

ENFORCEMENT ACTION AGAINST
ROBERTO MORALES WITH
RESPECT TO THIRD & FLORENCE
(HTC FILE # 91130 / CMTS # 995)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 22nd day of February, 2018, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) considered the matter of whether enforcement action should be taken against **ROBERTO MORALES**, an individual (“Respondent”).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (“APA”), Tex. Gov’t Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov’t Code § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov’t Code § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. During 1991, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$5,763 to build and operate Third & Florence (“Property”) (HTC file No. 91130 / CMTS No. 995 / LDLD No. 392).
2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective October 29, 1991, and filed of record at Document Number 055997 at Volume 2384, Page 0126, of the Official Public Records of Real Property of El Paso County, Texas (“Records”).

3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations^{1,2}:

4. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on July 20, 2015. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Condition Standards). Notifications of noncompliance were sent and an October 22, 2015, corrective action deadline was set. No response was received and the violations at Exhibit 1 remain unresolved.
5. On May 6, 2016, TDHCA sent notice that Respondent had failed to timely submit their 2015 Annual Owner's Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The report has not been submitted.
6. On May 18, 2017, TDHCA sent notice that Respondent had failed to timely submit their 2016 Annual Owner's Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The report has not been submitted.
7. An on-site monitoring review was conducted on June 15, 2017, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a September 21, 2017, corrective action deadline was set, however, the following violations were not corrected before corrective action deadline:
 - a. Respondent failed to submit pre-onsite documentation, a violation of 10 TAC §10.607 (Reporting Requirements) and §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. Documentation includes an Entrance Interview Questionnaire, Affirmative Marketing Plan with outreach marketing efforts, and Written Policies and Procedures including Tenant Selection Criteria;
 - b. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing Requirements), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled;
 - c. Respondent failed to maintain written policies and procedures, including tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements;

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC §§ 10 and 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

² All violations listed above are current as of February 13, 2018.

- d. Respondent failed to establish a utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance; and
 - e. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for all seven units, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Sections 3g and 4 of the LURA, which require screening of tenants to ensure qualification for the program. If proper screening is not completed, the households are not considered low income tenants.
8. The following violations remain outstanding at the time of this order:
- a. UPCS violations described in FOF #4;
 - b. 2015 Annual Owner's Compliance Report violation described in FOF #5;
 - c. 2016 Annual Owner's Compliance Report violation described in FOF #6;
 - d. Pre-onsite violation described in FOF #7.a;
 - e. Affirmative marketing plan violation described in FOF #7.b;
 - f. Written Policies and Procedures violation described in FOF #7.c;
 - g. Utility allowance violation described in FOF #7.d; and
 - h. Household income violations described in FOF #7.d.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.621 and I.R.C. §42, as amended, in 2015 by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.³
5. Respondent violated 10 TAC §10.607 in 2016 and 2017 by failing to submit Annual Owner's Compliance Reports for the years 2015 and 2016;

³ HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC 10.621(a)

6. Respondent violated 10 TAC §10.607 and §10.618 in 2017, by not submitting pre-onsite documentation including a unit status report and entrance interview questionnaire in preparation for the monitoring review;
7. Respondent violated 10 TAC §10.617 in 2017, by failing to provide a complete affirmative marketing plan;
8. Respondent violated 10 TAC §10.610 in 2107, by not maintaining written policies and procedures, including tenant selection criteria, meeting TDHCA requirements;
9. Respondent violated 10 TAC §10.614 in 2017 by failing to properly calculate and implement a utility allowance;
10. Respondent violated 10 TAC §10.611 and Sections 3g and 4 of the LURA in 2017, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for any of the seven units;
11. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
12. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
13. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code § 2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
14. An administrative penalty of \$1,500 is an appropriate penalty in accordance with 10 TAC §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$1,500, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

IT IS FURTHER ORDERED that Respondent shall repair all UPCS violations as indicated in the exhibits and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before May 23, 2018.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before May 23, 2018.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty and the remaining \$1,000 of the administrative penalty, will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provisions of this Agreed Final Order, then the \$1,000 remaining administrative penalty will be treated as follows:

- If the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, the full remaining administrative penalty of \$1,000 shall be due;
- If the Affirmative Marketing Plan violation is not corrected, a \$250 portion of the remaining administrative penalty shall be due;
- If the Written Policies and Procedures violation is not corrected, a \$250 portion of the remaining administrative penalty shall be due;
- If any other UPCS or file monitoring violation is not corrected, a \$500 portion of the remaining administrative penalty shall be due;
- Any remaining administrative penalty amount that does not come due as indicated above shall be forgiven; and
- Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 5, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

Exhibit 1

UPCS Instructions

1. UPCS violations that must be corrected:

*[FIGURE IS NOT AVAILABLE IN AN ACCESSIBLE FORMAT.
INTENTIONALLY OMITTED FROM WEB VERSION OF THE AGREED FINAL ORDER]*

2. Prepare corrective documentation following these guidelines:

<http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>

3. Submit corrective documentation via CMTS following the instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>, then email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to let her know that the submission is ready for review

Exhibit 2

File Monitoring Violation Resources and Instructions

Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>
Affirmative Marketing Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>
Affirmative Marketing Technical Assistance: <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>
Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaq.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>
Website link for CMTS is <https://pox.tdhca.state.tx.us/aims2/pox>
5. **Important notes -**
 - i. Do not backdate any documents listed below.
 - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

Instructions:

6. **Reports to submit within CMTS:** These reports cannot be completed on paper and the data must be entered directly into CMTS. Log in to CMTS. Click the “Unit Status Report” link. On the next page, click “Submit Reports”, then scroll down the list of reports until you find the desired report.
 - i. **2015 and 2016 Annual Reports** – Submit Part B (Unit Status Report) for both years. The 2015 report was due in 2016, and the 2016 report was due in 2017. They will be labeled accordingly. You may input current occupancy data. Guides and resources are at this link if needed
<http://www.tdhca.state.tx.us/pmcomp/reports.htm>.
 - ii. **Pre-onsite documentation** – Submit Entrance Interview Questionnaire via CMTS.
7. **Written tenant selection criteria –**
How to prepare compliant criteria: First watch the webinar presentation available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. Then prepare updated written policies and procedures addressing all requirements of the rule at 10 TAC §10.610, a copy of which is at Attachment 4. Staff recommends using that rule as a checklist. Ensure that you include an effective date for the policy. The “10.610 (policy & procedures)” tab of this spreadsheet provides details regarding how TDHCA monitors for this item so that you can check over your work before submission:
<http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>
What to submit: A copy of your complete written policies and procedures.

9. **Utility Allowance** – Nothing was submitted indicating that there is a utility allowance. Please remember that this is not an amount that you will charge to tenants; it is an estimate of how much the households pay toward utilities, to ensure that their total housing expenses are appropriately restricted.

Technical support: Details regarding utility allowances are at this link: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>. Calculate a utility allowance in accordance with [10 TAC §10.614](#). Look over the “10.614 (utility allowance)” tab of this spreadsheet, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

What to submit: Submit a copy of the new utility allowance via CMTS. Also submit the development’s updated Unit Status Report to demonstrate that the utility allowance has been implemented. Rent will be tested development-wide by TDHCA once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days. For more information, see <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

10. **Household income violations for all units (7 total)** – Follow the instructions below with respect to all seven units and submit documentation via CMTS.

Circumstance for each unit	Instruction
If unit is occupied by a qualified household	Submit the full tenant file*. If all necessary documentation was not collected initially, then collect new documentation to certify the household using their current financial circumstances. Do not backdate forms.
If unit is occupied by a nonqualified household on a month-to-month lease	A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.** B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 5/23/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.
If unit is occupied by a nonqualified household with a non-expired lease	A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.** B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 5/23/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.
If unit has been vacant <i>more than</i> 30 days	A. Unit must be made ready for occupancy. Submit a letter to TDHCA, certifying that it is ready for occupancy. B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 5/23/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.

(table continued on next page)

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<p>If unit has been vacant <i>less than</i> 30 days</p>	<p>A. If unit is ready for occupancy, submit a letter to TDHCA, certifying that it is ready for occupancy.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 5/23/2018 is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p>
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**Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, Tenant Rights and Resources Guide Acknowledgment, and a copy of the tenant selection criteria under which the household was screened. The application, verifications of income and assets, and tenant income certification must be dated within 120 days of one another.*

*** If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.610(f)*

8. Affirmative marketing plan –

Technical support: First read the rule at [10 TAC §10.617](#), read the technical assistance guide at <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>, and watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>, to gain a general understanding regarding affirmative marketing. Next, review the following list of frequent problems observed, which include, but are not limited to:

- Not using HUD Form 935.2A;
- Not correctly identifying populations “least likely to apply”. In general, those populations that are least likely to apply *might* include: White, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Hispanic or Latino, Persons with Disabilities, Families with Children, and Other. Analysis is required to determine which of these groups are least likely to apply;
- Not affirmatively marketing to the disabled. All properties must market to the disabled population;
- Not correctly identifying organizations that are specifically associated with groups identified as “least likely to apply”. For example, marketing to the Housing Authority or placing ads in Craigslist would be considered general marketing, not affirmative marketing, because both serve all persons living in the area;
- Not including evidence of special outreach efforts, such as marketing letters, to those “least likely to apply” populations through specific media, organizations, or community contacts that work with “least likely to apply” populations or work in areas where “least likely to apply” populations live;
- Not including a sentence in English and Spanish in the outreach marketing materials that prospective tenants can access if reasonable accommodations are needed to complete the application process; and
- Not including consideration regarding how Limited English Proficiency may affect populations that are least likely to apply, and not including ways to mitigate language barriers related to advertising and community outreach.

Steps to complete affirmative marketing plan:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. Determine the groups that are least likely to apply and mark them in your plan. The Affirmative Marketing Web Tool referenced at 10 TAC §10.617(d)(5) to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. The groups *currently* identified by this tool are Persons with Disabilities, Black/African American, Not Hispanic, and Asian. If there is no checkbox in the Plan form for a group that is identified by the Tool, you would add that group under “Other”. If you use this Tool and submit a copy with your Plan, you may rely upon its results.

Alternatively, if you do not use the Tool, you may perform your own analysis to determine groups that are least likely to apply, but you must perform and document a reasonable analysis by which those groups were identified, you must always include persons with disabilities, and populations representing less than 1% of the total population of the County or MSA will not be required in your affirmative marketing. This analysis must be included with the plan.

When the “Not Hispanic” population is identified by the Web Tool as a group least likely to apply, that group would be marked in your plan as “Other” and you would write in “Not Hispanic”. Many owners assume that the “Not Hispanic” group identified by the Affirmative Marketing Web Tool means “White”. That is not necessarily the case. The Compliance Division explains the category like this: each household member has a Race *and* an Ethnicity. The Race could be White, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander. The Ethnicity could be either Hispanic or Not Hispanic. In other words, a person could be Black/African American and Hispanic. Likewise, a person could be White and Hispanic. In other words, the “Not Hispanic” demographic is literally everyone who is “Not Hispanic.”

- c. Identify in your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups designated as least likely to apply. The Tool provides a link to a map that will show which Census tracts may be most beneficial for affirmative marketing. The census tracts provided for outreach consideration represent nearby neighborhoods identified in the U.S. Census as having the greatest number of the groups who are least likely to apply at your development based on its location. The identified neighborhoods may represent a first step for planning meaningful outreach and marketing for your development.

Specific examples:

- i. Least likely to apply population - People with disabilities:
 1. Local Center for Independent Living (“CIL”) – serve persons with all disability types. Not all counties are covered http://www.txsilc.org/page_CILs.html
 2. Aging and Disability Resource Center (“ADRC”) – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 3. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 4. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
 5. Local non-profits in your area serving people with disabilities
 6. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community

- ii. Least likely to apply population - Black/African American:
 1. Local Black/African American Chamber of Commerce
 2. Local Black/African American Professionals Social Network
 3. Weekly Black/African American newspaper / website for a city
 4. Local community center or YMCA in a historically black/African American neighborhood;
 5. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"
- iii. Least likely to apply population – Not Hispanic:
 1. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"
- iv. Least likely to apply population - Asian:
 1. Local Asian real estate association
 2. Local Asian Chamber of Commerce
 3. Local Asian American Resource Center
 4. Local organizations serving the Asian community
 5. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"
- d. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. Ensure that your plan includes a section considering how Limited English Proficiency may affect populations least likely to apply, and including ways you plan to mitigate language barriers related to advertising and community outreach. Such information should be included in the Plan as an additional consideration, or as an attachment to the Plan. Some sample information that may be useful for preparation is available at <http://www.tdhca.state.tx.us/pmcdocs/LAP-Guide.doc>;
- g. Send marketing outreach materials (such as letters) to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Remember that 10 TAC §10.617(f)(5) requires marketing materials to include the Fair Housing Logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms "reasonable accommodation" and must be in English and Spanish. Here is a sample of an acceptable sentence recently included in marketing materials from another property: *"Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX."*
- h. Look over the "10.617 (affirmative marketing)" tab of the spreadsheet at the following link, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

What to submit: Affirmative Marketing Plan, Affirmative Marketing Web Tool, and copies of outreach marketing materials (such as letters)

Exhibit 3

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Income Eligibility Training in order to get a full overview of the process. Sign up at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html> or <https://www.taa.org/events/>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
 - a. **Income Verification for Households with Section 8 Certificates:** This form is signed by the Public Housing Authority, certifying that the household is eligible at initial occupancy. This form can only be completed at initial occupancy and cannot be used to correct a finding of noncompliance relating to income eligibility.
 - b. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
 - c. **Employment Verification Form:** Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;
 - d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;

- e. **Telephone Verifications:** these are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature;
 - f. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
- a. **Under \$5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
 - b. **First hand verifications** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
 - c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.

6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(f) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.
7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.
8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(m), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at:

<http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>

Exhibit 4:

Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER E	COMPLIANCE MONITORING
RULE §10.610	Written Policies and Procedures

(a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation.

(1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section available in the leasing office or wherever applications are taken.

(3) All policies must have an effective date. Any changes require a new effective date.

(4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the wait list at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or wait list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household's file.

(1) The criteria must include:

(A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:

(i) The income and rent limits;

(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and,

(iii) Fees and/or deposits required as part of the application process.

(B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.

(i) The screening criteria must avoid the use of vague terms such as "elderly," "bad credit," "negative rental history," "poor housekeeping," or "criminal history" unless terms are clearly defined within the criteria made available to applicants.

(ii) Applicants must be provided the names of any third party screening companies upon request.

(C) Occupancy Standards. If fewer than 2 persons (over the age of 6) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.

(D) The following statements:

(i) The Development will comply with state and federal fair housing and antidiscrimination laws; including, but not limited to, consideration of reasonable accommodations requested to complete the application process.

(ii) Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules.

(iii) Specific animal, breed, number, weight restrictions, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s).

(E) Notice to applicants and current residents about Violence Against Women Reauthorization Act of 2013 ("VAWA") protections.

(F) Specific age requirements if the Development is operating as Housing for Older Persons under the Housing for Older Persons Act of 1995 as amended (HOPA), or as required by federal funds to have an Elderly Preference, and in accordance with a LURA.

(2) The criteria must not:

(A) Include preferences for admission, unless such preference is:

(i) Allowed for under program rules; or,

(ii) The property receives Federal assistance and has received written approval from HUD, USDA, or VA for such preference.

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually; or,

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, Multifamily Direct Loan funds used as HOME match, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; and,

(B) A timeframe (not to exceed 14 calendar days) in which the Owner will respond to a request.

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation or special needs set aside program;

(C) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or,

(D) Require a household to rent a unit that has already been made accessible.

(d) Wait List Policy. Owners must maintain a written wait list policy, regardless of current unit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the wait list;

(B) How preferences are applied; and,

(C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR §8.27 and Chapter 1, Subchapter B of this title.

(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The wait list policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(e) Denied Application Policies. Owners must maintain a written policy regarding procedures for denying applications.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven (7) days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. A grievance procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Developments that lease units under the Department's Section 811-PRA program; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process;

(B) The specific reason for which an applicant was denied, the date the decision was made; and,

(C) The date the denial notice was mailed or hand-delivered to the applicant.

(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:

(A) A copy of the written notice of denial; and,

(B) The Tenant Selection Criteria policy under which an applicant was screened.

(f) Non-renewal and/or Termination Notices. Owners must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules;

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and,

(D) Include information on the appeals process if one is used by the property.

(g) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:

(1) How security deposits will be handled for both the current unit and the new unit;

(2) How transfers related to a reasonable accommodation will be addressed; and,

(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.

(h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(i) No later than June 14, 2017, HOME, NHTF, NSP, 811 PRA, and state HOME match, Development Owners with contracts dated on or after December 16, 2016, must individualize for their Development and then adopt the TDHCA form based on HUD Form 5381 "Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking" or request from the Department to use another Federal program's Emergency Transfer Plan.

Source Note: The provisions of this §10.610 adopted to be effective April 24, 2016, 41 TexReg 2740; amended to be effective October 1, 2017, 42 TexReg 4987

Exhibit 5:

Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER E	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518