make the determination that a Development Site is ineligible based on this report, the termination of the Application resulting from such Board action is not subject to appeal.

Jean Latsha  
Director of Multifamily Finance  
512.475.1676  
[jean.latsha@tdhca.state.tx.us](mailto:jean.latsha@tdhca.state.tx.us)

<b>TDHCA ID#</b>	15043	<b>Development Name:</b>	Cleme Manor		
<b>City:</b>	Houston	<b>Region:</b>	6	<b>Review Status:</b>	Under Review
<b>Staff recommendation:</b>	Site is eligible under §10.101(a)(4)				

**Summary of Disclosure:** The Development Site is located in an area with a violent crime rate of 84/1000 annually according to neighborhoodscout.com.

**Site Analysis:** According to information provided by the Applicant, most, if not all, of the crime in the area is caused by tenants of the subject property, and crime has decreased slightly over the last three years. In addition, in order to mitigate the issue, the current owner (the Applicant, as of August 2014) has implemented a security plan that involves on-site cameras and police presence along with strict leasing policies.

Staff visited the site twice in 2014 for purposes of determining eligibility of a previously submitted application by the same applicant and for the same site. At that time, the Applicant provided an extensive amount of information about the site and the surrounding area, including the previously mentioned security plan, the community revitalization plan of the City of Houston, and evidence of significant public and private investment in the area. The site was discussed at length during a 2014 board meeting, and ultimately it was found to be eligible. Although the language in the rule has changed since 2014, the intent behind the rule has not; staff finds all of this previously submitted information still relevant, and the 2015 Application also includes information regarding the ongoing revitalization efforts in the area. According to neighborhoodscout.com, there has been a 16.4% increase in average annual per capita income in the area in the last five years; although staff was unable to find the precise data to support this finding, staff did find census data to support the statement in general. In addition, neighborhoodscout.com reports that there has been a 1.8% increase in the average annual number of college graduates in the same timeframe.

Staff found that approximately 39% (494 of 1267) of the households in the subject census tract have incomes greater than \$60,000, while the median household income for the Houston MSA is \$57,712. General land use in the area is a mix of commercial (including and residential properties, including single-family and some multifamily development. Other multifamily properties in the immediate surrounding area include Wheatley Court and Wheatley Manor Apartments, which appear (from a desk review) to be about 140 market rate units built in the late 1950s and that advertise acceptance of Section 8 vouchers. While staff's initial site visit in 2014 raised concerns about some of the land use and some physical decline of property in the area, subsequent visits have indicated that the revitalization efforts have been effective; the market study also indicates moderate growth in the area. Finally, although the property is adjacent to an

active railway, because this is a Rehabilitation Development that has ongoing assistance from HUD, the Application is eligible for an exemption under §10.101(a)(3) of the Rules; staff is recommending that the Board grant such an exemption under separate board action.



<b>TDHCA ID#</b>	15069	<b>Development Name:</b>	Wheatley Courts Senior Apartments		
<b>City:</b>	San Antonio	<b>Region:</b>	9	<b>Review Status:</b>	Under review
<b>Staff recommendation:</b>	Site is eligible under §10.101(a)(4)				

**Summary of Disclosure:** The Development Site is located in census tract with a 57% poverty rate for individuals. Also, the Development Site is located in an area with a violent crime rate of 24.81/1000 annually according to neighborhoodscout.com.

**Site Analysis:** Wheatley Courts Senior Apartments is the third phase of a multi-phase redevelopment effort. Staff visited the site for the second phase, Wheatley Courts, in 2014. Although staff had concerns about the neighborhood following that first visit, namely a significant number of vacant and abandoned homes and businesses as well as evidence of a high crime rate in the area, the site was ultimately found to be eligible by the board in the summer of 2014. The eligibility of the 2014 site was based largely on evidence that a significant revitalization effort which involves not only private investment but public investment from a number of different sources, including some exclusive federal sources such as the HUD Choice Neighborhood Initiative Implementation Grant and the Promise Neighborhood Grant program. Staff visited the site again in 2015 and also consulted with the applicant regarding the overall progress of the revitalization efforts. Staff observed that the original development had already been demolished, and excavating and grading has begun. Again, there are parts of the neighborhood that at first glance appear to be blighted, but this is actually consistent with information provided by the applicant. Many of the lots in the area have been acquired by the city, county, and the San Antonio Housing Authority in preparation for the development of the fourth phase of the larger redevelopment plan or as part of another effort that involves land banking for a future homeownership program.

General land use in the area includes primarily single family development and the Wheatley Middle School and Washington Elementary School. There do not appear to be any other affordable rental units in the immediate surrounding area. Although it appears as though some small businesses and churches and even a small multifamily development did exist at one time, most of them appear to be abandoned. Again, while typically a cause for concern this seems to be consistent with the information provided by the applicant as part of both the 2014 and 2015 applications; this area is undergoing a significant redevelopment process, and it is currently in a state of general turnover. A lengthy discussion regarding this effort was heard by the board at the June 26, 2014 board meeting, and ultimately the site proposed in the 2014 application cycle was found eligible.

Staff did find that over the last five years, there has been a relatively significant increase in the percentage of households in the census tracts with incomes over \$50,000. (The median household income for the San Antonio MSA is \$52,139.) Neighborhoodscout.com also reports a 7.9% increase in annual per capita income. The applicant submitted a disclosure on January 8, 2015 that neighborhoodscout.com indicated 24.81 violent crimes per 1,000 residents annually. However, The San Antonio Police Department provided updated statistics in February 2015, which were submitted in an updated disclosure letter on February 28, 2015. Again, this information initially caused staff concern, but that concern is mitigated by the revitalization efforts in the area. According to the applicant, the San Antonio Police Department and the San Antonio Housing Authority were awarded a Department of Justice Byrne Grant in order to work with the Eastside Community, which includes the Wheatley Courts sites. Also according to the applicant, as a result of the Byrne Grant along with the Choice Neighborhood and Promise Zone designations, Census Tract 48029130600 has seen a decline in violent crimes over the last two years. The ratio of Part I Violent Crimes is a rate of 13.39 per 1000 (statistics by SAPD). The applicant believes that this decline in violent crimes seen since 2013 is evidence that the discussion at the 2014 Board regarding the efforts of the San Antonio Police Department and residents of the community to address crime in the area has been effective. Again, staff feels this information, although presented with respect to an earlier application, remains relevant to this determination and overall revitalization efforts.

<b>TDHCA ID#</b>	15076	<b>Development Name:</b>		Provision at Four Corners	
<b>City:</b>	Four Corners	<b>Region:</b>	6	<b>Review Status:</b>	Under review
<b>Staff recommendation:</b>	Site is eligible under §10.101(a)(4)				

**Summary of Disclosure:** The Environmental Site Assessment (“ESA”) for the Development Site indicates that the site is located within .5 mile of a site that is included in the Texas Voluntary Cleanup Program (“VCP”) database.

**Site Analysis:** The site which was included in the VCP database is the Providence Shopping Center located at 9400 Highway 6 South, just north of the development site. The ESA indicates that the shopping center entered the program in 1995 with an end date in 2008 and an inactive status since 2009. The ESA does not indicate that the existence of this site impacts the subject property and further states that no recognized environmental conditions appear to exist to the subject property. Further, this site is located in a high opportunity area, in a census tract with high incomes and low poverty. While staff only performed a desk review of the surrounding area, there is no indication that there are any undesirable features in the neighborhood. General land use in the neighborhood includes a number of commercial uses along the major thoroughfare and single family homes closer to the site. While some parts of the neighborhood don’t appear to have sidewalks or curbs and have a number of manufactured homes, other parts are more fully developed. There does not appear to be any affordable rental units in the surrounding area.

<b>TDHCA ID#</b>	15267	<b>Development Name:</b>	Thomas Westfall Memorial Apartments		
<b>City:</b>	El Paso	<b>Region:</b>	13	<b>Review Status:</b>	Under Review
<b>Staff recommendation:</b>	Site is eligible under §10.101(a)(4)				

**Summary of Disclosure:** The Environmental Site Assessment (“ESA”) for the Development Site indicates that the site is located within .25 mile of three sites that are included in the Resource Conservation and Recovery Act (“RCRA”) generators database.

**Site Analysis:** The three sites that are included in the RCRA database are Stitches Inc., located at 1144 Vista De Oro, Wal-Mart Store #512, located at 1144 Yarbrough Dr. (now apparently a Burlington Coat Factory), and Wal-Mart Supercenter #0512, located at 10727 Gateway Blvd. According to the ESA, sites are included in this database are those that “generate, transport, store, treat, and/or dispose of hazardous waste as defined by the RCRA.” Clearly, these three sites are considered amenities in the area and not environmental hazards. The ESA further stated that there were “no recognized environmental conditions identified during the completion of this Phase I ESA update.”

Staff visited this site in 2014 as one of many potential RAD transactions being proposed by the El Paso Housing Authority. Staff had no concerns about the site with respect to undesirable neighborhood characteristics and observed that generally the area is a thriving, with a mix of commercial and residential use, both multifamily and single family. According to neighborhoodscout.com, the neighborhood experiences only 1.4 violent crimes per thousand residents annually; it also has a crime index of 84 (on a scale of 1-100 with 100 being the safest). The site is in a relatively high income, low poverty area as well.

4b

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 7, 2015**

Report on Site Challenges submitted in Accordance with 10 TAC §11.10 Concerning 2015 Housing Tax Credit Applications

**RECOMMENDED ACTION**

**WHEREAS**, the Department allows parties unrelated to an application to submit challenges relating to the eligibility of a proposed Development Site with regard to any application pursuant to §11.10(5) of the 2015 Qualified Allocation Plan (“QAP”);

**WHEREAS**, the Department received two such site challenges regarding applications that are competing in the current competitive 9% low income housing tax credit application cycle;

**WHEREAS**, staff has reviewed all of the challenges received and has made recommendations for further action based on the validity of each challenge; and

**WHEREAS**, §11.10(13) of the QAP requires that staff determinations regarding all challenges will be reported to the Board.

**NOW, therefore, it is hereby,**

**RESOLVED**, that the Board accepts this report in satisfaction of the requirements of §11.10(13) of the QAP;

**FURTHER RESOLVED**, that the Board directs staff to conduct further review with respect to each challenge as presented in the report, and report any findings to the Board at a future meeting.

**BACKGROUND**

Pursuant to §11.10(5) of the QAP, unrelated parties may challenge specific applications with respect to eligibility under §§10.101(a)(3) and (4) related to Undesirable Site Features and Undesirable Neighborhood Characteristics, respectively. Staff reviews each challenge, submits a request to the Applicant for a response, and researches both sides of the challenge in order to make a determination of appropriate resolution to the challenge. The challenges, along with the Applicants’ responses, are posted to the Department’s website. Section 11.10(13) of the QAP requires that staff determinations regarding all challenges will be reported to the Board. While staff has not made determinations with respect to the eligibility of each of the sites, staff is recommending further action as a result of those challenges. Summaries of staff’s recommendations after review of the information included in the challenges as well as in the Applicants’ responses are included below.

## **2015 Competitive Housing Tax Credit (HTC) Site Challenges**

The following tables constitute the staff determinations for 2015 Competitive Housing Tax Credit (“HTC”) Site Challenges received the deadline of April 1, 2015, and all determinations made as of **April 29, 2015**. All challenges referenced herein were received and reviewed in accordance with §11.10 of the 2015 Qualified Allocation Plan (“QAP”). Representatives for each of the challenged applications was provided the opportunity to respond to the submitted challenge, and staff has reviewed both the challenge and response in making a determination in each instance.

Each entry identifies the HTC development/application identification number (TDHCA ID#), the name of the development, city, region, and fee status, and the name and organization of the challenger. A brief summary of each challenge has been included, followed by Department staff’s analysis of the challenge, and finally the staff resolution to the challenge. The Department has posted each challenge and supporting documentation received to its website, which can be found at the following link: <http://www.tdhca.state.tx.us/multifamily/htc/index.htm>.

The Department’s Governing Board has final decision making authority on any of the issues reflected herein, and thus these determinations are subject to change. However, a challenger may not formally appeal any staff determination.

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<b>TDHCA ID#</b>	15110	<b>Development Name:</b>		Place of Grace	
<b>City:</b>	Beaumont	<b>Region:</b>	5	<b>Fee Received:</b>	Yes
<b>Challenger:</b>	Enrique Flores, GCM Housing Alton, Ltd				

**Nature and Basis of Challenge:** The challenger asserts that the Application is ineligible due to non-disclosure pursuant to §10.101(a)(4)(B)(ii) of the 2015 Uniform Multifamily Rules (the “Rule”) which requires an Applicant to disclose if a “Development Site is located in an Urban Area and the rate of Part I violent crimes is greater than 18 per 1,000 persons (annually) for the immediately surrounding area.” The challenger provided a copy of a Neighborhood Scout report which shows that the census tract in question has a rate of Part I violent crimes of 21.43. The challenger also points out that there are 597 affordable HTC units within a one mile radius and 697 within two miles. The challenger further asserts that the area has heavy industry as well as a wastewater treatment facility and a city landfill both of which create “strong, pungent odors and adverse health effects.”

**Applicant Response to Challenge:** In response to the challenger’s assertion that the Part I violent crimes rate exceeded the threshold pursuant to §10.101(a)(4)(B)(ii) of the Rule, the Applicant provided a meticulously curated dataset obtained from the Beaumont Police Department that shows a Part I violent crimes rate of 13.39 per 1,000 persons. The Applicant argues that because this dataset shows a rate of Part I violent crimes that is below the threshold for disclosure, no disclosure was required. The Applicant also contends that “the fact that there are so many affordable housing projects in the area indicates that the TDHCA has found southwest Beaumont to be an acceptable location for tax credit properties.” The Applicant also rebutted the challenger’s assertions about the heavy industrial and environmental issues.

**Analysis and Resolution:** Staff has reviewed the challenge and the response provided. While true that no disclosure was technically required under the Rule because the Applicant’s dataset showed Part I violent crimes to be below the threshold for disclosure, staff has serious concerns about the level of crime in this area based upon the Applicant’s own report, as well as the high concentration of affordable housing units in the area. Because of these concerns, staff is recommending that the Board direct staff to proceed as if a disclosure was submitted, and to conduct a further review, pursuant to §10.101(a)(4)(C) of the Rule. Those findings will be presented to the Board on June 16, 2015, for a determination of Development Site eligibility.



<b>TDHCA ID#</b>	15159	<b>Development Name:</b>	Abbington Commons of Whitewright		
<b>City:</b>	Whitewright	<b>Region:</b>	3	<b>Fee Received:</b>	Yes
<b>Challenger:</b>	John C. Shackelford, on behalf of App # 15029 Courtyard Apartments				

**Nature and Basis of the Challenge:** The challenger asserts that the development site is ineligible pursuant to §10.101(a)(3)(D) and (J) of the Rule because, within 960 feet, the El Dorado Chemical Company (“El Dorado”) operates an ammonium nitrate (“AN”) storage facility. The challenger states that a minimum of 500,000 pounds of AN is stored on the site daily. The challenger further states that the facility has capacity to store up to 1.6 million pounds of AN on a daily basis. The challenger points out that AN is a hazardous chemical under the OSHA Hazard Communication Standard and is at risk for explosion. The challenger asserts that should a fire and explosion occur similar to the one in West, the Abbington site would be within the blast zone. The challenge was accompanied by 170 pages of supporting documentation, including a report from SCS Engineers entitled “Evaluation of a Potential Multi-Family Housing Property located at South Bond Street and Echols Lane with Respect to the Storage of Ammonium Nitrate at a nearby facility in Whitewright, Texas.” This report calculates the blast zone radius based on the average daily minimum of 500,000 lbs of AN and concludes that at 1,070 feet from the point of detonation, the overpressure would equate to 3 psi, six times the acceptable limit established by HUD.

**Applicant Response to Challenge:** The Applicant responded to the challenge outlining the high level of due diligence conducted because of this potential hazard. The Applicant presented the challenge to their ESA provider, Phase I Engineering, who then preformed additional testing. Based on additional calculations, the ESA provider writes “mitigation measures may be warranted to lessen the potential of impact from pressure effects. Further study to determine the level and type of mitigation is needed.”

**Analysis and Resolution:** Staff has reviewed the challenge and the response provided. Because both the challenger and Applicant make compelling arguments, staff recommends that the Board direct staff to work with the Applicant to develop a set of conditions that would mitigate this hazard and that could be placed upon the award should an allocation be made. Staff will present a formal recommendation with respect to this application at the June 16, 2015, Board meeting, which will include those conditions. Alternatively, if further investigation results in a more definitive opinion with respect to the site, or if staff is unable to develop a set of conditions that would adequately mitigate the situation, staff may ultimately recommend approval of the site or terminate the application. Should the application be terminated, that termination would be subject to appeal.

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BOARD ACTION REQUEST

BOND FINANCE DIVISION

MAY 7, 2015

Presentation, Discussion and Possible Action on Resolution 15-017 authorizing the filing of an application for reservation with the Texas Bond Review Board with respect to qualified mortgage bonds; authorizing publication of a notice of public hearing; approving an underwriting team; and containing other provisions relating to the subject.

RECOMMENDED ACTION

See attached resolution.

BACKGROUND

Historically, single family mortgage revenue bonds ("MRBs") have been the primary financing method for providing homeownership opportunities through the Department's Texas First-Time Homebuyer Program. For several years now, market conditions have not been conducive to the issuance of MRBs, and the Department has relied on the My First Texas Home Program, which provides financing through a private sector mortgage model, to finance homebuyer assistance in the form of down payment and closing cost assistance.

Staff has been working closely with the Department's Financial Advisor, Bond Counsel, and members of the underwriting team to evaluate market conditions for a new money single family mortgage revenue bond program and for the possible restructuring or refunding of the Department's Single Family Variable Rate Mortgage Revenue Bonds, 2006 Series H. Based on current market conditions, it is prudent to prepare for the implementation of either and/or both of these options. Taking the initial steps required for execution should provide the flexibility to move quickly to execute a transaction when market conditions permit and will hopefully result in maximum benefit to the Department.

In order to begin a single family MRB transaction, the Department must submit an application to the Texas Bond Review Board to draw down private activity bond authority known as volume cap. Bond Finance is requesting authorization to apply for an amount not-to-exceed \$150 million in single family private activity bond authority. At this time, staff is not seeking nor is the Board granting, final approval of a bond issue with respect to the financing structure, target mortgage rates, timing and/or size of the issue. Staff will return to the Board with those specifics, as well as substantially final documents, at a later date for final Board approval before pricing and selling the Bonds.

Staff is also seeking authorization to publish a Notice of Public Hearing and requests approval of the Underwriting Team. At the November 7, 2013 Board meeting, the Board approved underwriters to serve the Department. Staff recommends approval of Morgan Stanley & Co. as the Senior Manager, and Ramirez & Co., Estrada Hinojosa & Co., and RBC Capital Markets as Co-Managers for this transaction.

## **RESOLUTION NO. 15-017**

### **RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR RESERVATION WITH THE TEXAS BOND REVIEW BOARD WITH RESPECT TO QUALIFIED MORTGAGE BONDS; AUTHORIZING PUBLICATION OF A NOTICE OF PUBLIC HEARING; APPROVING AN UNDERWRITING TEAM; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT**

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended from time to time (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low and very low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to make, acquire and finance, and to enter into advance commitments to make, acquire and finance, mortgage loans and participating interests therein, secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds, for the purpose, among others, of obtaining funds to acquire or finance such mortgage loans, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such single family mortgage loans or participating interests, and to mortgage, pledge or grant security interests in such mortgages or participating interests, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and (d) to issue its revenue bonds for the purpose of refunding any bonds theretofore issued by the Department; and

WHEREAS, Section 103 and Section 143 of the Internal Revenue Code of 1986, as amended (the "Code"), provide that the interest on obligations issued by or on behalf of a state or a political subdivision thereof the proceeds of which are to be used to finance owner-occupied residences will be excludable from gross income of the owners thereof for federal income tax purposes if such issue meets certain requirements set forth in Section 143 of the Code; and

WHEREAS, Section 146(a) of the Code requires that certain "private activity bonds" (as defined in Section 141(a) of the Code) must come within the issuing authority's private activity bond limit for the applicable calendar year in order to be treated as obligations the interest on which is excludable from the gross income of the holders thereof for federal income tax purposes; and

WHEREAS, the private activity bond "State ceiling" (as defined in Section 146(d) of the Code) applicable to the State is subject to allocation, in the manner authorized by Section 146(e) of the Code, pursuant to Chapter 1372, Texas Government Code, as amended (the "Allocation Act"); and

WHEREAS, the Allocation Act requires the Department, in order to reserve a portion of the State ceiling for qualified mortgage bonds (the "Reservation") and satisfy the requirements of Section 146(a) of the Code, to file an application for reservation (the "Application for Reservation") with the Texas Bond Review Board (the "Bond Review Board"), stating the maximum amount of the bonds requiring an allocation, the purpose of the bonds and the section of the Code applicable to the bonds; and

WHEREAS, the Allocation Act and the rules promulgated thereunder by the Bond Review Board (the "Allocation Rules") require that the Application for Reservation be accompanied by a certified copy of the resolution of the issuer authorizing the filing of the Application for Reservation; and

WHEREAS, the Governing Board has determined to authorize the filing of an Application for Reservation in the maximum amount of \$150,000,000 with respect to qualified mortgage bonds; and

WHEREAS, the Department has previously issued, sold and delivered its Single Family Variable Rate Mortgage Revenue Bonds, 2006 Series H and desires to prepare for a possible refunding of such bonds; and

WHEREAS, the Governing Board further desires to authorize the publication of a notice of public hearing required under Section 147(f) of the Code of 1986, relating to the issuance of qualified mortgage bonds (the "Public Hearing Notice") and approve an application to the Bond Review Board for approval of state bonds; and

WHEREAS, the Governing Board further desires to approve an underwriting team for the qualified mortgage bonds referenced in this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

## ARTICLE 1

### APPROVAL OF CERTAIN ACTIONS

Section 1.1 Application for Reservation. The Governing Board hereby authorizes Bracewell & Giuliani LLP, as Bond Counsel to the Department, to file on its behalf with the Bond Review Board an Application for Reservation in the maximum aggregate amount of \$150,000,000 with respect to qualified mortgage bonds, together with any other documents and opinions required by the Bond Review Board as a condition to the granting of the Reservation.

Section 1.2 Publication of Public Hearing Notice. The Department is hereby authorized to publish the Public Hearing Notice in the Texas Register and in newspapers throughout the State.

Section 1.3 State Debt Application. The Governing Board hereby authorizes and approves the submission of the application for approval of state bonds to the Bond Review Board on behalf of the Department in accordance with Chapter 1231, Texas Government Code.

Section 1.4 Authorization of Certain Actions. The Governing Board authorizes the Executive Director, the staff of the Department, as designated by the Executive Director, and Bond Counsel to take such actions on its behalf as may be necessary to carry out the actions authorized in Sections 1.1 through 1.3.

Section 1.5 Underwriting Team. From the approved current pool of senior underwriters, the Governing Board designates Morgan Stanley as the senior manager and Samuel A. Ramirez & Co., Inc., Estrada Hinojosa & Co., Inc. and RBC Capital Markets as the co-managers.

Section 1.6 Authorized Representatives. The following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief of Staff of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings

Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Execution page follows]*

PASSED AND APPROVED this 7th day of May, 2015.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)

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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action regarding Requests for Exemption from Undesirable Site Features under 10 TAC §10.101(a)(3) filed in the 2015 Competitive Housing Tax Credit Cycle

**RECOMMENDED ACTION**

**WHEREAS**, a Competitive Housing Tax Credit Application was submitted for Cleme Manor (#15043) on February 27, 2015;

**WHEREAS**, the Development Site is located within 100 feet of a railway, which, pursuant to §10.101(a)(3) of the Uniform Multifamily Rules (“Rule”) related to Undesirable Site Features, could cause the site to be deemed ineligible unless a requested exemption is granted;

**WHEREAS**, the Application proposes Rehabilitation of a Development that has ongoing and existing federal assistance from HUD in the form of a current Housing Assistance Payments (“HAP”) contract;

**WHEREAS**, the Rule allows for the Board to grant an exemption in cases where the Application proposes Rehabilitation of a Development with ongoing and existing federal assistance from HUD or USDA;

**WHEREAS**, the Rule includes a requirement that the request for the exemption must include a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act (the “Fair Housing letter”);

**WHEREAS**, the Board, in response to the U.S. Department of Housing and Urban Development (“HUD”) statement that it would not provide such a letter, waived the requirement to obtain the Fair Housing letter at the February 19, 2015, meeting; and

**WHEREAS**, the Applicant has timely requested such an exemption from the Board;

**NOW, therefore, it is hereby,**

**RESOLVED**, the Applicant’s request for an exemption under §10.101(a)(3) of the Rule related to Undesirable Site Feature for Cleme Manor (#15043) is hereby granted.

## **BACKGROUND**

An Application for Cleme Manor, located in Houston (urban region 6), was submitted on February 27, 2015. The application proposes rehabilitation of a development that has ongoing federal assistance from HUD in the form of a HAP contract, and the site is located adjacent to an active railway. Pursuant to §10.101(a)(3) of the Rule, Development Sites located within 100 feet of active railroad tracks will be considered ineligible unless the board grants an exemption for Rehabilitation Developments that have ongoing and existing federal assistance from HUD or USDA. Such an exemption was requested. Staff has reviewed the relevant documentation and has determined that the exemption request meets the requirements of the Rule, with the exception of the submission of a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Federal Fair Housing Act. However, the requirement for the letter was waived by the Board on February 19, 2015, based on HUD's unwillingness to provide such a letter. Therefore, staff recommends granting the exemption. Therefore, staff recommends granting the exemption.



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February 27, 2015

**Via Electronic Submission**

Mr. Timothy K. Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
P.O. Box 13941  
Austin, TX 78711-3941

Re: Cleme Manor in Houston, Texas  
TDHCA No. 15043

Dear Tim:

Our client, Cleme Manor Holdings, LLC (the "**Applicant**"), has acquired and proposes to rehabilitate the Cleme Manor Apartments in Houston (the "**Development**") and has submitted a pre-application for Housing Tax Credits to finance the acquisition and rehabilitation. The Development is a 284-unit apartment complex for families in the Greater Fifth Ward of Houston. It was constructed in 1970 and is currently supported with a HUD HAP contract.

In accordance with the Qualified Allocation Plan (the "**QAP**"), the Applicant hereby requests: (1) exemption of Undesirable Site Features in accordance with Section 10.101(a)(3) and (2) disclosure and approval of an Undesirable Neighborhood Characteristics in accordance with Section 10.101(a)(4). Specifically:

**Undesirable Site Feature**

The Development is located within 100 feet of railroad tracks, which is considered an Undesirable Site Feature. The Applicant engaged acoustical consultants to perform a sound study with regard to the railroad tracks and surrounding uses (including the industrial facilities described below). A copy of the sound study is enclosed for your information as Exhibit A. This study was conducted in accordance with HUD standards for site acceptability. The study measured sound at the Development for three days. During the entire measurement period, not a single train passed by the property and other noise levels were acceptable. Therefore, the site was found to be acceptable for HUD purposes in conjunction with the transfer of the HAP contract to the Applicant, as the new owner. It should be noted that part of the Applicant's proposed rehabilitation will include additional insulation and sound attenuation to further

improve the environment for the residents. In addition, we note the TDHCA Board has waived the requirement for a letter from HUD, confirming that the rehabilitation is consistent with the Fair Housing Act. With this information, the Applicant believes the site should be exempt from the Undesirable Site Features provision of the QAP.

**Undesirable Neighborhood Characteristic**

The Development is located in an area with a violent crime rate of 84/1000 annually according to neighborhoodscount.com. This statistic merits the provision of additional information. The Applicant gathered data from the Houston Police Department ("HPD") website. The City of Houston has 116 separate beats where statistics for incidents of theft, burglary, aggravated assault, robbery, auto-theft, murder and rape are compiled. This data can also be sorted by date, time, beat, number of offenses, street name, and block range.

The Development is located at 5300 Coke Street. Using HPD characteristics for defining locations where criminal activity has occurred, the Development is defined as being located within:

- Beat 7C10
- Street Name: Coke
- Block Range: 5300-5399

The Development is the only developed and occupied property in block range 5300-5399 on Coke Street. Therefore, it is assumed that all crime data for the defined location involves people associated with the Development.

**Beat 7C10/Coke Street Crime Stats Highlights**

- Overall since 2012, criminal activity has declined marginally in Beat 7C10.
- Since 2012 aggravated assault and robbery on Coke Street have trended down an average of 33%, while auto theft, murder, and rape have remained low – at or near 0%. Burglary has trended upward by nearly double, but the actual number of occurrences is only an increase of 4 burglaries annually.

OVERALL CRIME STATS - BEAT 7C10				OVERALL CRIME STATS - BEAT 7C10 - COKE ST. ONLY			
	2012	2013	2014		2012	2013	2014
Aggravated Assault	167	171	165	Aggravated Assault	24	21	17
Auto Theft	99	140	139	Auto Theft	7	9	10
Burglary	253	192	163	Burglary	7	11	11
Murder	1	0	2	Murder	0	0	0
Rape	7	12	4	Rape	0	5	0
Robbery	96	85	104	Robbery	9	4	6
Theft	479	379	395	Theft	26	10	23
<b>TOTAL</b>	<b>1102</b>	<b>979</b>	<b>972</b>	<b>TOTAL</b>	<b>73</b>	<b>60</b>	<b>67</b>

COKE ST % OF BEAT 7C10 CRIMES				
	2012	2013	2014	TREND
Aggravated Assault	14%	12%	10%	-28%
Auto Theft	7%	6%	7%	2%
Burglary	3%	6%	7%	144%
Murder	0%	0%	0%	0%
Rape	0%	42%	0%	0%
Robbery	9%	5%	6%	-38%
Theft	5%	3%	6%	7%
<b>TOTAL</b>	<b>7%</b>	<b>6%</b>	<b>7%</b>	

**Improvement Since Acquisition**

The Applicant acquired the Development in August 2014. Prior to acquisition, the Applicant knew that crime at the Development needed to be addressed. The Applicant devised a Security Plan for the Development, attached hereto as Exhibit B. This plan was devised in close consultation with HPD and the Harris County Sheriff's Department.

This Security Plan has already yielded positive results. The Applicant's success in decreasing criminal activity is due to the implementation of 24-hour live monitored cameras with direct connections to HPD, a constant police presence at the property by employing off-duty officers, a dedication to upholding house rules, repairing of the entry gate, and evicting tenants with felony records that live in the Development. Per stats compiled from the off duty officers that patrol the Development, on site arrests for criminal activity/trespassing, narcotics, open warrants and criminal trespass warrants have all shown gradual declines from month to month, indicating that criminal element at the Development is starting to disappear.

**MONTHLY CRIME STATS**

	Sep-14*	Oct-14	Nov-14	Dec-14	Jan-15	Total
Arrests - Criminal Activity/Trespass	1	3	4	1	1	10
Arrests - Narcotics	3	9	3	0	1	16
Arrests - Open Warrants	1	1	1	2	1	6
Criminal Trespass Warrants	10	18	10	3	11	52

If the crime statistics for the Development are compared as between the Applicant and the prior owner, positive trends also appear.

- The Development was acquired by the Applicant on August 25, 2014, thus the prior owner had 8 months of ownership, while the Applicant had 4 months of ownership. In order to make a more accurate comparison of the criminal activity during the time of the two owners, the criminal activity that occurred during the 4 months of the Applicant's ownership was escalated to 8 months by using the current actual crime states of the last 4 months over a factor of .6667.
- As forecasted over 8 months of ownership, the Applicant is projected to decrease overall criminal activity by 64%. This would cut Coke Street criminal activity in half by going from 7% of the total criminal activity in Beat 7C10 to only 3.5%.

BEAT 7C10 - CLEME CHARTIABLE TRUST OWNERSHIP 1/1/2014 - 8/24/2014			BEAT 7C10 - NHPF OWNERSHIP 8/25/2014 - 12/31/2014			% Diff from previous owner
CRIME	# of OFFENSES	% of TOTAL 2014	CRIME	# of OFFENSES	If Owned for (8) months	
Aggravated Assault	12	71%	Aggravated Assault	5	15	25%
Auto Theft	10	100%	Auto Theft	0	0	-100%
Burglary	10	91%	Burglary	1	3	-70%
Murder	0	0%	Murder	0	0	0%
Rape	0	0%	Rape	0	0	0%
Robbery	3	50%	Robbery	3	9	200%
Theft	19	83%	Theft	4	12	-37%
<b>TOTAL</b>	<b>54</b>	<b>81%</b>	<b>TOTAL</b>	<b>13</b>	<b>39</b>	<b>-28%</b>

**Conclusion**

TDHCA previously reviewed the neighborhood characteristics surrounding the Development in conjunction with the Applicant's 2014 application for Housing Tax Credits. Much information was provided during that analysis. Clearly, the Fifth Ward is a community revitalization area of high priority for the City of Houston, with evidence of significant public and private sector investment. The proposed rehabilitation preserves existing occupied affordable housing and sustains the federal subsidy of the HAP contract. Taken all together, we believe this Application is eligible to proceed in the Housing Tax Credit cycle and request TDHCA's affirmation.

We are happy to present any additional information required for TDHCA to make a determination on this matter. Thank you.

Sincerely,



Cynthia L. Bast

CLB/bsh

Exhibit A – Sound Study  
 Exhibit B – Security Plan

EXHIBIT A  
Sound Study



December 17, 2013

To: Jaymar Joseph [jjoseph@nhpfoundation.org](mailto:jjoseph@nhpfoundation.org)  
The NHP Foundation 202-789-5300 (main)  
1090 Vermont Avenue, N.W. 571-421-9336 (mobile)  
Suite 400 202-789-1990 (fax)  
Washington, DC 20005

From: Ashton Taylor  
HFP Acoustical Consultants Inc.

Re: Sound Monitoring Survey  
Cleme Manor Apartments, 5300 Coke Street, Houston, Texas  
HFP File No. 8282-1

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## SOUND LEVEL MONITORING REPORT

This report presents the results of a sound level monitoring study conducted November 18 – 21, 2013 at the Cleme Manor Apartments located at 5300 Coke Street in Houston, Texas. This work was undertaken at the request of the NHP Foundation to determine the environmental noise levels relative to the criteria set forth by the Department of Housing and Urban Development (HUD) for site acceptability.

### Site Description

There are 24 existing two-story apartment buildings at the Cleme Manor Apartments site. Most of the apartments are currently occupied. The site is approximately 725 feet wide (east to west). The length of the east property line is approximately 800 feet and the west property line is approximately 650 feet. The property boundaries and adjacencies are as follows:

- North Side: Coke Street with public park opposite
- South Side: Railroad tracks behind industrial buildings along Clinton Drive to south
- East Side: Vacant lot
- West Side: Residential properties (houses)

The nearest roads to the site are as follows:

- Coke Street which abuts the property on the north side
- Clinton Drive approximately 500 feet south of the south property line
- Lockwood Drive approximately 1050 feet east of the east property line
- Finnegan Park Pl. Ct. approx. 125 feet west of the west property line (not a through street)
- Schwekhart Street approximately 700 feet west of the west property line

6001 Savoy Drive, Suite 215  
Phone: 713.789.9400

Houston, Texas 77036  
Fax: 713.789.5493

#1140, 10201 Southport Road S.W.  
Phone: 403.259.6600

Calgary, Alberta, Canada T2W 4X9  
Fax: 403.259.6611



Railroad tracks abut the property on the south side and the noise from trains on these tracks was considered a primary concern. These tracks run generally east-west and cross Lockwood Drive to the east of the site and Schwekhart Street to the west. Since these crossings are at grade, a train traveling along these tracks would sound their horn in the vicinity of the Cleme Manor Apartments to warn motorists on these streets.

### Monitor Locations

For this study, sound level monitors were placed on second-floor balconies at five positions as follows:

- Position 1 – Balcony of Apartment No. 284 near southeast corner of site
- Position 2 – Balcony of Apartment No. 114 slightly northeast of site center
- Position 3 – Balcony of Apartment No. 64 near northeast corner of site
- Position 4 – Balcony of Apartment No. 124 near west property line
- Position 5 – Balcony of Apartment No. 152 slightly southwest of site center

### Weather during Sound Monitoring

The sound monitor survey was conducted from the afternoon of Monday 11/18/2013 until late morning of Thursday 11/21/2013. The weather for each of the four days is summarized in the following table:

Date	Temperature (°F)			Rel. Humidity (%)			Wind (mph)			Sky
	High	Avg	Low	High	Avg	Low	Avg	Gusts	From	
11/18	79	71	62	100	68	35	5	16	N/NE	Overcast, 0 precipitation
11/19	70	60	50	77	55	35	11	17	E	Ptly cloudy, 0 precipitation
11/20	73	61	48	93	78	63	8	19	E	Ptly cloudy, trace precip.
11/21	80	74	67	100	87	74	8	17	E/SE	Overcast, 0.06" precipitation

### Instrumentation

All of the instruments used for the sound level survey are Type 1 precision grade sound level monitors with calibration certified to national standards. The following instruments were used for the survey, identified by position:

#### Position 1

Sound level meter/monitor: Larson Davis model 824, serial number A0412  
Microphone preamplifier: Larson Davis model PRM902, serial number 0757  
Microphone: Gras model 40AE, serial number 102790  
Audio Recording: Marantz Pro model PMD620

#### Position 2

Sound level meter/monitor: Larson Davis model 824, serial number A0301  
Microphone preamplifier: Larson Davis model PRM902, serial number 0621  
Microphone: B&K model 4176, serial number 1331480  
Audio Recording: Marantz Pro model PMD620

Position 3

Sound level meter/monitor: Larson Davis model 824, serial number A0606  
Microphone preamplifier: Larson Davis model PRM902, serial number 0979  
Microphone: Gras model 40AE, serial number 16611  
Audio Recording: Marantz Pro model PMD620

Position 4

Sound level meter/monitor: Larson Davis model 824, serial number A0298  
Microphone preamplifier: Larson Davis model PRM902, serial number 0615  
Microphone: Gras model 40AE, serial number 16622  
Audio Recording: Marantz Pro model PMD620

Position 5

Sound level meter/monitor: Larson Davis model 824, serial number A0970  
Microphone preamplifier: Larson Davis model PRM902, serial number 1490  
Microphone: Gras model 40AE, serial number 21872  
Audio Recording: Marantz Pro model PMD620

**HUD Site Acceptability Standards**

HUD specifies that the environmental sound levels be quantified using the Day Night Average Sound Level, abbreviated  $L_{dn}$ . The  $L_{dn}$  is the sound energy average for a minimum period of one full day except that 10 decibels is added to the actual sound levels during the hours of 10 P.M. until 7:00 A.M. The results are A-weighted decibels [dB(A)]. The A weighting filter is used in all sound level meters so that these instruments can “hears” more like average listeners. The following are the HUD site acceptability standards:

<u>Sound Level, dB(A) <math>L_{dn}</math></u>	<u>Acceptability</u>
Not exceeding 65	Acceptable
Above 65, but not exceeding 70	Normally unacceptable unless 5 dB additional attenuation incorporated into buildings
Above 70, but not exceeding 75	Normally unacceptable unless 10 dB additional attenuation incorporated into buildings
Above 75	Not acceptable except on a case-by-case review

**Sound Level Monitoring Results**

The measured A-weighted  $L_{dn}$  sound level results are presented in the following table. The daily  $L_{dn}$  values are shown at each position. Note that on November 18 and November 21, the entire

day was not monitored. Therefore, the results for those days are projected based upon the measured data at hand.

<u>Position</u>	<u>dB(A) <math>L_{dn}</math></u> <u>11/18/2013</u>	<u>dB(A) <math>L_{dn}</math></u> <u>11/19/2013</u>	<u>dB(A) <math>L_{dn}</math></u> <u>11/20/2013</u>	<u>dB(A) <math>L_{dn}</math></u> <u>11/21/2013</u>
1	64.3 *	61.9	61.7	58.5 *
2	67.9 *	64.0	66.0	63.8 *
3	61.7 *	59.4	61.0	59.3 *
4	66.0 *	69.9	68.2	65.3 *
5	60.0 *	65.8	64.6	68.9 *

\* Projected  $L_{dn}$  based upon data measured during portion of day

Attached to this report are tables presenting hour-by-hour octave-band and A-weighted sound levels for each position along with the daily  $L_{dn}$  levels. Additionally, graphs showing the minute-by-minute sound levels at each position are attached. Where the graphs indicate high sound levels, the monitoring system digital audio was checked so we could identify what was causing the high sound level. Based upon these recordings, the sound levels at the site were due to the activity of the residents. **There were no trains during the entire measuring period of almost three days.** This is easy to see by comparing the sound-level-by-time graphs. Notice that the high sound level “spikes” occur at different times. These are due to local sources such as children playing or people talking near the sound level monitors. If a train had been present, the readings at all positions would show an elevated sound level at the same time.

Because the sound levels were influenced by resident activity and not environmental causes, statistical means can be used to estimate the environmental sound levels without activity noise. One way to do this is by use of the  $L_{90}$ , the sound level that is exceeded 90% of the measurement period time. We believe this is a more accurate estimate of the site environmental sound levels than the environment-plus-activity readings obtained with the energy average. The following table presents the estimated  $L_{dn}$  levels by position and by date using the  $L_{90}$  metric.

<u>Position</u>	<u>dB(A) <math>L_{dn}</math></u> <u>11/18/2013</u>	<u>dB(A) <math>L_{dn}</math></u> <u>11/19/2013</u>	<u>dB(A) <math>L_{dn}</math></u> <u>11/20/2013</u>	<u>dB(A) <math>L_{dn}</math></u> <u>11/21/2013</u>
1	57.3 *	55.4	54.4	53.2 *
2	61.1 *	58.5	57.3	55.6 *
3	54.0 *	54.7	55.9	54.9 *
4	57.8 *	58.2	57.8	59.7 *
5	51.9 *	55.0	56.6	55.7 *

\* Projected  $L_{dn}$  based upon data measured during portion of day

Notice that when the  $L_{90}$  is used to statistically remove the sound of people activity, the environmental sound levels are well below the HUD acceptable standard level of 65 dB(A)  $L_{dn}$ .

**Conclusion**

Prior to the sound level measurements being conducted, there were some expectations for high sound levels at Cleme Manor Apartments because of the train track along the south side of the property. However, no trains passed the property on this track during the measurement period. One resident told our consultant on site that she had never heard a train on this track. In fact, the track appears to be only a spur servicing the businesses on Clinton Drive. When one of these businesses occasionally ships something via rail, a train may travel along this track.

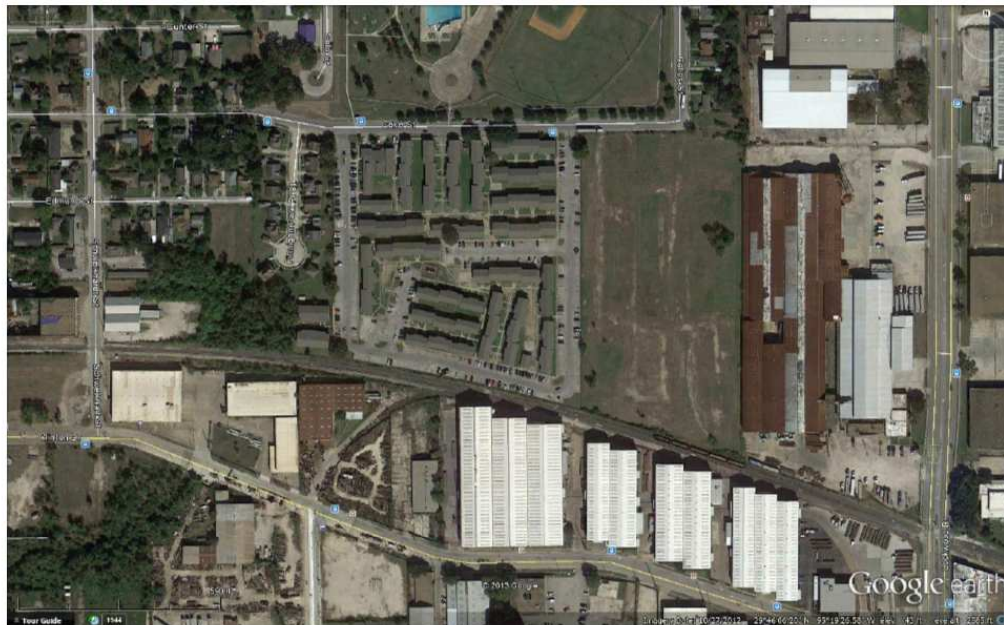
Sincerely,  
HFP Acoustical Consultants Inc.



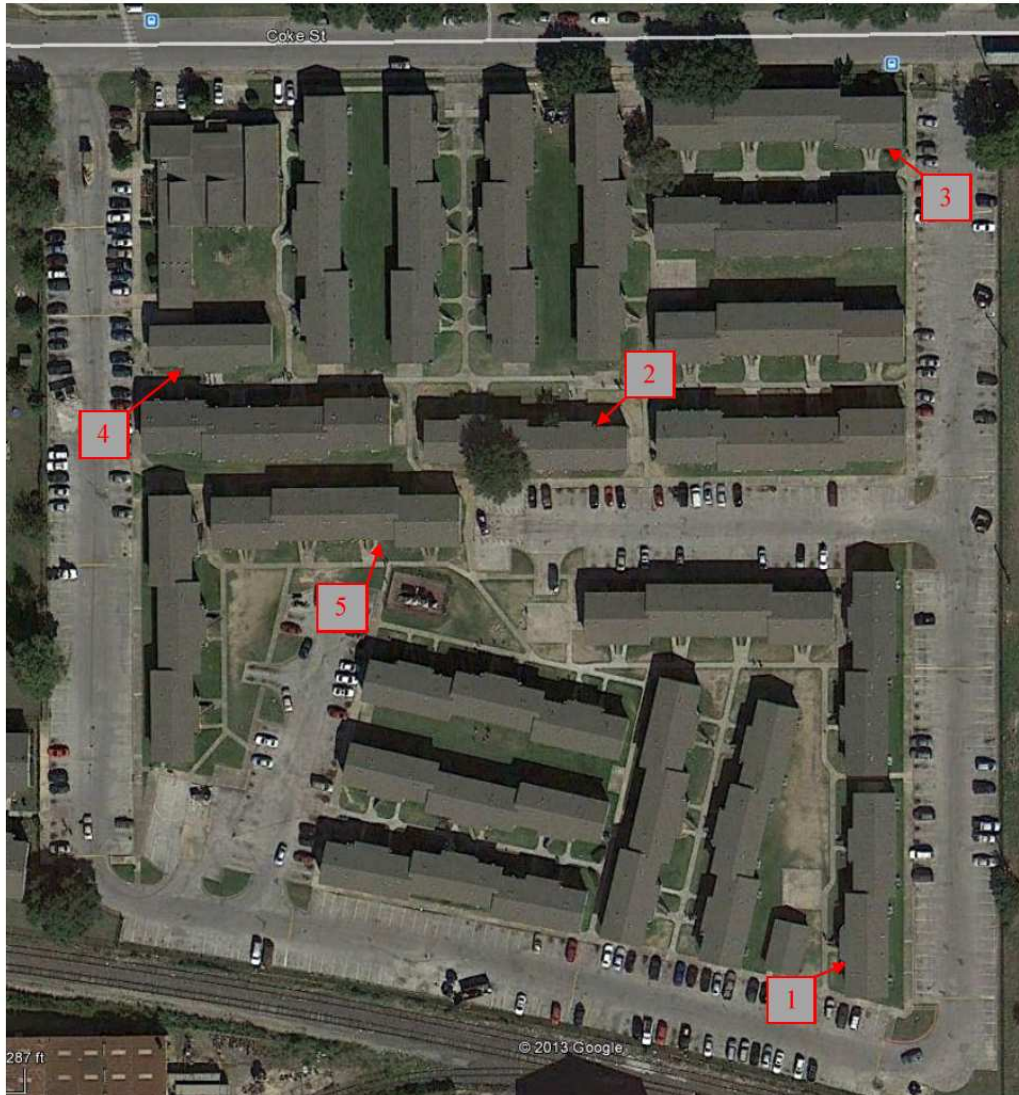
Ashton Taylor  
Senior Project Consultant

Attachments:

- Satellite photograph of area
- Satellite photograph of site showing positions
- Tables and graphs of sound levels at each position



General Area of Cleme Manor Apartments Site



Cleme Manor Apartments Site showing Measurement Positions



EXHIBIT B  
Security Plan

## **Cleme Manor – Security Plan**

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### **Introduction**

We have drafted this plan after consultation with the Houston Police Department, Houston City Attorney- FAST Coordinator, and Harris County Commissioner's Office. All believe that the problems at Clem are solvable by a minimum of physical investment and a strong management presence. All have indicated a desire to work closely with us, especially since the current owner has been steadfast in their refusal to work with public safety officials. The Houston City Attorney's Office is calling a meeting of the relevant City of Houston and Harris County officials to work with us on a coordinated public safety plan for Cleme.

### **Project Description**

Cleme Manor Apartments (the "Property"), located at 5300 Coke Street in Houston, Harris County Texas, consists of twenty three (23) two-story apartment buildings, one (1) single story community building, and one (1) single story leasing office building. The Property contains two hundred eighty four (284) dwelling units. According to tax records, the buildings were constructed in 1970, are situated on approximately 12.79 acres, and have approximately 251,224 square feet of gross building area.

Currently, the Property is 100% occupied. The Property receives HUD Housing Assistance Payment (HAP) subsidy funding for all of the 284 units on property. The HAP funding provides financial assistance to the tenants who are low income to extremely low income households. The following is summary of the demographic profile of the tenant population:

- 100% of the residents are some degree of low income earners
- 47 households are wage earners
- 90 households receive a pension, retirement payments, or public assistance
- 250 households are headed by women
- 34 tenants are elderly
- 59 tenants are disabled
- 439 residents are under the age of 18, which represents 54.7% of the population
- 168 residents are between the age of 18-29, which represents approximately 20% of the population



## Background

In May 2011, the City of Houston executed a nuisance abatement plan with the current owner, which outlines the following major activities:

- Hiring two (2) certified peace officers.
- Installation of security cameras on property.
- Installation of exterior lighting on property.
- Enforcement and control of access into the property through parking tags and operable gates and fences.
- Maintenance of the landscaping in order to increase visibility on property.
- Evaluation of prospective residents and maintaining an active enforcement of the lease standards and house rules, as well as implementing criminal background checks

However, the current owner has not fully complied with the nuisance abatement plan and has performed only limited implementation of the following measures:

- Cameras: only six cameras were installed. They are not monitored in real time so have provided limited benefit.
- Lighting: Insufficient lighting was installed and the lights that were installed were improperly placed at the center of the buildings.
- Criminal background checks: only the most minimal checks are done.
- Rule Enforcement: only limited unit inspections have been done and tenants are rarely evicted for bad behavior or apartment unit condition violations.
- Cooperation with Police: Houston Police Department reports that existing management does not actively cooperate with them to address property issues.
- Fencing: All entrances are not secured with entry limited to tenants and their registered guests.
- Security Officers: Off the record conversations with HPD undercover officers indicate that the existing Off Duty Police Officers are not performing up to standards either due to lack of supervision, support, and/or work ethic.

The lackluster and deficient implementation of the nuisance plan has prevented it from having any effect on crime at the property.

Based on our experience and conversations with HPD, we believe a relatively small number of tenants are responsible for a large number of violations. We believe 28 or 10% of the residents are responsible for 90% of the crime on the property. The Harris County Sherriff's Department has told us they know who are the bad tenants, down to their unit numbers.

## Crime Prevention Plan

NHPF/UA LLC ("New Owners") have researched the security concerns on the property and proposed the following three step strategy for combatting the criminal activity on the Property:

- Strategic Upfront Capital Improvements
- Intensive Security Monitoring and Enforcement
- Collaborative Planning and Security Initiatives with Local Police and Sherrif's Departments

The Crime Prevention Plan has three phases:

- 1) Shock and Awe (or There Is A New Sherriff In Town)
  - a. The goal of this phase is to immediately put the residents on notice that the security environment has changed as well as to identify and evict the 28 units causing most of the crime.
  - b. During this phase, we will immediately implement:
    - i. Strategic physical improvements to fencing, lights, and cameras;
    - ii. Additional off duty police officers and increase the number of hours of security personnel working on the property to a total of 85 hours/week;
      1. In consultation with HPD and HCS we will determine if the existing Off Duty Police Officers can be effective with adequate supervision or need to be replaced.
    - iii. 24-hour real time security monitoring system with synchronized cameras;
    - iv. Seamless coordination with HPD and Harris County Sherriff's Office, which will include drug stings, bait cars, and property sweeps coordinated by the off duty police officers with the assistance of a security camera monitoring service.
    - v. Rigid enforcement of all Rules and frequent unit inspections.
    - vi. Full criminal background checks for new and existing tenants.
  - c. This phase is expected to last no more than six months.
- 2) High Intensity Monitoring and Follow Up
  - a. It is expected that this will last the next six months (until the end of the interim hold period).
  - b. All evictions related to criminal actions and targeted police activity are anticipated to be completed by this time.
  - c. The focus will be on continued implementation of rules and regulations
  - d. On site police offices will be reduced from 2 to 1.5 officers (65-85 hours/week)
  - e. Live camera monitoring service will be reduced to 16 hours a day.
- 3) Maintenance

- a. This will be the permanent level of security services once we are assured that the problems on the property have been remedied and a new security and behavior norm established.
- b. On site Security will be reduced to 45 hours and live camera monitoring will be kept at 18 hours a day.

## **Details**

### **Proposed Capital Improvements / Rehabilitation Plans**

The New Owners will complete the following items immediately upon acquiring the property:

- **Video Surveillance Equipment**
  - Install video surveillance cameras which will cover the entire property and will supplement the existing cameras on site.
  - Install audio equipment which can communicate with the onsite security personnel, property management, and local law enforcement dispatch
- **Controlled Access Equipment**
  - Repair front gateentry to require key fob, or being buzzed in by management or a resident.
  - Front gate equipment will record persons entering and exiting the property.
  - Repair and control access to the pedestrian gates on site
  - During the work day, Management will control all access to the property remotely using the newly installed cameras and entry control.
- **Exterior Lighting**
  - Repair all exterior unit lighting on property to ensure visibility to the building numbers for first responders
  - Install HID exterior common area lighting throughout the property to eliminate dark or blind spots on the property
- **Other Common Area Improvements**
  - Trimming landscaping to allow for better visibility in the common areas
  - Strategically post “No Trespassing”, “Towing” and other signage in highly visible locations to warn potential criminals of the property enforcement

### **Security Monitoring and Enforcement**

The New Owners will change management companies to Lynd Management group immediately upon property acquisition. Lynd has a great deal of experience taking over and successfully addressing problems of this nature. In fact they were complemented by the HPD for their skill. The following comprehensive operational plan will be implemented to eradicate the existing criminal activity:

- **Security Personnel**
  - New Owners and Lynd will retain 2 certified peace officers for the first year to provide an aggressive response to the criminal activity
  - Security personnel will work 85 hours a week consisting of 7 days a week
  - Security personnel will have an affiliation with local law enforcement and will maintain an active log of criminal activity which will be used by management and local law enforcement to coordinate strategic deterrent exercises
  - New Owners plan to maintain 1.5 certified peace officers at 65 hours a week for 7 days in the second year and throughout the ownership period
  
- **Surveillance Monitoring**
  - New Owners will procure a security company to provide 24 hour monitoring on the property for the six (6) months
  - The Security Company have extensive experience dealing with high criminal activities in apartment properties
  - The Security Company has an extensive monitoring operation to provide coordinated information with local law enforcement, the onsite security personnel and management in real-time communication.
  - The Security Company will perform real-time reviews of security footage and seamless delivery of critical information to local law enforcement for expedited prosecution.
  
- **Property Management**
  - New Owners and Lynd will implement new TAA-approved lease addendum and house rules to allow for immediate eviction for criminal activity and association with people that conduct criminal activities
  - Lynd will perform rigorous screening and tenant selection processes, which will include criminal background checks, identification of persons on the lease and residing in the unit, as well as ongoing checks during lease renewals
  - Lynd will perform periodic unit inspections for criminal activities. Lynd and security personnel will communicate their findings to the local law enforcement to coordinate the appropriate responses.

### **Collaborative Planning and Strategic Enforcement Implementation**

The New Owners will commence a strategic approach to address the criminal activities at the Property through the establishment of ongoing relationships with the following parties:

- **City Attorney Office and FAST Unit Representative** – The New Owners will meet with the City Attorney Office and the FAST Unit Representative and solicit “Best-Practices” and coordinate strategic deterrent activities on property.
  
- **Positive Interaction Program (PIP)** – Lynd will participate in the monthly PIP meetings and organize PIP events with the City of Houston and Harris County

- **Blue Star Multi-housing Program** – Lynd will participate in the City’s Blue Star Multi-housing program and apartment registration, which will include completing the “no trespassing affidavit and implementing curfew policies to ensure that residents under 18 years of age are participating in school and age appropriate activities
- **Mayor’s Anti-Gang Office** – Lynd will participate with local law enforcement and the Mayor’s anti-gang office and crime reduction unit to implement the latest initiatives to curtail any gang activity on the Property
- **Social Organizations and Finnegan Park Community Center** – The New Owners and Lynd will establish outreach efforts to prominent social organizations, such as the “100 Black Men”, “100 Black Women”, “La Raza” as well as African American fraternity and sorority organizations to implement effective social programming and mentorship activities to deter persons from committing crimes.

The aforementioned organizations will be working in coordination in order to deter the criminal activities at the Property and the surrounding area. Based on observations and research of the criminal activities at the Property and the current owner’s responses over the past two (2) years, it appears that piecemeal and isolated responses were implemented, and were not taken seriously by the residents. However, the New Owners intend to implement a comprehensive and coordinate response, in which each entity and measure identified will work together to deter criminal activity in at an aggressive pace and expedited enforcement.

Our plan to eradicate crime at Cleme Manor has been enthusiastically received by the various city agencies, HUD and the police. All have offered their full support. It is an opportunity to provide safe, clean affordable housing to the 246 residents not involved in criminal activity on the property and create a safe environment in a neighborhood that has received millions of dollars of improvements, with more to come.

## Budget

The budget to implement the security plan is as follows:

### Proposed Capital Improvements / Rehabilitation Plans for the Hold Period

Cameras - surveillance	\$50,000
Front Gate	\$27,400
Exterior Lighting	\$25,100
Signage / Landscaping	\$1,000
<b>SUBTOTAL</b>	<b>\$103,500</b>

### Security Monitoring and Enforcement

#### Year 1 - First Six Months

Item	Quantity (Hours / Months)	unit Cost	Total Cost
2 Security Officers (85 hours, 7 days)	2,214 Hours	\$ 35	\$ 77,490
Video Surveillance (24 hours, 7 days)	6 months	\$ 3,000	\$ 18,000
<b>SUBTOTAL</b>			<b>\$ 95,490</b>

#### Year 1 - Second Six Months

Item	Quantity (Hours / Months)	unit Cost	Total Cost
1.5 Security Officers (65 hours, 7 days)	1,690 Hours	\$ 35	\$ 59,150
Video Surveillance (18 hours, 7 days)	6 months	\$ 2,000	\$ 12,000
<b>SUBTOTAL</b>			<b>\$ 71,150</b>

**TOTAL YEAR 1 AMOUNT: \$166,640**

#### Year 2

Item	Quantity (Hours / Months)	unit Cost	Total Cost
1 Security Officers (45 hours, 7 days)	2,340 Hours	\$ 35	\$ 81,900
Video Surveillance (24 hours, 7 days)	12 months	\$ 2,000	\$ 24,000
<b>TOTAL Year 2 through Perm.</b>			<b>\$105,900</b>

#### Effect of Security Costs during the Hold Period

1. With all capital and operating costs accounted for the deal is still projecting a 15% ROI for the Fund.

2. The \$103,500 is included in the hold period capital budget of \$290,250. If need be this expense can be reimbursed by the LIHTC deal on closing since it is within the look back period for capital expenses.
3. Evictions will not cause a significant negative effect on ROI and rent collected
  - a. Section 8 properties are allowed to collect 80% of the rent from HUD for brief periods of vacancy prior to re-leasing. The current owner has not taken advantage of this rule.
  - b. As the project is completely full and there is a waiting list, we anticipate that units will actually be vacant for no more than 2 weeks while we turn units.
    - i. However, if we assume that 10% of the units will be evicted and empty for 1 month, the vacancy loss is (\$21,230) but this amount will be offset by 80% rent payments from HUD of \$16,984, with a net decrease of (\$4,246) or \$150/unit/month
      1. While it is possible that the tenants may stop paying their portion of the rent during the eviction proceeding, this will be minimal, since the average income is well under \$10,000 / year which equals a tenant payment of \$250/month (x 28 units would equal another \$7,000 loss). It is likely that the troublemakers have little or no reported (legal) income, hence, 30% of nothing, is 0.
  - c. We will be doing minimal turns during the hold period, estimated at \$350/ unit but we have included \$700/ unit for eviction units.
  - d. Total Vacancy includes the 3% historic vacancy, eviction vacancy of 1 month for 28 units and "rehab" vacancy for units we intentionally leave vacant in preparation for construction.
    - i. Historically five leases a month aren't renewed. Not filling those units for the last three months prior to construction will give us sufficient units to work on to maintain an 18 month construction schedule. There is no 80% income set off for rehab unit vacancy.
4. Security Expenses will not push the Fund return below 15%.
  - a. Hold period security expenses are \$166,640.
  - b. Previously we were budgeting approximately \$70,000 for security, however this \$96,640 increase has been partially offset by \$72,068 in HUD reimbursements for vacant units (80% rate) which we did not include in our prior numbers.
  - c. The difference was made up by the Bridge Financing Reimbursement at LIHTC closing (While this may be includable in acquisition price for basis purposes, to be conservative, we have broken it out separately in the LIHTC S&U and assumed no basis for it).

## **Timing**

The timing for implementing the security plan will be immediately upon completing the property acquisition. The overall schedule is as follows:

- **Capital improvements**
  - Commencement within one (1) week after closing
  - Completion will be no later than two weeks after closing
  
- **Security Enforcement**
  - Security Company / Officers will be procured prior to closing
  - Engagement and onsite security will commence at closing
  - Monthly security activity status reports will be provide one month from closing
  - Harris County and HPD crime sweeps will be planned prior to closing and implemented starting immediately after closing.
  
- **Video Surveillance**
  - Security Company will be procured prior to closing
  - Engagement and onsite security will commence on installation of cameras



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 7, 2015**

Presentation, Discussion, and Possible Action regarding Requests for Exemption from Undesirable Site Features under 10 TAC §10.101(a)(3) filed in the 2015 Competitive Housing Tax Credit Cycle

**RECOMMENDED ACTION**

**WHEREAS**, a Competitive Housing Tax Credit Application was submitted for Bay City Manor Apartments (#15128) on February 27, 2015;

**WHEREAS**, the Development Site is located within 100 feet of a railway, which, pursuant to §10.101(a)(3) of the Uniform Multifamily Rules (“Rule”) related to Undesirable Site Features, could cause the site to be deemed ineligible unless a requested exemption is granted;

**WHEREAS**, the Application proposes Rehabilitation of a Development that has ongoing and existing federal assistance from USDA in the form of a USDA Section 515 loan;

**WHEREAS**, the Rule allows for the Board to grant an exemption in cases where the Application proposes Rehabilitation of a Development with ongoing and existing federal assistance from HUD or USDA;

**WHEREAS**, the Rule includes a requirement that the request for the exemption must include a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act (the “Fair Housing letter”);

**WHEREAS**, the Board, in response to the U.S. Department of Housing and Urban Development (“HUD”) statement that it would not provide such a letter waived the requirement to obtain the Fair Housing letter at the February 19, 2015 meeting; and

**WHEREAS**, the Applicant has timely requested such an exemption from the Board;

**NOW, therefore, it is hereby,**

**RESOLVED**, the Applicant’s request for an exemption under §10.101(a)(3) of the Uniform Multifamily Rules related to Undesirable Site Feature for Bay City Manor Apartments (#15128) is hereby granted.

## **BACKGROUND**

An Application for Bay City Manor Apartments, located in Bay City (rural region 6), was submitted on February 27, 2015. The application proposes rehabilitation of a development that has ongoing federal assistance from USDA in the form of a Section 515 loan, and the site is located adjacent (across a narrow road) to an active railway. Pursuant to §10.101(a)(3) of the Uniform Multifamily Rules (“the Rule”), Development Sites located within 100 feet of active railroad tracks will be considered ineligible unless the board grants an exemption for Rehabilitation Developments that have ongoing and existing federal assistance from HUD or USDA. Such an exemption was requested. Staff has reviewed the relevant documentation and has determined that the exemption request meets the requirements of the Rule, with the exception of the submission of a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act. However, the requirement for the letter was waived by the Board on February 19, 2015, based on HUD’s unwillingness to provide such a letter. Therefore, staff recommends granting the exemption.



P.O. Box 190  
Burnet, Texas 78611  
Voice: 512-756-6809  
Fax: 512-756-9885

February 25, 2015

Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78711

RE: #15128  
Waiver request  
Bay City Manor Apartments  
Undesirable Site Feature

To Whom it May Concern;

Bay City Manor Apartments are less than a 100 Feet from a rail road track, at this time I am submitting a request for an exemption request pursuant to §10.101(a)(3).

We were granted a waiver from the board with respect to the requirement to submit to the Fair Housing for a Compliance letter.

Should you have any questions, please let me know.

Sincerely;

A handwritten signature in cursive script, appearing to read "Nan S. Boyles".

Nan S. Boyles  
Development Coordinator