

**BOARD BOOK OF
APRIL 23, 2020**



Leslie Bingham, Vice-Chair

Paul Braden, Member

Sharon Thomason, Member

Leo Vasquez III, Member

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT

Fiscal Year 2019 (September 1, 2018, through August 31, 2019)

Owner Financing and Down Payment	
<ul style="list-style-type: none"> 30-year, fixed interest rate mortgage loans Mortgage credit certificates Down payment, closing cost assistance Homebuyer education 	
Programs:	
<ul style="list-style-type: none"> Homebuyer Assistance Program (HBA)* Single Family Homeownership 	
Expended Funds:	\$1,693,834,604
Total Households Served:	9,605

Energy Related Assistance	
<ul style="list-style-type: none"> Utility bill payment assistance Energy consumption education Weatherization for energy efficiency 	
Programs:	
<ul style="list-style-type: none"> Comprehensive Energy Assistance Program (CEAP) Weatherization Assistance Program (WAP) 	
Expended Funds:	\$147,270,662
Total Households Served:	162,668

Multifamily New Construction	
<ul style="list-style-type: none"> Affordable rental units financed and developed 	
Programs:	
<ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds Multifamily Direct Loan Program* 	
Expended Funds:	\$108,945,178
Total Households Served:	7,062

Homelessness Services	
<ul style="list-style-type: none"> Shelter building rehabilitation, conversion, operations Essential services e.g., health services, transportation, job training, employment services 	
Programs:	
<ul style="list-style-type: none"> Emergency Solutions Grant Program (ESG) Homeless Housing and Services Program (HHSP) 	
Expended Funds:	\$12,162,959
Total Individuals Served:	71,350

Multifamily Rehab Construction	
<ul style="list-style-type: none"> Affordable rental units financed and rehabilitated 	
Programs:	
<ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds 	
Expended Funds:	\$56,792,063
Total Households Served:	2,503

Supportive Services	
Provides administrative support for essential services for low income individuals through Community Action Agencies	
Program:	
<ul style="list-style-type: none"> Community Services Block Grant Program (CSBG) 	
Expended Funds:	\$31,103,729
Total Individuals Served:	561,906

Owner Rehabilitation Assistance	
<ul style="list-style-type: none"> Home rehabilitation, reconstruction Manufactured housing unit replacement Accessibility modifications e.g., ramp, grab bar installation 	
Programs:	
<ul style="list-style-type: none"> Homeowner Rehabilitation Assistance Program (HRA)* Amy Young Barrier Removal Program 	
Expended Funds:	\$11,384,025
Total Households Served:	251

Rental Assistance	
<ul style="list-style-type: none"> Short, long term rent payment help Assistance linked with services Transitional assistance Security, utility deposits 	
Programs:	
<ul style="list-style-type: none"> Tenant-Based Rental Assistance (TBRA)* Section 8 Housing Choice Vouchers Section 811 	
Expended Funds:	\$11,021,909
Total Households Served:	1,932

Single Family Development	
<ul style="list-style-type: none"> Single family development, reconstruction, rehabilitation Do-it-yourself, "sweat equity" construction, rehabilitation Contract for Deed refinance 	
Programs:	
<ul style="list-style-type: none"> Single Family Development Program (SFD)* Contract for Deed (CFD) 	
Expended Funds:	\$3,769,888
Total Households Served:	85

Total Expended Funds:	\$2,076,285,016
Total Households Served:	817,362
All FY2019 data as reported in TDHCA's 2020 State Low Income Housing Plan and Annual Report (SLIHP).	
Note: Some households may have been served by more than one TDHCA program.	

* Administered through the federally funded HOME Investment Partnerships Program

Texas Department of Housing and Community Affairs
RESOLUTION

WHEREAS, Community Action Agencies are nonprofit and unit of local government organizations designated under the Economic Opportunity Act of 1964 to serve to ameliorate the effects of poverty and help persons experiencing poverty to transition to self-sufficiency;

WHEREAS, Community Action builds and promotes economic stability and enhances stronger communities and the opportunity to live in dignity;

WHEREAS, nationally Community Action has enhanced the lives of millions by providing essential, life-changing services and opportunities;

WHEREAS, Community Action serves 99% of America’s counties in rural, suburban, and urban communities, and works toward the goal of ending poverty in our lifetime;

WHEREAS, Texas has a strong vibrant network of Community Action Agencies to deliver Community Action to Texans in need;

WHEREAS, Community Action will continue to implement innovative and cost-effective programs to improve the lives and living conditions of the impoverished; continue to provide support and opportunities for all eligible households in need of assistance; and continue to develop and carry out effective welfare system reforms; and

WHEREAS, the Texas Department of Housing and Community Affairs and the State of Texas support the Community Action network in Texas in working to improve communities and make Texas a better place to live not only during Community Action Month in May, but throughout the entire year;

NOW, therefore, it is hereby

RESOLVED, that the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate May 2020, as Community Action Month in Texas, and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of the hard work and dedication of Texas Community Action agencies.

Signed this twenty-third day of April 2020.



Leslie Bingham, Vice Chair

Sharon Thomason, Member

Paul A. Braden, Member

Leo Vasquez, Member

Bobby Wilkinson, Executive Director

Texas Department of Housing and Community Affairs
RESOLUTION

WHEREAS, May 2020 is National Mobility Awareness Month, which is dedicated to showing the community at large how Persons with Disabilities can live active, mobile lifestyles, and raise awareness of the mobility solutions available in the local community;

WHEREAS, a goal of the Texas Department of Housing and Community Affairs (the Department) is to ensure that all Texans have access to safe and decent affordable housing;

WHEREAS, it is the policy of the Department to support fair housing opportunities in the administration of its Single Family and Multifamily Programs, especially in regards to Persons with Disabilities accessing new home construction, home rehabilitation, housing vouchers, and rental assistance programs and services;

WHEREAS, this year, the Department is celebrating ten years of offering the Amy Young Barrier Removal Program, named in honor of the late advocate for Texans with Disabilities who helped shape the state-funded program to improve the quality of life for Persons with Disabilities throughout the State of Texas;

WHEREAS, the Amy Young Barrier Removal Program provides one-time grants of up to \$22,500 for Persons with Disabilities, both renters and homeowners earning up to 80% of the Area Median Family Income, who need home modifications to increase accessibility and eliminate hazardous conditions in their homes;

WHEREAS, since 2010, the Department through the Amy Young Barrier Removal Program has completed approximately \$22.8 million worth of accessibility modifications on approximately 1,167 homes of Texans with Disabilities, such as constructing roll-in showers, installing shower wands and lever faucets, widening doorways, modifying kitchens and laundry rooms with accessible cabinetry and appliances, building ramps, and improving walkways with handrails, paving, and lighting to accommodate program participants' specific needs;

WHEREAS, the Department applauds the nonprofit organizations and local governments around the state who have become Amy Young Barrier Removal Program Administrators and who advocate for their clients through quality construction, pragmatic solutions, and respectful service; and

WHEREAS, the Department encourages Texans to explore the numerous TDHCA programs and resources related to increasing and maintaining mobility during National Mobility Awareness Month and throughout the year;

NOW, therefore, it is hereby

RESOLVED, that in the pursuit of the goal and responsibility of increasing mobility opportunities of Texans with Disabilities, the Governing Board of the Texas Department of Housing and Community Affairs, does hereby celebrate May 2020 as National Mobility Awareness Month and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of National Mobility Awareness Month.

Signed this Twenty-Third Day of April, 2020.



Leslie Bingham

Paul A. Braden

Sharon Thomason

Leo Vasquez

Bobby Wilkinson, Executive Director

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

**A G E N D A
9:00 AM
April 23, 2020**

Meeting Location: In light of the March 13, 2020, disaster declaration by the Office of the Governor, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551*, this meeting of the TDHCA Governing Board will be accessible to the public via the telephone and web link information, below. In order to engage in two-way communication during the meeting, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the meeting without registering online will not be able to ask questions or provide comments, but the meeting will still be audible. A recording of the meeting will be made available to the public as soon as possible following the meeting.

Governing Board Webinar registration:

<https://attendee.gotowebinar.com/register/862841056476346637>

Dial-in number: +1 (562) 247-8422, access code 370-639-005 (persons who use the dial-in number and access code without registering online will only be able to hear the Board meeting and will not be able to ask questions or provide comments). Note, this meeting will be proceeding as a videoconference under Tex. Gov't Code §551.127, as modified by waiver.

CALL TO ORDER

ROLL CALL

Leslie Bingham, Vice Chair

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.

Resolution recognizing May as Community Action Month

Resolution recognizing May as National Mobility Awareness Month

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 Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

* The list of Open Meeting laws subject to temporary suspension effective March 16, 2020, is available at:
<https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Open%20Meeting%20Laws%20Subject%20to%20Temporary%20Suspension.pdf>

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

EXECUTIVE

- a) Presentation, discussion, and possible action on Board meeting minutes summary for January 16, 2020

J. Beau Eccles
General Counsel

ASSET MANAGEMENT

- b) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application
17081 Palladium Denton Denton
19234 The Residences at Alsbury Burlison
- c) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement
96182 Crestview Apartments Longview
00179 Highland Oaks Apartments Floresville
- d) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application and Land Use Restriction Agreement
97167 Columbia Luxar Townhomes Dallas
- e) Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount
16409 Sansom Ridge Sansom Park
17410 Lakecrest Village Apartments Houston

Rosalio Banuelos
Director of Asset Management

COMMUNITY AFFAIRS

- f) Presentation, discussion, and possible action on the 2020 Department of Energy Weatherization Assistance Program State Plan and Awards
- g) Presentation, discussion, and possible action on release of the draft 2021 Low Income Home Energy Assistance Program State Plan for public comment

Michael DeYoung
Director of Community Affairs

RULES

- h) Presentation, discussion, and possible action on an order adopting amendments to 10 TAC §8.7, Tenant Selection and Screening; an order adopting amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their submission to the Texas Register for adoption

Brooke Boston
Director of Programs

MULTIFAMILY FINANCE

- i) Presentation, discussion, and possible action on the Second Amendment to the 2020-1 Multifamily Direct Loan Notice of Funding Availability
- j) Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

Andrew Sinnott
Multifamily Loan Programs Administrator

Teresa Morales
Director of Multifamily Bonds

- 20420 Pan American San Antonio
- 20408 Vi Collina Austin
- 20449 Emli at Pecan Creek Aubrey ETJ

BOND FINANCE

- k) Presentation, discussion, and possible action on Resolution No. 20-013 regarding the annual approval of the Department’s Investment Policy
- l) Presentation, discussion, and possible action on Resolution No. 20-014 regarding the annual approval of the Department’s Interest Rate Swap Policy

Monica Galuski
Director of Bond Finance

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Outreach and Activities Report (March-April)
- b) Report on the Department’s 2nd Quarter Investment Report in accordance with the Public Funds Investment Act
- c) Report on the Department’s 2nd Quarter Investment Report relating to funds held under Bond Trust Indentures

Michael Lyttle
Director of
External Affairs

Joe Guevara
Director of
Financial Administration

Monica Galuski
Director of Bond Finance

ACTION ITEMS

ITEM 3: SINGLE FAMILY AND HOMELESS PROGRAMS

- a) Presentation, discussion, and possible action on waivers to certain provisions of Texas Administrative Code to allow for payment of mortgages as a homelessness prevention activity under the Homeless Housing and Services Program

Abigail Versyp
Director of Single Family
and Homeless Programs

ITEM 4: BOND FINANCE

- a) Report regarding the impact of the coronavirus on the municipal market and on the Department’s mortgage revenue bond programs
- b) Presentation, discussion, and possible action regarding the Issuance of Multifamily Green Tax-Exempt Bonds (Green M-TEBS - Oaks on Clark Apartments) Resolution No. 20-015 and a Determination Notice of Housing Tax Credits
- c) Presentation, discussion, and possible action regarding the Issuance of Governmental Notes (Granada Terrace Apartments) Resolution No. 20-016 and a Determination Notice of Housing Tax Credits
- d) Presentation, discussion, and possible action on Resolution No. 20-017 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2020 Series A and Single Family Mortgage Revenue Refunding Bonds, 2020 Series B (Taxable); approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject

Monica Galuski
Director of Bond Finance

Teresa Morales
Director of
Multifamily Bonds

Monica Galuski
Director of Bond Finance

ITEM 5: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action on the draft 2020 Multifamily National Housing Trust Fund Minimum Rehabilitation Standards for the 2020-2024 State of Texas Consolidated Plan and Opportunity for a Public Hearing
- b) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits and an Award of Direct Loan Funds (#20401, Palladium Port Aransas, Port Aransas)
- c) Presentation, discussion, and possible action on the process of staff determinations regarding points awarded under 10 TAC §11.9(d)(4) related to Quantifiable Community Participation

Andrew Sinnott
Multifamily Loan Programs
Administrator

Marni Holloway
Director of
Multifamily Finance

20004	Bamboo Estates Apartments	Progreso
20012	Merritt Gardens	Midland
20034	Ranch Court Apartments	Andrews
20063	Azalea West	Fort Worth
20066	Vista at Everest	San Antonio
20069	Vista at Interpark	San Antonio
20079	Fairview Terrace	Brenham
20115	Avenue at Sycamore Park	Fort Worth
20116	Dian Street Villas	Houston
20120	Lennox House	Grand Prairie
20123	Meander Park	Granbury

20145	Gala at Ridgmar	Fort Worth
20148	High View Place	Killeen
20149	Provision at Fort Worth	Fort Worth
20153	Provision at Bomber Road	White Settlement
20155	Gala at Premier	Plano
20158	Redwood Apartments	Dumas
20167	Laurel Flats	Tyler
20184	The Heritage at Abilene	Abilene
20186	The Residences at Ridgehill	Kerrville
20187	Cortez Plaza	El Paso
20190	Nuestra Senora	El Paso
20204	Heritage Senior Residences	Houston
20210	Amber Ridge Apartments	Angleton
20211	Ennis Trails	Ennis
20216	Henderson Trails	Henderson
20220	Trinity Estates	Trinity
20222	Brenham Trails	Brenham
20231	Walnut Trails	San Angelo
20233	Quinlan Estates	Quinlan
20267	Valley View Estates	Fabens
20294	Sagebrush Apartments	Brady
20295	Hwy 79 Senior Living	Henderson
20317	Merritt Edge	Midland
20344	Merritt Sunset	Midland

d) Presentation, discussion, and possible action regarding requests for waiver of the Department's Multifamily Program Rules

20001	Farm Street Village	Bastrop
20128	OST Lofts	Houston
20147	Kestrel on Cooper	Arlington

ITEM 6: RULES

- a) Presentation, discussion, and possible action on adoption of amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing that they be published for adoption in the *Texas Register*
- b) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; and an order adopting new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee and directing that they be published for adoption in the *Texas Register*

Patricia Murphy
Director of Compliance

- c) Presentation, discussion, and possible action on an order adopting new 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, and directing its publication in the Texas Register

Cate Tracz
Manager of FHDMR

ITEM 7: AGENCY RESPONSE TO COVID-19 PANDEMIC AND ACTIVITY UNDER HR 748, CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT)

- a) Presentation, discussion and possible action on the Programming of Community Services Block Grant funds available to Texas through the Coronavirus Aid, Relief, and Economic Security Act and Authorization to Award Such Funds
- b) Presentation, discussion and possible action on the Programming of Low Income Home Energy Assistance Program funds available to Texas through the Coronavirus Aid, Relief, and Economic Security Act and Authorization to Award Such Funds and Update on Administrative Flexibilities
- c) Presentation, discussion and possible action on the programming of Community Development Block Grant funds available to Texas through the Coronavirus Aid, Relief, and Economic Security Act and authorization to award such funds and opportunity for Public Hearing on a Material Amendment to the 2019 One-Year Action Plan, and 2015-2019 Consolidated Plan
- d) Presentation, discussion and possible action on the Programming of Emergency Solutions Grant (ESG) Program funds in the first allocation available to Texas through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Authorization to Award Such Funds, and, if needed, an emergency rulemaking to accomplish this action
- e) Presentation, discussion, and possible action on waivers to certain provisions of Texas Administrative Code for HOME Tenant-Based Rental Assistance for disaster response for qualified persons and households most impacted by COVID-19
- f) Presentation, discussion, and possible action relating to the use of Reserve for Replacement Account funds as provided for in 10 TAC §10.404(a)(7)(C)(i) to address responsiveness for households impacted by the COVID-19 pandemic, and, if needed, an emergency rulemaking to accomplish this action
- g) Presentation, discussion and possible action on waivers relating to certain requirements under 10 TAC Chapter 11, the Qualified Allocation Plan (QAP) and 10 TAC Chapter 13, the Multifamily Direct Loan (MFDL) Rule in relation to the Department's response to the COVID-19 pandemic

Michael DeYoung
Director of
Community Affairs

Abigail Versyp
Director of Single Family
and Homeless Programs

Tom Gouris
Director of Single Family and
Homeless Programs &
Special Initiatives

Marni Holloway
Director of
Multifamily Finance

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):

Leslie Bingham
Vice Chair

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;

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;

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; including seeking legal advice in connection with a posted agenda item;

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

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 or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Elizabeth Yevich, at 512-463-7961 or Relay Texas at 1-800-735-2989, at least five 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 five 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 cinco días antes de la junta para hacer los preparativos apropiados.

CONSENT AGENDA

1a

BOARD ACTION REQUEST

BOARD SECRETARY

APRIL 23, 2020

Presentation, discussion, and possible action on Board meeting minutes summary for January 16, 2020

RECOMMENDED ACTION

Approve the Board meeting minutes summary for January 16, 2020

RESOLVED, that the Board meeting minutes summary for January 16, 2020, is hereby approved as presented.

**Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
January 16, 2020**

On Thursday, the sixteenth day of January 2020, at 9:00 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held in the Dewitt C. Greer State Highway Building, Ric Williamson Hearing Room, 125 East 11th Street, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- Leslie Bingham, Vice Chair
- Paul A. Braden
- Sharon Thomason
- Leo Vasquez

Leslie Bingham served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as secretary.

- 1) The Board unanimously approved the Consent Agenda as presented.

- 2) Action Item 3 -- Presentation, discussion, and possible action regarding authorization to reprogram Community Services Block Grant discretionary funds towards the procurement of one or more providers to provide fiscal and cost allocation related training and technical assistance for Community Services Block Grant eligible entities – was presented by Michael De Young, TDHCA Director of Community Affairs. The Board unanimously approved staff recommendation to reprogram the funds accordingly.

- 3) Action Item 4 – Presentation, discussion, and possible action authorizing the Department to submit an application for Fair Housing Initiative Program – Education and Outreach Initiative (FR-6300-N-21-A) released by the U.S. Department of Housing and Urban Development, and if successfully awarded to operate such program – was presented by Brooke Boston, TDHCA Director of Programs. The Board unanimously approved staff recommendation to authorize the Department to apply for the fair housing initiative funding.

- 4) Action Item 5 – Presentation, discussion, and possible action on an amendment to the Neighborhood Stabilization Program 1 Agreement 77090000601 and associated loan documents with City Wide Community Development Corporation and authorization to award additional funding from Neighborhood Stabilization Program – Program Income – was presented by Raul Gonzales, TDHCA Director of the Office of Colonia Initiatives, Housing Trust Fund, and Neighborhood Stabilization Program. The Board unanimously approved staff recommendation to approve the contract modifications and awarding of additional funding.

5) Action Item 6(a) – Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications – was presented by Teresa Morales, TDHCA Director of Multifamily Bonds. The Board unanimously approved staff recommendation to issue credits for the following applications:

20422	Brush Country Cottages	Dilley
20423	Chula Vista	San Diego
20424	Cielo Lindo	Edcouch
20425	La Estancia	Sebastian
20426	La Posada I & II	Elsa
20427	La Reina	La Villa
20428	La Sombra	Donna
20429	Las Palmas	La Feria
20430	Leuty Avenue	Justin
20431	Los Laureles	Edcouch
20432	Los Naranjos	Alton
20433	Oak Haven	Donna
20434	Raintree	Alamo
20435	Seagraves Garden	Seagraves
20436	Silver Trail	Menard
20437	The Village	Tomball
20438	Valley View	Valley View
20439	Villa Vallarta	Rio Grande City
20440	Vista Verde	Cotulla
20441	Willowick	Gainesville
20442	Windmill	Giddings
20423	Windwood I & II	Kingsland
19471	Austin Manor	Austin ETJ

6) Action Item 6(b) – Presentation, discussion, and possible action regarding a waiver of certain requirements in 10 TAC §11.1(d)(122) regarding the definition of Supportive Housing – was presented by Ms. Boston. The Board unanimously approved staff recommendation to adopt the waiver.

7) Action Item 7(a) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; an order proposing new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; and directing their publication for public comment in the *Texas Register* – was presented by Patricia Murphy, TDHCA Director of Compliance. The Board unanimously approved staff recommendation to publish the draft rules.

8) Action Item 7(b) – Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, an order adopting new 10 TAC

Chapter 90, Migrant Labor Housing Facilities and directing publication in the Texas Register – was presented by Tom Gouris, TDHCA Director of HOME and Special Initiatives. The Board unanimously approved staff recommendation to repeal the existing rules and adopt the new rules for final publication.

9) During the Public Comment portion of the meeting the follow persons provided comment:

- Bobby Wilkinson, TDHCA Executive Director, told the Board that staff would be bringing a waiver request to the February Board meeting regarding certain aspects of the feasibility report requirement in the 2020 Qualified Allocation Plan for developments being rehabilitated.

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 9:36 a.m. The next meeting is set for Thursday, February 27, 2020.

Secretary

Approved:

Chair

1b

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Palladium Denton (HTC #17081)

RECOMMENDED ACTION

WHEREAS, Palladium Denton (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2017 for the construction of 150 units of multifamily housing in Denton, Denton County;

WHEREAS, a representative for Palladium Denton, Ltd. (the Development Owner or Owner) has submitted a request for approval for a reduction in the common area from 4,070 square feet to 3,511 square feet, a reduction of 13.73% or 559 square feet from the original design represented at application;

WHEREAS, Board approval is required for a reduction of three percent or more in the square footage of the units or common areas as directed in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D), and the Owner has complied with the amendment requirements therein; and

WHEREAS, the requested change does not negatively affect the Development, impact the viability of the transaction, impact the scoring of the application, or affect the amount of the tax credits awarded;

NOW, therefore, it is hereby

RESOLVED, that the requested Application amendment for the Palladium Denton is approved as presented at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

Palladium Denton was approved during the 2017 competitive 9% Housing Tax Credit cycle to construct 150 multifamily units in Denton, Denton County. Construction of the Development is complete, and the cost certification documentation for the Development is currently under review by the Department. However, staff's review of the final cost certification submitted for the Development identified a reduction in the square footage of the community building, and on March 5, 2020, Cody Hunt, a representative of the Development Owner, submitted a

request for approval of a material amendment to the Application for the reduction of the square footage of the common area.

At the time of Application, the Development Owner proposed to build a 4,070 square foot community building that included, among other spaces, two offices for leasing staff. However, the Owner representative explained that the second leasing office, typical for properties with 150-180 units, was eliminated for efficiency purposes, as a property with 120-150 units typically needs one leasing staff office. The Owner determined that the second leasing office would not be used extensively. The redesign of the clubhouse for this change also resulted in further reductions to the square footage of areas benefitting tenants. The changes in clubhouse layout resulted in a reduction of 13.73% or 559 square feet of the total common area, going from 4,070 square feet to 3,511 square feet, which requires Board approval under Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D). However, no amenities or services were changed due to the reduction in the square footage. A comparison of the originally proposed clubhouse to the as-built clubhouse design is in the table below.

Material Alterations as defined in Texas Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D)	
Application	Amendment
<p>Common Area: 4,070 square feet (507 staff sq. ft. plus 3,563 tenant access sq. ft.)</p> <p style="text-align: center;">CLUBHOUSE FLOOR PLAN 4,070 S.F.</p>	<p>Common Area: 3,511 square feet (393 staff sq. ft. plus 3,117 tenant access sq. ft.)</p> <p style="text-align: center;">CLUBHOUSE FLOOR PLAN 3,511 S.F.</p>

Staff has reviewed the original Application, the underwriting report, and the cost certification and has concluded that the reduced square footage of the community building would not have impacted the scoring of the Application, and does not significantly affect the total development costs or affect the tax credit allocation awarded. The final HTC recommendation will be determined upon finalization of the cost certification review.

Staff recommends approval of the material amendment as presented herein.

Lee Ann Chance

From: Cody Hunt <chunt@palladiumusa.com>
Sent: Thursday, March 05, 2020 3:50 PM
To: Lee Ann Chance; Tom Schneider
Cc: Tom Huth; Peg Jones; Scott Johnson
Subject: RE: Palladium Denton #17081 - RFI #2

Dear Lee Ann,

I spoke with our head of construction regarding the reduction. The reason for the reduction was for efficiency purposes. The difference in square footage can largely be attributed to the removal of the second office for the assistant manager on the plans that are on file with the state. There are two people needed in the leasing office, so the assistant manager must office in the leasing area to service the residents and it was deemed that the second office would not be used extensively. The explanation should have read:

The total square footage was reduced to properly service a 120-150 unit development. The original plans on file with the state (4,070 sq ft, 745 sq ft unconditioned space, 4,815 total sq ft) were designed to service 150-180 units.

I apologize for any confusion regarding the 120 unit vs. 150 unit designation as the Property has 150 units. Essentially, the additional square footage was not needed to service the development.

I have not completed an amendment for a cost certification before, would you mind explaining to me what the process entails and how we can avoid needing an amendment on future projects? I am available to speak if you would like to give me call this afternoon or tomorrow.

Also, we will be sending a check for \$2,500 via FedEx for the amendment fee today. Please let us know if you need anything else regarding this matter.

Thanks,

Cody J. Hunt, CPA
Corporate Controller
Palladium USA International, Inc.

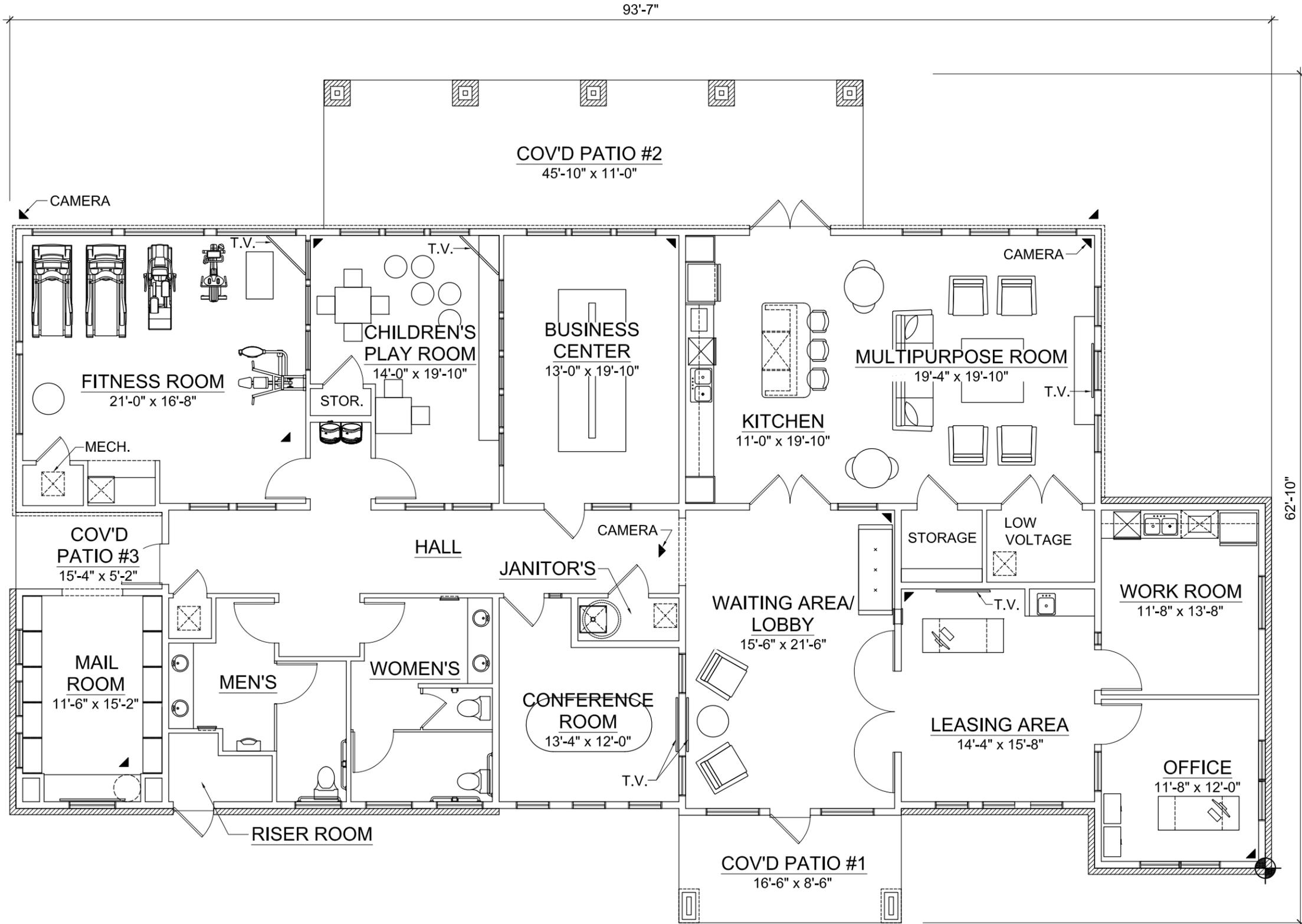
“Changing lives – one apartment home at a time”

13455 Noel Road
Suite 400
Dallas, Texas 75240
Ph: 972-774-4439
Fax: 972-774-4495
www.palladiumusa.com

From: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>
Sent: Wednesday, March 4, 2020 11:59 AM
To: Tom Schneider <tschneider@doz.net>
Cc: Cody Hunt <chunt@palladiumusa.com>; Tom Huth <tom@palladiumusa.com>; Peg Jones

APARTMENTS AT SHERMAN DRIVE
DENTON, TEXAS

EMPLOYEE AND TENANT FLOOR AREA	
CONDITIONED SPACE S.F.	
EMPLOYEE ONLY S.F.	
HVAC	18
HVAC	12
HVAC/JANITORS	28
WORK ROOM	177
OFFICE #1	158
TOTAL EMPLOYEE ONLY S.F.	393
TENANT ACCESS S.F.	
FITNESS ROOM	439
CHILDREN'S PLAYROOM	258
BUSINESS CENTER	281
HALL	297
MEN'S RR	143
WOMEN'S RR	168
CONFERENCE ROOM	201
KITCHEN/MULTIPURPOSE ROOM	642
STORAGE #1	11
STORAGE #2	38
LOW VOLTAGE	49
WAITING AREA/LOBBY	350
LEASING AREA	241
TOTAL TENANT ACCESS S.F.	3,117
TOTAL CONDITIONED SPACE S.F.	3,511
(MEASURED FROM OUTSIDE OF FRAMING)	
UNCONDITIONED SPACE S.F.	
EMPLOYEE ONLY S.F.	39
RISER ROOM	176
MAILROOM	212
TOTAL EMPLOYEE ONLY S.F.	427
TENANT ACCESS S.F.	
COV'D PATIO #1	440
COV'D PATIO #2	61
COV'D PATIO #3	632
TOTAL TENANT ACCESS S.F.	1,133
TOTAL UNCONDITIONED SPACE S.F.	1,560



CLUBHOUSE FLOOR PLAN 3,511 S.F.

SCALE 1/8" = 1' - 0"

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for The Residences at Alsbury (HTC #19234)

RECOMMENDED ACTION

WHEREAS, The Residences at Alsbury (the Development) received an award of 9% Housing Tax Credits (HTCs) and a Multifamily Direct Loan (MFDL) in 2019 for the construction of 83 new multifamily units in Burleson, Johnson County;

WHEREAS, OPG Alsbury Partners, LLC (Applicant) requests approval for a reduction in the common area from 19,664 to 17,910 square feet, representing a reduction of 8.92% or 1,754 square feet from the original designs represented at Application;

WHEREAS, the Applicant's request also includes modifications to the site design plan represented at Application in order to address topographical and soil issues;

WHEREAS, Board approval is required for a reduction of three percent or more in the square footage of the common areas as directed in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D) and for a significant modification of the site plan as directed in Tex. Gov't Code §2306.6712(d)(1) and 10 TAC §10.405(a)(4)(A), and the Applicant has complied with the amendment requirements therein; and

WHEREAS, the requested changes do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the Application, or affect the amount of the tax credits awarded;

NOW, therefore, it is hereby

RESOLVED, that the requested amendments for The Residences at Alsbury are approved as presented at this meeting (contingent upon the City of Burleson approving this or a substantially similar site plan), and the Executive Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

The Residences at Alsbury received a 9% HTC award in 2019 in the amount of \$1,194,300 and was awarded a MFDL in the amount of \$1,050,000 to construct 83 units (72 HTC, 11 Market, and 11 HOME units) with a designation for Elderly, in Burleson, Johnson County. In a letter dated February 3, 2020, Alyssa Carpenter, the representative for the Applicant, requested approval for material amendments to the Application involving significant modifications to the site plan and a reduction to the common area. According to the Applicant, the amendments are the result of unforeseen changes required due to topographical and soil issues discovered on the site. The initial engineering at Application indicated that a retaining wall would be required near the south boundary of the property. However, subsequent engineering and soil testing revealed that additional retaining walls are required on the west side of the property. Also, instead of one tall wall, they must be tiered, which requires more space to construct. The additional space requires the building to be shifted slightly to the north and east. This results in a slight reduction to the building footprint, but it does not affect the number of buildings or units, the Net Rentable Area, or the total parking spaces. Additional changes to the site plan involve the elimination of detention ponds that were included in the original site plan. A flood study was conducted after Application submission revealed that there is sufficient capacity in two drainage catch basins located adjacent to the site. Therefore, in the revised site plan, the detention ponds have been eliminated, and the site will be graded towards the catch basins. The Applicant states that their current site plan was submitted to the City of Burleson and that they anticipate it will be approved.

The reduction of the building footprint affects the overall size of the common area. As a result, the amendment request seeks approval for a reduction in the common area from 19,664 to 17,910 square feet of tenant common area. This represents an 8.92% or 1,754 square foot reduction in the original design represented at Application. The table below is a comparison between the original and revised common areas.

Material Alterations as defined in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D)			
Application		Amendment	
Common Area:		Common Area:	
First Floor –	10,589 square feet	First Floor –	9,358 square feet
Second Floor –	9,075 square feet	Second Floor –	8,552 square feet
Total	19,664 square feet	Total	17,910 (1,754 square feet or 8.92% reduction)
First Floor Common Area		First Floor Common Area	Difference
Community Room	1,966	Community Room	934
Sitting Room	693	Sitting Room	822
Dining Room	1,508	Dining Room	0
Pantry	155	Pantry	155
Halls	6,034	Halls	7,214
Toilets	113	Toilets	113
Elevator	120	Elevator	120
	10,589		9,358
			1,231

Material Alterations as defined in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D)			
Second Floor Common Area		Second Floor Common Area	
Sitting Room	693	Sitting Room	693
Wellness Screening	312	Wellness Screening	250 62
TV Lounge	0	TV Lounge	629 (629)
Theater	998	Theater	0 998
Multi-Purpose/Fitness	1,056	Multi-Purpose/Fitness	684 372
Halls	5,783	Halls	6,756 (973)
Toilets	113	Toilets	113 0
Elevator	<u>120</u>	Elevator	<u>120</u> <u>0</u>
	9,075		8,552 523
Total	19,664	Total	17,910 1,754

The reduction to the common area is material under and is a material amendment under Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D). Additionally, the changes to the site plan are considered material under 10 TAC §10.405(a)(4)(A) because they affect the construction budget and total development costs.

The Applicant provided updated financial information that has been analyzed by the Real Estate Analysis (REA) Division. The information provided indicates there is a 17.61%, or \$1,642,205, increase in the direct construction hard costs and an overall 10.86%, or \$1,758,538, increase in the total development cost from the information identified at Application. To address the increased costs, the Applicant has changed lenders and will increase the first lien permanent debt from \$3,375,000 to \$4,153,796, an increase of 23.08%, or \$778,796. However, the loan terms will be more favorable with a decrease in the interest rate from 6.0% to 4.8%. There will also be an increase in the syndication rate from \$0.92 to \$0.99, resulting in a 7.03%, or \$776,218, increase in the syndication proceeds. Additionally, the Applicant has reduced the Developer Fee from \$1,822,188 to \$1,744,500, a reduction of 4.26%, or \$77,688, and the amount of their deferred Developer Fee will increase from \$673,974 to \$877,498, a 30.20%, or \$203,524 increase.

REA's analysis of the changes to the costs and financing structure indicates that with the Development is feasible, and that there is no change to the previous recommended credit allocation or MFDL award amounts. However, the term of the MFDL is increasing from 15 years to 15.5 years, in order to mature six months after the senior loan.

Staff has determined that the proposed changes noted above would not have impacted the scoring of the Application.

Staff recommends approval of the amendment request as presented herein.



Addendum to Underwriting Report

TDHCA Application #: **19234** Program(s): **9% HTC/MDL**

The Residences at Alsbury

Address/Location: SWQ of SW Alsbury Blvd. and Ridgehill Dr.

City: Burleson County: Johnson Zip: 76028

APPLICATION HISTORY	
Report Date	PURPOSE
04/01/20	Amendment & MDL Closing Memo
07/19/19	New Application - Initial Underwriting

ALLOCATION

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
Multifamily Direct Loan Const. to Perm. (Repayable)	\$1,050,000	2.50%	30	15	\$1,050,000	2.50%	30	15.5	2
LIHTC (0% Credit)	\$1,194,300				\$1,194,300				

* Multifamily Direct Loan Terms:

* The term of a Multifamily Direct Loan should match the term of any superior loan (within 6 months).

* Lien position after conversion to permanent. The Department's lien position during construction may vary.

CONDITIONS STATUS

- 0 Receipt and acceptance at Closing
 - **New Condition to be Confirmed at Closing: Annual Debt Service on the Senior Debt Must Not Exceed \$252,242.**
- 1 Receipt and acceptance before Direct Loan Closing
 - a: Substantially final construction contract with Schedule of Values.
Status: Satisfied.
 - b: Updated term sheets with substantially final terms from all lenders
Status: Satisfied.
 - c: Substantially final draft of limited partnership agreement.
Status: Satisfied.
 - d: Senior loan documents (and/or partnership documents) must contain a provision(s) that any stabilization resizing on the senior debt includes the debt service on the TDHCA MDL at a minimum 1.15 DCR.
Status: Satisfied.

e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.

Status: Satisfied.

f: Updated TDHCA application exhibits (rent schedule, operating expenses, long-term pro forma, development cost schedule, schedule of sources)

Status: Satisfied.

g: Documentation that a noise study has been completed, and certification from the Architect that all recommendations from the noise study are incorporated into the development plans.

Status: Satisfied.

2 Receipt and acceptance by Cost Certification:

- Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

Status: Pending

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

SET-ASIDES

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
20% of AMI	20% of AMI	4
30% of AMI	30% of AMI	5
40% of AMI	40% of AMI	4
50% of AMI	50% of AMI	20
60% of AMI	60% of AMI	29
70% of AMI	70% of AMI	5
80% of AMI	80% of AMI	5

TDHCA SET-ASIDES for DIRECT LOAN LURA		
Income Limit	Rent Limit	Number of Units
30% of AMFI	30% of AMFI	9
50% of AMFI	Low HOME	2

ANALYSIS

Applicant has submitted the final budget for review to close on the Direct Loan as well as an amendment request for minor modifications to the site plan and a reduction to total common area square footage.

These changes are being requested due to the requirement of additional tiered retaining walls on the west side of the property. Additionally, all walls will be tiered in construction instead of a single wall. The tiered walls require more space between the building and property lines, which slightly shifts the building to the north and east. In order to accommodate setbacks and parking, this change also slightly reduces the building footprint. The number of buildings and total parking spaces will remain the same.

Additionally, subsequent to Application, a flood study was conducted which concluded that there is sufficient capacity in two drainage catch basins adjacent to the site at Alsbury Rd and Ridgehill Drive. Therefore, onsite detention ponds are not required and have been removed with this amendment request.

Finally, as a result of the building footprint reduction, overall common area was decreased. Approximately 9 inches were removed from the corridor areas, approximately 30 feet was removed from the center section of the building, and some corners were reconfigured. Including corridors, there were 19,664 square feet of tenant common area at Application. This area has been reduced to 17,910 square feet of common area (8.9% reduction). The size and number of units remain the same.

Operating Pro Forma

Applicant updated rents based on the current 2019 HTC rents and slightly higher Market premiums as supported by the original market study. These rent updates reflect a 2% increase in rental income. Applicant's expenses increased by less than 1% stemming primarily from an increase in property insurance. NOI shows an increase of \$14K. Underwriter's NOI reflects similar updates to rents and expenses.

Applicant's updated proforma remains within 5% of the Underwriter's and is used to determine feasibility.

Development Cost

Previously underwritten Total Hard Cost, were derived based on Marshall & Swift cost estimates that were generally in-line with the Applicant's total cost budget at that time. A contract as of January 2020 was provided as part of the MDL Closing package and is consistent with the Applicant's current total Hard Cost estimate \$10.3M (18% increase).

Underwritten costs reflect the contract figures. Total Development Costs have increased by \$1.7M.

Sources of Funds

Wells Fargo replaced Horizon Bank, providing interim financing of \$13M (increase of \$9.63M) at a more favorable interest rate of 3.45%.

Truist Bank (purchaser of SunTrust) also replaced Horizon Bank. The provided term sheet from Truist Bank indicates a loan amount totaling \$4.43M; however, subsequent correspondence from the lender acknowledges the lower \$4.15M (increase of \$779K over original amount) being currently underwritten, at a more favorable interest rate of 4.8%. Additionally, confirmation at closing that the senior debt be limited to an amount that produces 1.15 debt coverage will be required. Specifically, annual debt service on the senior debt must not exceed \$252,242.

Updated term sheet from Wells Fargo indicates increased credit price at \$0.99 (up from \$0.92). This generates an additional \$777K in equity proceeds.

Finally, Applicant has requested to change the permanent term on TDHCA's loan from 15 to 15.5 years in order to mature 6 months after the senior loan in accordance with 10 TAC §13.8(a).

Underwriter recommends no changes to the previous tax credit award, and an increase on the MDL term to 15.5 years.

Underwriter:	<u>Diamond Unique Thompson</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

UNIT MIX/RENT SCHEDULE

The Residences at Alsbury, Burlleson, 9% HTC/MDL #19234

LOCATION DATA	
CITY:	Burleson
COUNTY:	Johnson
Area Median Income	\$76,000
PROGRAM REGION:	3

UNIT DISTRIBUTION								
# Beds	# Units	% Total	Assisted	MDL	Income	# Units	% Total	
Eff	-	0.0%	0	0	20%	4	4.8%	
1	63	75.9%	0	8	30%	5	6.0%	
2	20	24.1%	0	3	40%	4	4.8%	
3	-	0.0%	0	0	50%	20	24.1%	
4	-	0.0%	0	0	60%	29	34.9%	
5	-	0.0%	0	0	70%	5	6.0%	
						80%	5	6.0%
						MR	11	13.3%
TOTAL	83	100.0%	-	11	TOTAL	83	100.0%	

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	86.30%
APP % Acquisition	3.42%
APP % Construction	9.00%
Average Unit Size	720 sf

UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC		TDHCA Direct Loan Program		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst		
TC 20%	\$285	30%/30%	\$428	3	1	1	673	\$285	\$43	\$242	(\$0)	\$0.36	\$242	\$726	\$726	\$242	\$0.36	\$0	\$1,210	\$1.80	\$1,210	
TC 30%	\$427	30%/30%	\$428	4	1	1	673	\$427	\$43	\$384	(\$0)	\$0.57	\$384	\$1,536	\$1,536	\$384	\$0.57	\$0	\$1,210	\$1.80	\$1,210	
TC 40%	\$570	LH/50%	\$712	1	1	1	673	\$570	\$43	\$527	(\$0)	\$0.78	\$527	\$527	\$527	\$527	\$0.78	\$0	\$1,210	\$1.80	\$1,210	
TC 40%	\$570			2	1	1	673	\$570	\$43	\$527	(\$0)	\$0.78	\$527	\$1,054	\$1,054	\$527	\$0.78	\$0	\$1,210	\$1.80	\$1,210	
TC 50%	\$712			16	1	1	673	\$712	\$43	\$669	(\$0)	\$0.99	\$669	\$10,704	\$10,704	\$669	\$0.99	\$0	\$1,210	\$1.80	\$1,210	
TC 60%	\$855			23	1	1	673	\$855	\$43	\$812	(\$0)	\$1.21	\$812	\$18,676	\$18,676	\$812	\$1.21	\$0	\$1,210	\$1.80	\$1,210	
TC 70%	\$997			4	1	1	673	\$997	\$43	\$954	(\$0)	\$1.42	\$954	\$3,816	\$3,816	\$954	\$1.42	\$0	\$1,210	\$1.80	\$1,210	
TC 80%	\$1,140			3	1	1	673	\$1,140	\$43	\$1,097	(\$0)	\$1.63	\$1,097	\$3,291	\$3,291	\$1,097	\$1.63	\$0	\$1,210	\$1.80	\$1,210	
MR				7	1	1	673	\$0	\$43		NA	\$1.78	\$1,200	\$8,400	\$8,400	\$1,200	\$1.78	NA	\$1,200	\$1.78	\$1,210	
TC 20%	\$342	30%/30%	\$513	1	2	1	869	\$342	\$56	\$286	\$0	\$0.33	\$286	\$286	\$286	\$286	\$0.33	\$0	\$1,450	\$1.67	\$1,450	
TC 30%	\$513	30%/30%	\$513	1	2	1	869	\$513	\$56	\$457	\$0	\$0.53	\$457	\$457	\$457	\$457	\$0.53	\$0	\$1,450	\$1.67	\$1,450	
TC 40%	\$684	LH/50%	\$855	1	2	1	869	\$684	\$56	\$628	\$0	\$0.72	\$628	\$628	\$628	\$628	\$0.72	\$0	\$1,450	\$1.67	\$1,450	
TC 50%	\$855			4	2	1	869	\$855	\$56	\$799	\$0	\$0.92	\$799	\$3,196	\$3,196	\$799	\$0.92	\$0	\$1,450	\$1.67	\$1,450	
TC 60%	\$1,026			6	2	1	869	\$1,026	\$56	\$970	\$0	\$1.12	\$970	\$5,820	\$5,820	\$970	\$1.12	\$0	\$1,450	\$1.67	\$1,450	
TC 70%	\$1,197			1	2	1	869	\$1,197	\$56	\$1,141	\$0	\$1.31	\$1,141	\$1,141	\$1,141	\$1,141	\$1.31	\$0	\$1,450	\$1.67	\$1,450	
TC 80%	\$1,368			2	2	1	869	\$1,368	\$56	\$1,312	\$0	\$1.51	\$1,312	\$2,624	\$2,624	\$1,312	\$1.51	\$0	\$1,450	\$1.67	\$1,450	
MR				4	2	1	869	\$0	\$56		NA	\$1.61	\$1,400	\$5,600	\$5,600	\$1,400	\$1.61	NA	\$1,400	\$1.61	\$1,450	
TOTALS/AVERAGES:				83				59,779				\$0	\$1.15	\$825	\$68,482	\$68,482	\$825	\$1.15	\$0	\$1,265	\$1.76	\$1,268

ANNUAL POTENTIAL GROSS RENT:	\$821,784	\$821,784
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STABILIZED PRO FORMA

The Residences at Alsbury, Burlison, 9% HTC/MDL #19234

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				PRIOR REPORT		TDHCA				VARIANCE	
	Database	Regional Comps	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT			\$1.15	\$825	\$821,784	\$806,472	\$806,472	\$821,784	\$825	\$1.15		0.0%	\$0	
late fees, app fees, pet fees					\$15.00	\$14,940	14,940							
retained deposits, NSF fees					\$0.00	\$0	0							
Total Secondary Income					\$15.00			14,940	\$14,940	\$15.00		0.0%	\$0	
POTENTIAL GROSS INCOME						\$836,724	\$821,412	\$821,412	\$836,724			0.0%	\$0	
Vacancy & Collection Loss				7.5% PGI	(62,754)	(61,606)	(61,606)	(62,754)	7.5% PGI			0.0%	-	
Rental Concessions					-	0	0	-				0.0%	-	
EFFECTIVE GROSS INCOME						\$773,970	\$759,806	\$759,806	\$773,970			0.0%	\$0	

General & Administrative	\$31,575	\$380/Unit	\$36,208	\$436	3.82%	\$0.50	\$357	\$29,597	\$34,110	\$31,575	\$31,575	\$380	\$0.53	4.08%	-6.3%	(1,978)
Management	\$31,085	4.3% EGI	\$31,702	\$382	5.00%	\$0.65	\$466	\$38,698	\$37,990	\$37,990	\$38,698	\$466	\$0.65	5.00%	0.0%	(0)
Payroll & Payroll Tax	\$105,985	\$1,276.93/Unit	\$115,461	\$1,391	12.75%	\$1.65	\$1,189	\$98,685	\$98,853	\$105,985	\$105,985	\$1,277	\$1.77	13.69%	-6.9%	(7,300)
Repairs & Maintenance	\$59,674	\$719/Unit	\$49,925	\$602	6.43%	\$0.83	\$600	\$49,800	\$49,800	\$49,800	\$49,800	\$600	\$0.83	6.43%	0.0%	-
Electric/Gas	\$16,200	\$195/Unit	\$14,441	\$174	2.71%	\$0.35	\$253	\$20,981	\$20,750	\$14,441	\$14,441	\$174	\$0.24	1.87%	45.3%	6,540
Water, Sewer, & Trash	\$61,364	\$739/Unit	\$59,766	\$720	7.05%	\$0.91	\$657	\$54,550	\$53,950	\$59,766	\$59,766	\$720	\$1.00	7.72%	-8.7%	(5,216)
Property Insurance	\$23,285	\$0.39/sf	\$25,823	\$311	3.49%	\$0.45	\$325	\$26,975	\$21,128	\$23,285	\$26,975	\$325	\$0.45	3.49%	0.0%	-
Property Tax (@ 100%) 2.8770	\$58,453	\$704/Unit	\$63,511	\$765	11.80%	\$1.53	\$1,100	\$91,300	\$93,687	\$92,264	\$94,446	\$1,138	\$1.58	12.20%	-3.3%	(3,146)
Reserve for Replacements	\$31,770	\$383/Unit	\$22,081	\$266	2.68%	\$0.35	\$250	\$20,750	\$20,750	\$20,750	\$20,750	\$250	\$0.35	2.68%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)			\$3,176	\$38	0.37%	\$0.05	\$35	\$2,880	\$2,880	\$2,880	\$2,880	\$35	\$0.05	0.37%	0.0%	-
TDHCA Direct Loan Compliance Fees (\$34/MDL unit)			\$0	\$0	0.06%	\$0.01	\$6	\$473	\$473	\$374	\$374	\$5	\$0.01	0.05%	26.5%	99
TOTAL EXPENSES					56.16%	\$7.27	\$5,237	\$ 434,689	\$434,371	\$439,111	\$445,691	\$5,370	\$7.46	57.59%	-2.5%	\$ (11,002)
NET OPERATING INCOME ("NOI")					43.84%	\$5.68	\$4,088	\$339,281	\$325,435	\$320,695	\$328,279	\$3,955	\$5.49	42.41%	3.4%	\$ 11,002

CONTROLLABLE EXPENSES		\$3,056/Unit										\$3,151/Unit				
------------------------------	--	--------------	--	--	--	--	--	--	--	--	--	--------------	--	--	--	--

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

The Residences at Alsbury, Burleson, 9% HTC/MDL #19234

DEBT / GRANT SOURCES																		
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									Prior Underwriting		AS UNDERWRITTEN DEBT/GRANT STRUCTURE							
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative		
		UW	App						Applicant	TDHCA						DCR	LTC	
Truist Bank		1.34	1.38	245,242	4.80%	35	15	\$4,153,796	\$3,375,000	\$3,375,000	\$4,153,796	15	35	4.80%	\$245,242	1.38	23.1%	
TDHCA		1.11	1.15	\$49,785	2.50%	30	15	\$1,050,000	\$1,050,000	\$1,050,000	\$1,050,000	15.5	30	2.50%	\$49,785	1.15	5.8%	
CASH FLOW DEBT / GRANTS																		
JGR		1.11	1.15		0.00%	0	0	\$53,550	\$53,550	\$53,550	\$53,550	0	0	0.00%		1.15	0.3%	
City of Burleson		1.11	1.15		0.00%	0	0	\$500	\$500	\$500	\$500	0	0	0.00%		1.15	0.0%	
				\$295,027	TOTAL DEBT / GRANT SOURCES				\$5,257,846		\$5,257,846	TOTAL DEBT SERVICE				\$295,028	1.15	29.3%
NET CASH FLOW		\$33,252	\$44,254							APPLICANT	NET OPERATING INCOME	\$339,281	\$44,253	NET CASH FLOW				

EQUITY SOURCES														
APPLICANT'S PROPOSED EQUITY STRUCTURE						Prior Underwriting		AS UNDERWRITTEN EQUITY STRUCTURE						
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method	
						Applicant	TDHCA						Applicant Request	Total Developer Fee
Wells Fargo	LIHTC Equity	65.8%	\$1,194,300	0.99	\$11,811,746	\$11,046,170	\$11,046,170	\$11,822,388	\$0.99	\$1,194,300	65.8%	\$14,389	Applicant Request	
Overland Property Group	Deferred Developer Fees	4.9%	(51% Deferred)		\$888,140	\$673,974	\$673,974	\$877,498	(50% Deferred)		4.9%		Total Developer Fee: \$1,744,500	
Additional (Excess) Funds Req'd		0.0%						\$0			0.0%			
TOTAL EQUITY SOURCES					70.7%	\$12,699,886	\$11,720,144	\$11,720,144	\$12,699,886			70.7%		
TOTAL CAPITALIZATION						\$17,957,732	\$16,199,194	\$16,199,194	\$17,957,732				15-Yr Cash Flow after Deferred Fee:	\$47,444

DEVELOPMENT COST / ITEMIZED BASIS																
APPLICANT COST / BASIS ITEMS					Prior Underwriting		TDHCA COST / BASIS ITEMS					COST VARIANCE				
Acquisition	New Const. Rehab	Total Costs			Applicant	TDHCA	Total Costs			New Const. Rehab	Acquisition	%	\$			
		Eligible Basis	Eligible Basis	Eligible Basis												
Land Acquisition		\$18,072 / Unit	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$18,072 / Unit			0.0%	\$0				
Building Acquisition	\$0	\$ / Unit	\$0	\$0	\$0	\$0	\$0	\$ / Unit		\$0	0.0%	\$0				
Off-Sites		\$ / Unit	\$0	\$0	\$0	\$0	\$0	\$ / Unit			0.0%	\$0				
Site Work	\$1,906,397	\$22,969 / Unit	\$1,906,397	\$1,396,025	\$1,396,025	\$1,906,397	\$22,969 / Unit	\$1,906,397			0.0%	\$0				
Site Amenities	\$270,729	\$3,262 / Unit	\$270,729	\$681,869	\$681,869	\$270,729	\$3,262 / Unit	\$270,729			0.0%	\$0				
Building Cost	\$8,131,576	\$136.03 /sf	\$97,971/Unit	\$8,131,576	\$6,543,288	\$6,543,288	\$8,131,576	\$97,971/Unit	\$136.03 /sf	\$8,131,576	0.0%	\$0				
Contingency	\$657,277	6.38%	6.38%	\$657,277	\$491,608	\$491,608	\$657,277	6.38%	6.38%	\$657,277	0.0%	\$0				
Contractor Fees	\$1,442,403	13.15%	13.15%	\$1,442,403	\$1,236,503	\$1,236,503	\$1,442,403	13.15%	13.15%	\$1,442,403	0.0%	\$0				
Soft Costs	0	\$948,889	\$11,734 / Unit	\$973,889	\$1,022,094	\$1,022,094	\$973,889	\$11,734 / Unit	\$948,889	\$0	0.0%	\$0				
Financing	0	\$596,015	\$11,729 / Unit	\$973,522	\$937,196	\$937,196	\$973,522	\$11,729 / Unit	\$596,015	\$0	0.0%	\$0				
Developer Fee	\$0	\$1,744,500	12.50%	12.50%	\$1,744,500	\$1,822,188	\$1,790,540	\$1,744,500	12.50%	\$1,744,500	0.0%	\$0				
Reserves		6 Months	\$357,439	\$357,439	\$357,439	\$357,439	6 Months				0.0%	\$0				
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)					\$0	\$15,697,786	\$216,358 / Unit	\$17,957,732	\$16,199,194	\$15,956,563	\$17,957,732	\$216,358 / Unit	\$15,697,786	\$0	0.0%	\$0
Acquisition Cost	\$0			\$0	\$0											
Contingency		\$0		\$0	\$0											
Contractor's Fee		\$0		\$0	\$0											
Financing Cost		\$0														
Developer Fee	\$0	\$0		\$0	\$0											
Reserves		\$0		\$0	\$0											
ADJUSTED BASIS / COST					\$0	\$15,697,786	\$216,358/unit	\$17,957,732	\$16,199,194	\$17,957,732	\$216,358/unit	\$15,697,786	\$0	0.0%	\$0	
TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):								\$17,957,732								

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

The Residences at Alsbury, Burlison, 9% HTC/MDL #19234

	CREDIT CALCULATION ON QUALIFIED BASIS			
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$0	\$15,697,786	\$0	\$15,697,786
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$15,697,786	\$0	\$15,697,786
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$0	\$20,407,122	\$0	\$20,407,122
Applicable Fraction	86.30%	86.30%	86.30%	86.30%
TOTAL QUALIFIED BASIS	\$0	\$17,612,276	\$0	\$17,612,276
Applicable Percentage	3.42%	9.00%	3.42%	9.00%
ANNUAL CREDIT ON BASIS	\$0	\$1,585,105	\$0	\$1,585,105
CREDITS ON QUALIFIED BASIS	\$1,585,105		\$1,585,105	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.9899	Variance to Request	
			Credit Allocation	Credits	Proceeds
Eligible Basis	\$1,585,105	\$15,690,969	----	----	----
Needed to Fill Gap	\$1,282,945	\$12,699,886	----	----	----
Applicant Request	\$1,194,300	\$11,822,388	\$1,194,300	\$0	\$0

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost:	Elevator Served	59,779 SF	\$89.61	5,356,595
Adjustments				
Exterior Wall Finish	2.48%		2.22	\$132,844
Elderly	3.00%		2.69	160,698
9-Ft. Ceilings	3.31%		2.97	177,303
Roof Adjustment(s)			(0.25)	(14,945)
Subfloor			(0.86)	(51,410)
Floor Cover			2.66	158,964
Enclosed Corridors	\$81.16	11,817	16.04	959,028
Balconies	\$25.89	1,465	0.63	37,929
Plumbing Fixtures	\$1,020	0	0.00	0
Rough-ins	\$500	166	1.39	83,000
Built-In Appliances	\$1,730	83	2.40	143,590
Exterior Stairs	\$2,280	4	0.15	9,120
Heating/Cooling			2.21	132,112
Storage Space	\$81.16	0	0.00	0
Carports	\$12.25	0	0.00	0
Garages		0	0.00	0
Common/Support Area	\$110.92	11,434	21.22	1,268,259
Elevators	\$81,000	2	2.71	162,000
Other:			0.00	0
Fire Sprinklers	\$2.59	83,030	3.60	215,048
SUBTOTAL			149.39	8,930,135
Current Cost Multiplier	0.99		(1.49)	(89,301)
Local Multiplier	0.87		(19.42)	(1,160,917)
Reserved				0
TOTAL BUILDING COSTS			128.47	\$7,679,916
Plans, specs, survey, bldg permits	3.30%		(4.24)	(\$253,437)
Contractor's OH & Profit	11.50%		(14.77)	(883,190)
NET BUILDING COSTS		\$78,835/unit	\$109.46/sf	\$6,543,288

Long-Term Pro Forma

The Residences at Alsbury, Burleson, 9% HTC/MDL #19234

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$773,970	\$789,449	\$805,238	\$821,343	\$837,770	\$924,965	\$1,021,237	\$1,127,528	\$1,244,882	\$1,374,450	\$1,517,504
TOTAL EXPENSES	3.00%	\$434,689	\$447,343	\$460,368	\$473,777	\$487,579	\$562,926	\$650,033	\$750,748	\$867,211	\$1,001,900	\$1,157,684
NET OPERATING INCOME ("NOI")		\$339,281	\$342,106	\$344,870	\$347,566	\$350,190	\$362,039	\$371,203	\$376,779	\$377,670	\$372,550	\$359,820
EXPENSE/INCOME RATIO		56.2%	56.7%	57.2%	57.7%	58.2%	60.9%	63.7%	66.6%	69.7%	72.9%	76.3%
MUST -PAY DEBT SERVICE												
TOTAL DEBT SERVICE		\$295,028	\$295,028	\$295,028	\$295,028	\$295,028	\$295,028	\$295,028	\$295,028	\$295,028	\$295,028	\$295,028
DEBT COVERAGE RATIO		1.15	1.16	1.17	1.18	1.19	1.23	1.26	1.28	1.28	1.26	1.22
ANNUAL CASH FLOW												
		\$44,253	\$47,079	\$49,842	\$52,538	\$55,163	\$67,012	\$76,176	\$81,752	\$82,643	\$77,522	\$64,792
Deferred Developer Fee Balance		\$833,245	\$786,166	\$736,324	\$683,786	\$628,623	\$316,348	\$0	\$0	\$0	\$0	\$0
CUMULATIVE NET CASH FLOW		\$0	\$0	\$0	\$0	\$0	\$0	\$47,444	\$446,690	\$860,243	\$1,260,796	\$1,613,618

February 3, 2020

Lee Ann Chance
TDHCA Asset Management Division
PO Box 13941
Austin, TX 78711

RE: Application Amendment for 19234 The Residences at Alsbury

Dear Ms. Chance:

Please find the attached application amendment for HTC 19234 The Residences at Alsbury in Burleson. This amendment concerns minor modifications to the site plan and a reduction to total common area square footage. These changes are being requested due to required additional tiered retaining walls that were not foreseeable at the time of Application. These changes are necessary due to site topography and soils. The good cause for the change is for improved and proper site design and to keep affordable units in Burleson.

Modification to Site Plan

At Application, initial engineering required a retaining wall to be built near the southern boundary of the property due to the topography of the site. After subsequent engineering and soils testing, additional retaining walls were required on the west side of the property and all walls would need to be tiered in construction instead of one tall wall. The tiered walls require more space between the building and property lines, which slightly shifts the building to the north and east. In order to accommodate setbacks and parking, this change also slightly reduces the building footprint. The number of buildings and total parking spaces remain the same.

Additionally, at Application, detention ponds were planned on the site. Subsequent to Application, a flood study (attached) was conducted which concluded that there is sufficient capacity in two drainage catch basins adjacent to the site at Alsbury Rd and Ridgehill Drive and therefore onsite detention ponds are not required. This amendment removes the detention ponds and grades the site towards the catch basins. The study and current site plan has been submitted to the City of Burleson and is anticipated to be approved.

Reduction in Common Area

Because the building footprint was reduced, there is an overall decrease in common area. Approximately 9 inches were removed from the corridor areas, approximately 30 feet was removed from the center section of the building, and some corners were reconfigured. Including corridors, there were 19,664 square feet of tenant common area at Application, which has been reduced to 17,910 square feet of common area in this Amendment, which is a reduction of 8.9%. The size and number of units did not change from Application.

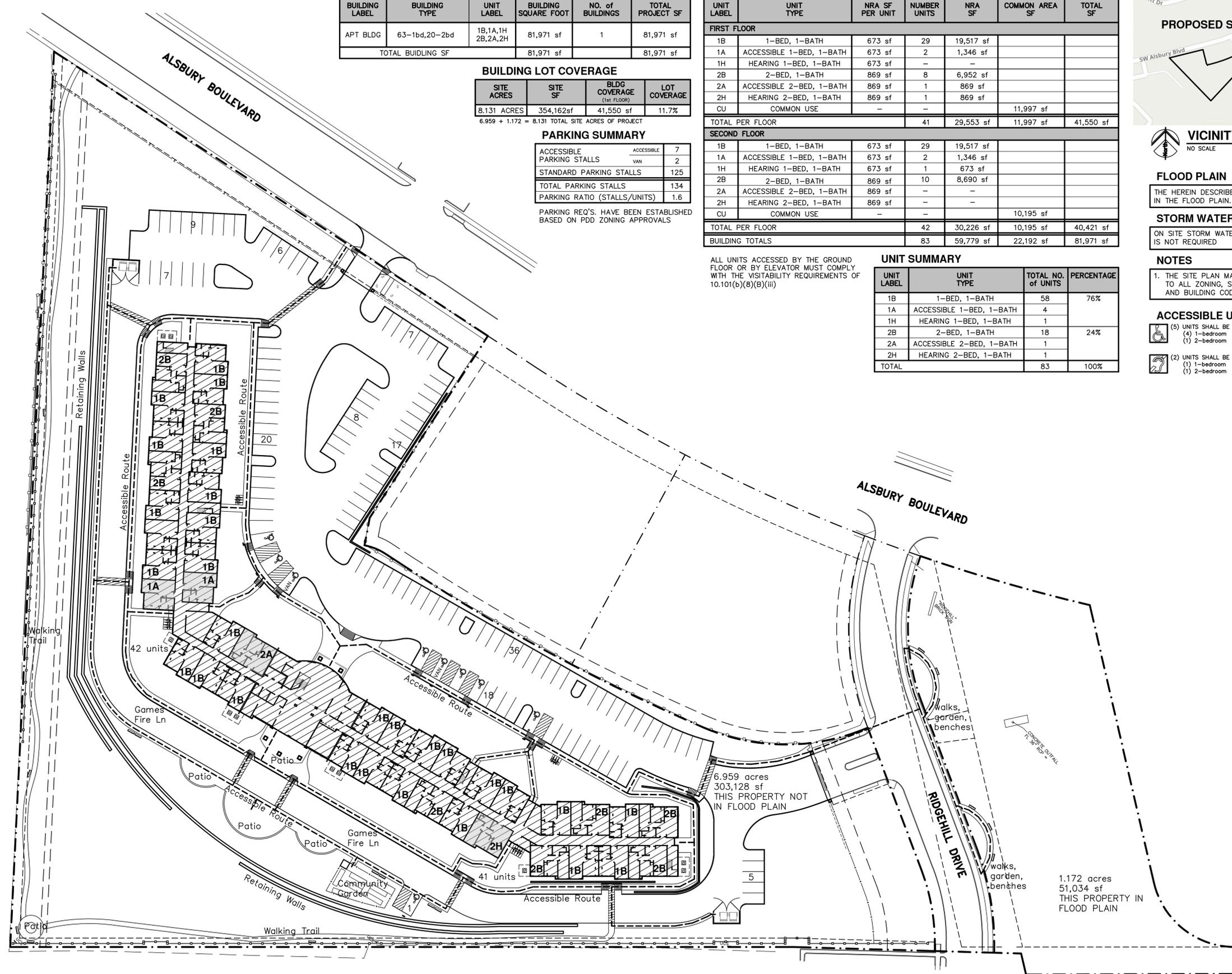
Please see the revised architectural drawings. Please also see the revised financing exhibits that reflect the current costs for the development.

Thank you for your attention and please contact me at 512-789-1295 with any questions.

Regards,

A handwritten signature in black ink, appearing to be 'Alyssa', with a long horizontal line extending to the right.

Alyssa Carpenter



PROJECT SUMMARY

BUILDING LABEL	BUILDING TYPE	UNIT LABEL	BUILDING SQUARE FOOT	NO. of BUILDINGS	TOTAL PROJECT SF
APT BLDG	63-1bd,20-2bd	1B,1A,1H 2B,2A,2H	81,971 sf	1	81,971 sf
TOTAL BUILDING SF			81,971 sf		81,971 sf

BUILDING LOT COVERAGE

SITE ACRES	SITE SF	BLDG COVERAGE (1st FLOOR)	LOT COVERAGE
8.131 ACRES	354,162sf	41,550 sf	11.7%

6.959 + 1.172 = 8.131 TOTAL SITE ACRES OF PROJECT

PARKING SUMMARY

ACCESSIBLE PARKING STALLS	ACCESSIBLE	7
	VAN	2
STANDARD PARKING STALLS		125
TOTAL PARKING STALLS		134
PARKING RATIO (STALLS/UNITS)		1.6

PARKING REQ'S. HAVE BEEN ESTABLISHED BASED ON PDD ZONING APPROVALS

BUILDING SUMMARY

UNIT LABEL	UNIT TYPE	NRA SF PER UNIT	NUMBER UNITS	NRA SF	COMMON AREA SF	TOTAL SF
FIRST FLOOR						
1B	1-BED, 1-BATH	673 sf	29	19,517 sf		
1A	ACCESSIBLE 1-BED, 1-BATH	673 sf	2	1,346 sf		
1H	HEARING 1-BED, 1-BATH	673 sf	-	-		
2B	2-BED, 1-BATH	869 sf	8	6,952 sf		
2A	ACCESSIBLE 2-BED, 1-BATH	869 sf	1	869 sf		
2H	HEARING 2-BED, 1-BATH	869 sf	1	869 sf		
CU	COMMON USE	-	-	-	11,997 sf	
TOTAL PER FLOOR			41	29,553 sf	11,997 sf	41,550 sf
SECOND FLOOR						
1B	1-BED, 1-BATH	673 sf	29	19,517 sf		
1A	ACCESSIBLE 1-BED, 1-BATH	673 sf	2	1,346 sf		
1H	HEARING 1-BED, 1-BATH	673 sf	1	673 sf		
2B	2-BED, 1-BATH	869 sf	10	8,690 sf		
2A	ACCESSIBLE 2-BED, 1-BATH	869 sf	-	-		
2H	HEARING 2-BED, 1-BATH	869 sf	-	-		
CU	COMMON USE	-	-	-	10,195 sf	
TOTAL PER FLOOR			42	30,226 sf	10,195 sf	40,421 sf
BUILDING TOTALS			83	59,779 sf	22,192 sf	81,971 sf

ALL UNITS ACCESSED BY THE GROUND FLOOR OR BY ELEVATOR MUST COMPLY WITH THE VISITABILITY REQUIREMENTS OF 10.101(b)(8)(B)(iii)

UNIT SUMMARY

UNIT LABEL	UNIT TYPE	TOTAL NO. of UNITS	PERCENTAGE
1B	1-BED, 1-BATH	58	76%
1A	ACCESSIBLE 1-BED, 1-BATH	4	
1H	HEARING 1-BED, 1-BATH	1	
2B	2-BED, 1-BATH	18	24%
2A	ACCESSIBLE 2-BED, 1-BATH	1	
2H	HEARING 2-BED, 1-BATH	1	
TOTAL		83	100%



VICINITY PLAN
NO SCALE

FLOOD PLAIN

THE HEREIN DESCRIBED PROPERTY IS IN THE FLOOD PLAIN.

STORM WATER RETENTION

ON SITE STORM WATER RETENTION IS NOT REQUIRED

NOTES

1. THE SITE PLAN MATERIALLY ADHERES TO ALL ZONING, SITE DEVELOPMENT, AND BUILDING CODE ORDINANCES.

ACCESSIBLE UNIT SYMBOLS

(5) UNITS SHALL BE HANDICAP ACCESSIBLE
(4) 1-bedroom
(1) 2-bedroom

(2) UNITS SHALL BE HEARING & VISION IMPAIRED ACCESSIBLE
(1) 1-bedroom
(1) 2-bedroom

SITE PLAN
1"=40'-0"



COMMON SPACE CONDITIONED SPACES

AREA	CONDITIONED SF	UN-CONDITIONED SF	TOTAL
FIRST FLOOR			11,997 sf
TENANT COMMON USE			9,358 sf
COMMUNITY ROOM	934 sf		
DINING ROOM	822 sf		
PANTRY	155 sf		
HALLS	7,214sf		
TOILETS	113 sf		
ELEVATOR		120 sf	
RESTRICTED USE			2,639 sf
OFFICES	638 sf		
KITCHEN	545 sf		
STORAGE	673 sf		
ELEV. EQUIPMENT	156 sf		
MECHANICAL		557 sf	
JANITOR		70 sf	
SECOND FLOOR			10,195 sf
TENANT COMMON USE			8,552sf
WELLNESS SCREENING	250 sf		
TV LOUNGE	629 sf		
MULTI-PURPOSE/FITNESS	684 sf		
HALLS	6,756 sf		
TOILETS	113 sf		
ELEVATOR		120 sf	
RESTRICTED USE			1,643 sf
STAFF	900 sf		
MECHANICAL		686 sf	
JANITOR		57 sf	

BUILDING SUMMARY

UNIT LABEL	UNIT TYPE	NRA SF PER UNIT	NUMBER UNITS	NRA SF	COMMON AREA SF	TOTAL SF
FIRST FLOOR						
1B	1-BED, 1-BATH	673 sf	29	19,517 sf		
1A	ACCESSIBLE 1-BED, 1-BATH	673 sf	2	1,346 sf		
1H	HEARING 1-BED, 1-BATH	673 sf	-	-		
2B	2-BED, 1-BATH	869 sf	8	6,952 sf		
2A	ACCESSIBLE 2-BED, 1-BATH	869 sf	1	869 sf		
2H	HEARING 2-BED, 1-BATH	869 sf	1	869 sf		
CU	COMMON USE	-	-	-	11,997 sf	
TOTAL PER FLOOR			41	29,553 sf	11,997 sf	41,550 sf
SECOND FLOOR						
1B	1-BED, 1-BATH	673 sf	29	19,517 sf		
1A	ACCESSIBLE 1-BED, 1-BATH	673 sf	2	1,346 sf		
1H	HEARING 1-BED, 1-BATH	673 sf	1	673 sf		
2B	2-BED, 1-BATH	869 sf	10	8,690 sf		
2A	ACCESSIBLE 2-BED, 1-BATH	869 sf	-	-		
2H	HEARING 2-BED, 1-BATH	869 sf	-	-		
CU	COMMON USE	-	-	-	10,195 sf	
TOTAL PER FLOOR			42	30,226 sf	10,195 sf	40,421 sf
BUILDING TOTALS			83	59,779 sf	22,192 sf	81,971 sf

ACCESSIBLE UNIT SYMBOLS

- (5) UNITS SHALL BE HANDICAP ACCESSIBLE
 - (4) 1-bedroom
 - (1) 2-bedroom
- (2) UNITS SHALL BE HEARING & VISION IMPAIRED ACCESSIBLE
 - (1) 1-bedroom
 - (1) 2-bedroom

ALL UNITS ACCESSED BY THE GROUND FLOOR OR BY ELEVATOR MUST COMPLY WITH THE VISIBILITY REQUIREMENTS OF 10.101(b)(8)(B)(iii)



FLOOR ELEVATION: 110'-5 7/8"
CEILING HEIGHT: 9'-0"

FLOOR ELEVATION: 100'-0"
CEILING HEIGHT: 9'-0"

SECOND FLOOR PLAN
1"=30'-0" 40,421 SF

FIRST FLOOR PLAN
1"=30'-0" 41,550 SF

1c

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Crestview Apartments (HTC #96182)

RECOMMENDED ACTION

WHEREAS, Crestview Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 1996 and HOME Loan award in 1997 to construct 40 multifamily units in Longview, Gregg County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a 90-day ROFR period, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

WHEREAS, in 2015, the 84th Texas Legislature, Regular Session, amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, Crestview Apartments Partnership Ltd (the Development Owner or Owner) requests to amend the LURA for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Crestview Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Crestview Apartments received a 9% Housing Tax Credit (HTC) award in 1996 and a HOME loan award in 1997 to construct 40 multifamily units in Longview, Gregg County. In a letter dated March 11, 2020, Joyce Middleton, General Partner of the Development Owner, Crestview Apartments Partnership Ltd, requested approval to amend the HTC LURA related to the ROFR provision.

The Housing Tax Credit application allotted three points to the Development Owner in exchange for a 90-day ROFR period, to a qualified nonprofit entity or the tenants. Upon completion of the Development, the Owner entered into a LURA recorded in Gregg County on December 30, 1998, later amended and recorded on February 16, 2000.

The additional use restrictions in the current HTC LURA would require, among other things, a 90-day ROFR to sell the Development to a qualified nonprofit entity or the tenants. The Development is currently in the 23rd year of the 25-year Compliance Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the 84th Texas Legislature, Regular Session, passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on March 17, 2020, at the Development's onsite office/community clubhouse. The public hearing minutes report no negative comments received regarding the requested amendment and zero tenants having attended.

Staff recommends approval of the material LURA amendment as presented herein.

CRESTVIEW APARTMENTS PARTNERSHIP, LTD.
107 Crosby Street
Mansfield, Louisiana 71052

March 11, 2020

VIA HAND DELIVERY

Mr. Kent Bedell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 96182; Crestview Apartments (the "**Property**")

Dear Mr. Bedell:

The undersigned, being the General Partner (herein so called) of Crestview Apartments Partnership, Ltd., a Louisiana limited partnership (the "**Partnership**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the 90-day Right of First Refusal ("**ROFR**") period.

Request to Amend ROFR Period

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a 90-day ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the 90-day ROFR period and replace it with the 180-day ROFR period.

LURA Amendment

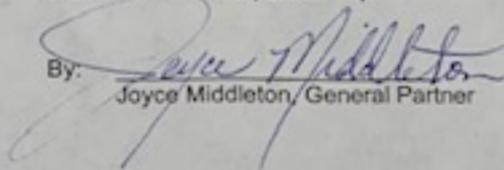
In accordance with Section 10.405(b) of the Rules, the Partnership, is delivering a fee in the amount of \$2500. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to these proposed amendments. The Partnership will proceed to set a date and time for the public hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership requests staff recommendation in support of this request to be considered at the next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

CRESTVIEW APARTMENTS PARTNERSHIP, LTD.
a Louisiana limited partnership

By:

A handwritten signature in cursive script, appearing to read "Joyce Middleton", written over a horizontal line.

Joyce Middleton, General Partner

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Highland Oaks Apartments (HTC #00179)

RECOMMENDED ACTION

WHEREAS, Highland Oaks Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2000 to construct 76 multifamily units in Floresville, Wilson County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

WHEREAS, in 2015, the 84th Texas Legislature, Regular Session, amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, Floresville Apartment Venture Limited Partnership (the Development Owner or Owner) requests to amend the LURA for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Highland Oaks Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Highland Oaks Apartments received a 9% Housing Tax Credit award in 2000 to construct 76 multifamily units (58 of which are HTC) in Floresville, Wilson County. In a letter dated February 7, 2020, Lacy M. Gilbert, President of Floresville Apartment GP, LLC, the General Partner of Floresville Apartment Venture Limited Partnership, the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2000, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a LURA recorded in Wilson County on November 14, 2002.

As approved in 2000, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), to a tenant organization or to the Department, if at any time after the 15th year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 18th year of the 25-year Compliance Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the 84th Texas Legislature, Regular Session, passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on February 19, 2020, at the Development's onsite office/community clubhouse. The public hearing minutes report no negative comments received regarding the requested amendment, as it is reported there were zero resident attendees.

Staff recommends approval of the material LURA amendment as presented herein.

February 7, 2020

Via Federal Express
and Email: dee.patience@tdhca.state.tx.us

Dee Patience
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

RE: TDHCA File No. 00179 Highland Oaks Apartments of Floresville (the
“Property”)

Dear Ms. Patience:

The undersigned, being the General Partner (herein so called) of Floresville Apartment Venture Limited Partnership, a Texas limited partnership (the “Partnership”), and the current owner of the Property, hereby submits this letter to request a material LURA amendment in accordance with Section 10.405(b) of the Rules for the reasons set forth below.

Background Information and Request

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day Right of First Refusal (“ROFR”) period, resyndication, and the sale to qualified entities. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(F) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore, the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period, also permitting resyndication and sale to qualified entities.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the General Partner, acting on behalf of the Partnership, is delivering a fee in the amount of \$2,500. In addition, the General Partner, acting on behalf of the Partnership, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the General Partner, acting on behalf of the Partnership, will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the General Partner, acting on behalf of the Partnership, requests

Texas Department of Housing and Community Affairs
February 7, 2020
Page 2

staff recommendation, in support of this request, to be considered at the next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

Floresville Apartment GP, LLC,
a Texas limited liability company

By: Lacy M. Gilbert
Name: LACY M GILBERT
Title: PRESIDENT

1d

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

APRIL 23, 2020

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application and Land Use Restriction Agreement for Columbia Luxar Townhomes (HTC #97167)

RECOMMENDED ACTION

WHEREAS, Columbia Luxar Townhomes (the Development) received an award of 9% Housing Tax Credits (HTCs) in 1997 for the new construction of 125 units of multifamily housing in Dallas, Dallas County;

WHEREAS, the Application was awarded five points under the 1997 Qualified Allocation Plan (QAP) for Participation of Local Tax Exempt Organizations for the provision of special supportive services that would not otherwise be available to tenants, and this requirement is reflected in the Land Use Restriction Agreement (LURA) for the Development;

WHEREAS, the LURA for the Development states that, throughout the Compliance Period, an After School Education Enrichment Program is to be provided by a Local Tax Exempt Organization;

WHEREAS, Kiest Townhomes, L.P. (the Development Owner or Owner) requests approval for a substantive modification to the scope of the supportive services referenced in the LURA by replacing the requirement for After School Education Enrichment Program with the following new supportive services: annual health fair; twice monthly on site social events; twice monthly on site arts, crafts and other recreational activities; annual income tax preparation; and notary to be provided by on-site staff;

WHEREAS, Board approval is required for a substantive modification of the scope of tenant services as directed in Tex. Gov't Code §2306.6712(d)(3) and 10 TAC §10.405(a)(4)(C), and the Owner has complied with the amendment and notification requirements as directed in 10 TAC §10.405(b); and

WHEREAS, the requested changes do not negatively affect the Development;

NOW, therefore, it is hereby

RESOLVED, that the requested material amendment to the Application and LURA for Columbia Luxar Townhomes is approved as presented at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

Columbia Luxar Townhomes received a 9% HTC award in 1997 for the new construction of 125 multifamily units (all 125 HTC) in Dallas, Dallas County. In a letter dated February 27, 2020, Malaika Taylor, representative of the Development Owner, requested approval to amend the requirement from the Application and reflected in the LURA related to the provision of supportive services by a Local Tax Exempt Organization.

In 1997, the Development Owner received five points for having an executed agreement with a Local Tax Exempt Organization for the provision of special supportive services, and this requirement is reflected in the LURA. Specifically, the LURA requires that a Local Tax Exempt Organization, which was University of North Texas at the time of filing of the LURA, provide an After School Education Enrichment Program. The Owner is required by the LURA to notify the Department of any change in the status or role of such Local Tax Exempt organization with respect to the Development or if such organization is proposed to be replaced by a different qualified Tax Exempt Organization. The LURA requires that the supportive services be provided throughout the 25-year Compliance Period, which ends on December 31, 2024.

The Owner has requested to amend the LURA by removing After School Education Enrichment Program as the offered supportive service and by removing University of North Texas as the service provider. The Owner proposes to contract with a different Local Tax Exempt Organization for the provision of the following supportive services: annual health fair; twice monthly on site social events; twice monthly on site arts, crafts and other recreational activities; and annual income tax preparation. In addition, the Owner proposes to have on-site management company staff offer on-site notary service. These five supportive services have a value of one point each in the 2020 QAP, totaling five points, which is equivalent to the five-point value attributed in the 1997 Application to the After School Education Enrichment Program that the Owner is proposing to replace. The 1997 QAP did not have a list of optional supportive services from which an applicant could choose. The Owner representative reported that they have selected Hope Housing Foundation as the Local Tax Exempt Organization to provide supportive services, but the Owner does not want to engage a contract with the new provider until after Department approval of the requested change.

The Development Owner representative stated that the reason for this request is that participation in the After School Education Enrichment Program is insufficient to sustain the program, as there has been an increase in the number of after school programs in the local schools. The Owner representative indicated that this change was not foreseeable and that the

requested changes do not have a financial impact on the Development. The requested change would not have affected the selection of the Application in the Application Round.

The Development Owner has complied with the amendment and notification requirements under 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on March 7, 2020, at a public recreation center 2.5 miles from the Development. It was reported that there were no negative public comments regarding the requested amendment.

Staff recommends approval of the requested material Application and LURA amendment as presented herein.



February 27, 2020

Laura DeBellas
Senior Asset Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Revise Required Community Supportive Services at
Kiest Townhomes, LP – 3120 Guadalupe Ave, Dallas, TX 75233

Dear Ms. DeBellas,

The purpose of this letter is to request permission to revise the required Community Supportive Services at Kiest Townhomes, LP. Specifically, discontinue on-site after-school care and implement notary service and on-site social events. Participation in the after-school program is insufficient. The lack of participation may be related to an increased number of after school programs offered at our residents' schools. We could not foresee the change in residents' needs. Additionally, the change in service will not have a financial impact.

Enclosed, please find the completed Amendment Request form.

Thank you in advance for your consideration.

Sincerely,

Malaika Taylor
Malaika Taylor
Vice President of Property Management
Columbia Residential

Jonathan Chilson

From: Tonya Hall <thall@columbiaries.com>
Sent: Tuesday, March 10, 2020 2:36 PM
To: Jonathan Chilson
Cc: Bridget Cormier
Subject: RE: Columbia Luxar Townhomes - LURA Amendment
Attachments: 20-QAP-10TAC-Ch11.pdf

Good afternoon Mr. Chilson,

Please see below:

- Notary – 1 point
- Annual Health Fair – 1 point
- Twice monthly on site social events – 1 point
- Twice monthly on site arts, crafts and other recreational activities – 1 point
- Annual Income Tax Preparation (partner with VITA) – 1 point

Best regards,



Celebrating 25 Years

TONYA HALL, HCCP®, COS®, CAM®

Sr. Regional Portfolio Manager

 thall@columbiaries.com

 [504-259-1066](tel:504-259-1066)

1400 Milton Street
New Orleans, LA 70122

 [504-284-4769](tel:504-284-4769) (Office)

 [504-282-2324](tel:504-282-2324) (Fax)

 www.columbiaries.com

From: Jonathan Chilson <jonathan.chilson@tdhca.state.tx.us>

Sent: Tuesday, March 10, 2020 2:04 PM

To: Tonya Hall <thall@columbiaries.com>

Cc: Laura DeBellas <laura.debellas@tdhca.state.tx.us>

Subject: Columbia Luxar Townhomes - LURA Amendment

Hello Tonya,

I am assisting Laura DeBellas with the processing of the Material LURA Amendment for the change of resident supportive services you are requesting for Columbia Luxar Townhomes, which requires Board approval.

I have reviewed the files, and it appears you are removing "After School Education Enrichment Program" by the Local Tax Exempt Organization, University of North Texas. Although the Development's actual application is pending arrival to

us from storage, it appears this was worth five points in the 1997 LURA, as per the 1997 Qualified Action Plan (QAP). Laura conveyed that you have reported that residents are not using it so much because on-campus after-school programs are available to them.

I understand you are going to contract with Hope Housing, a local non-profit, which helps a great deal in attaining the approval in that you will still be contracting with a local non-profit. However, I am writing today to ask you to help me get to understanding where five points of services will be provided.

Since the 1997 QAP did not list points items as specifically as they are now broken down, we will be using the current/2020 QAP to analyze the points. I have attached a copy, and have highlighted on pages 78 and 80 the start and end of the germane points itemization section. We need to get to five points between those highlighted lines, and I am only seeing 3 points that you have itemized.

Notary Service on-site (1 pt)

Annual Health Fair (1 pt)

Arts, Crafts and other recreational activities (twice monthly) (1 pt)

Can you select five points specifically, from within the cited section, which you will provide? I saw in your prior emails with Laura you provided a lengthier list of activities, which to me suggests you might be looking at a point for “(iv) twice monthly on-site social events” which would be one point, and possibly tax preparation which would be your fifth point, but I really need the words to come from you, with a stated intention of providing a set group of services totaling five points.

Feel free to ask any additional questions. Thanks,

Jonathan Chilson, Associate Asset Manager
Phone: 512.475.2014
221 E. 11th Street
Austin, TX 78701-2410
Asset Management Division
Texas Department of Housing & Community Affairs (TDHCA)
jonathan.chilson@tdhca.state.tx.us

About TDHCA

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit www.tdhca.state.tx.us or the [Learn about Fair Housing in Texas](#) page.

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

1e

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount for Sansom Ridge (HTC #16409)

RECOMMENDED ACTION

WHEREAS, Sansom Ridge (the Development) received a 4% Housing Tax Credit (HTC) award in 2016 to construct 100 affordable units in the City of Sansom Park in Tarrant County;

WHEREAS, construction of the Development has been completed, and Sansom Ridge, LP (the Development Owner or Owner) requests, at cost certification, to increase the annual HTC amount to \$714,342, which is 111.14% of \$642,725, the amount of tax credits reflected in the original Determination Notice;

WHEREAS, §42(m)(2) of the Internal Revenue Code allows an increase of tax credits for a bond financed project when the increase is determined necessary as demonstrated through the submission of the cost certification package;

WHEREAS, 10 TAC §10.402(c) requires approval by the Board if an increase to the amount of tax credits exceeds 110% of the amount of credit reflected in the Determination Notice; and

WHEREAS, a review of the cost certification package submitted by the Development Owner supports the need for the additional tax credits requested, and staff has determined that the increase is necessary for the viability of the transaction;

NOW, therefore, it is hereby

RESOLVED, that the housing tax credit increase for Sansom Ridge requested by the Development Owner is approved as presented to this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

Sansom Ridge received a 4% HTC award in 2016 to construct 100 affordable units in the City of Sansom Park in Tarrant County. On August 9, 2016, a Determination Notice was issued with an approved annual tax credit amount of \$642,725. The last residential building in the Development placed in service on January 24, 2018, and the final cost certification was received by the Department on June 24, 2019, following a cost certification extension that extended its deadline from January 15, 2019, to June 30, 2019.

In conjunction with the submission of the cost certification package, William Justin Hartz and Lisa Becker, the representatives for the Development Owner, requested to increase the annual tax credit award to \$714,342, an increase of \$71,617 (11.14%) from the amount reflected in the Determination Notice.

A comparison of the development costs from the time of Application, in 2016, to cost certification indicates that the underwritten total development costs increased by approximately 28%, going from \$15,718,854 at Application to \$20,185,852 at cost certification. The majority of cost increases on this Development were due to increases in off-sites (from \$57,000 at Application to \$584,974 at cost certification, increased over nine times the original total expected cost), site work (from \$1,126,537 at Application to \$3,218,261 at cost certification, a 58% increase), and indirect costs (from \$763,119 at Application to \$1,433,758 at cost certification, an 88% increase). The need for additional financing to balance the cost increases also led to a 57% increase in financing costs (from \$1,416,704 to \$2,228,684).

According to the Owner representative working on the cost certification file, Keith Musanje, the increase in site work was related to the lack of a Geotech report at the time of Application, which led to the Owner's inability to project that the site would require rock substrate. The change required an increase in cost for the substrate layer, a switch from asphalt to more costly concrete driveways, and increases in costs for sidewalks and underground utilities, which all came back higher with higher than original bids.

Increases in off-site costs were due to requirements placed on the Development by the City of Sansom Park (the City) following the submission of the original Application. At the time of Application, the off-site cost breakdown appears to have only included costs associated with an off-site proposed detention pond (rough grading, fine grading, off-site concrete, off-site utilities, landscaping, and fencing). However, at cost certification, a letter was submitted by a third party engineer at Dunaway explaining that the revised off-site costs included an off-site water well and tank for water service that was required by the City to relieve the new pressure on the City of Sansom Park's current water infrastructure as well as roadway improvements based on findings of a traffic impact assessment prepared by Dunaway in coordination with the Texas Department of Transportation (these included a right-turn deceleration lane, closure of an existing median opening, construction of a new left turn lane, and other drainage and lane improvements). The Development shared the overall costs of these improvements with the neighboring Sansom Pointe Senior (HTC #16410), and serviced a lesser share of the improvements based on its smaller number of units.

Increases in indirect costs were mostly due to increases in architectural fees (which according to the Owner representative were based on the architect's fee being tied to a percentage of the total building and site work costs) and permits (which according to the Owner representative were due to the City of Sansom Park changing the permit fee ordinance, increasing the permit fee amount).

Staff's analysis of this transaction at cost certification has concluded that the Development supports a tax credit allocation of the requested amount, which is necessary for the viability of the transaction. This results in an 11.14% increase from the original annual allocation of \$642,725 awarded in the Determination Notice to \$714,342. In accordance with 10 TAC §10.402(c), Board approval is required because the requested tax credit amount exceeds 110% of the HTC amount reflected in the Determination Notice. The Development Owner will be required to submit the Tax-Exempt Bond Credit Increase Request Fee, as required in 10 TAC §11.901(8), for the increase to the HTC amount prior to issuance of Forms 8609.

Staff recommends approval of the increase in the tax credit award as presented herein.

UNIT MIX/RENT SCHEDULE
Sansom Ridge Apartments , Sansom Park, # 16409

LOCATION DATA	
CITY:	Sansom Park
COUNTY:	Tarrant
PROGRAM REGION:	3

UNIT DISTRIBUTION					
# Beds	# Units	% Total	Income	Income	# Units
Eff			30%	30%	0
1	24	24.0%	40%	40%	0
2	48	48.0%	50%	50%	2
3	16	16.0%	60%	60%	98
4	12	12.0%	MR	MR	0
TOTAL	100	100.0%	TOTAL	TOTAL	100

PRO FORMA ASSUMPTIONS	
REVENUE GROWTH:	2.00%
EXPENSE GROWTH:	3.00%
HIGH COST ADJUSTMENT:	130%
APPLICABLE FRACTION:	100.00%
APP % - ACQUISITION:	
APP % - CONSTRUCTION:	3.23%
AVERAGE SF	1,095

UNIT MIX / MONTHLY RENT SCHEDULE																					
HTC		Other	Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market	
TC60%	\$855	0	11	1	1	850	\$855	\$91	\$764	\$0	\$0.90	\$764	\$8,404	\$8,404	\$764	\$9.89	\$0		0.00		
TC50%	\$712	0	1	1	1	850	\$712	\$91	\$621	\$0	\$0.73	\$621	\$621	\$621	\$621	\$0.73	\$0		0.00		
TC60%	\$1,026	0	48	2	2	1,072	\$1,026	\$122	\$904	\$0	\$0.84	\$904	\$43,392	\$43,392	\$904	\$40.48	\$0		0.00		
TC60%	\$1,185	0	16	3	2	1,185	\$1,185	\$154	\$1,031	\$0	\$0.87	\$1,031	\$16,496	\$16,496	\$1,031	\$13.92	\$0		0.00		
TC60%	\$1,323	0	12	4	2.5	1,557	\$1,323	\$188	\$1,135	\$0	\$0.73	\$1,135	\$13,620	\$13,620	\$1,135	\$8.75	\$0		0.00		
TC50%	\$712	LH/50%	1	1	1	850	\$712	\$95	\$617	\$0	\$0.73	\$617	\$617	\$617	\$617	\$0.73	\$0		0.00		
TC60%	\$855	HH/60%	4	1	1	850	\$853	\$95	\$758	\$0	\$0.89	\$758	\$3,032	\$3,032	\$758	\$3.57	\$0		0.00		
TC60%	\$855	0	7	1	1	850	\$855	\$95	\$760	\$0	\$0.89	\$760	\$5,320	\$5,320	\$760	\$6.26	\$0		0.00		
TOTALS / AVERAGES:			100			109,500				\$0	\$0.84	\$915	\$91,502	\$91,502	\$915	\$24.23	\$0	\$0	\$0.00	(\$915)	

ANNUAL POTENTIAL GROSS RENT:	\$1,098,024	\$1,098,024
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PRO FORMA ANALYSIS & DEVELOPMENT COSTS

POTENTIAL GROSS RENT
 Secondary Income
 Other Income:
 Other Income:
 POTENTIAL GROSS INCOME
 Vacancy & Collection Loss
 EO/Non-Rental Units/Concessions
 EFFECTIVE GROSS INCOME

Per Unit/Month \$20.00
 -
 Late fees, App fees, Pet fees, Misc

% of PGI -7.5%

TDHCA CC	TDHCA -Prior	% DIFF	APP - Orig	Owner CC
\$1,098,024	\$1,005,216	0%	\$1,005,216	\$1,098,024
\$24,000	\$24,000	20%	\$75,120	\$28,680
		#DIV/0!		\$0
		#DIV/0!		\$14,964
\$1,122,024	\$1,029,216	2%	\$1,080,336	\$1,141,668
(\$84,152)	(77,191)	-5%	(81,025)	(79,917)
\$0	-	#DIV/0!	-	-
\$1,037,872	\$952,025	2%	\$999,311	\$1,061,751

\$23.90 Per Unit Per Month
 \$0.00 Per Unit Per Month
 \$12.47 Per Unit Per Month

-7.0% % of PGI

\$36.37

EXPENSES	% of EGI	Per Unit	Per SF				Per SF	Per Unit	% of EGI
General & Administrative	5.48%	\$569	\$0.52	\$56,869	\$42,193	-41%	\$54,708	\$33,733	3.18%
Management	2.50%	\$259	\$0.24	\$25,947	\$31,798	1%	\$35,330	\$26,090	2.46%
Payroll & Payroll Tax	10.67%	\$1,108	\$1.01	\$110,783	\$101,708	2%	\$100,000	\$112,700	10.61%
Repairs & Maintenance	6.00%	\$623	\$0.57	\$62,255	\$60,000	-38%	\$19,454	\$38,445	3.62%
Electric/Gas	1.11%	\$115	\$0.11	\$11,540	\$33,093	-39%	\$37,621	\$7,095	0.67%
Water, Sewer, & Trash	3.91%	\$406	\$0.37	\$40,614	\$35,016	13%	\$52,379	\$46,054	4.34%
Property Insurance	2.17%	\$225	\$0.21	\$22,500	\$29,206	0%	\$30,000	\$22,500	2.12%
Property Tax	100%	2.88	\$1.35	\$147,501	\$77,800	10%	\$85,000	\$161,559	15.22%
Reserve for Replacements	2.41%	\$250	\$0.23	\$25,000	\$30,000	0%	\$30,000	\$25,000	2.35%
Cable TV	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$600	0.06%
Supportive service contract fees	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$4,000	\$0	0.00%
TDHCA Compliance fees	0.39%	\$40	\$0.04	\$4,000	\$4,000	0%	\$4,000	\$4,000	0.38%
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	0.00%
Security	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	0.00%
Other	0.33%	\$34	\$0.03	\$3,400	\$1,000	-100%	\$14,398	\$0	0.00%
TOTAL EXPENSES	49.18%	\$5,104	\$4.66	\$510,408	\$445,814	-6%	\$466,890	\$477,776	45.00%
NET OPERATING INCOME	50.82%	\$5,275	\$4.82	\$527,464	\$506,211	11%	\$532,421	\$583,976	55.00%

COMPARABLES USED		
TDHCA DB	DB Per Unit	Other
\$46,869	\$469	
\$46,158	\$462	
\$127,693	\$1,277	
\$71,897	\$719	
\$24,154	\$242	
\$81,168	\$812	
\$31,331	\$313	
\$86,576	\$866	
\$47,176	\$472	

DEBT

First Lien: Tarrant County Housing Finance Corporation	\$426,995	\$433,612	0%	\$465,664	\$426,995
Other: The Development Corporation of Tarrant County			#VALUE!		
Other: LDG Multifamily, LLC			#VALUE!		
TOTAL DEBT SERVICE	\$426,995	\$433,612	0%	\$465,664	\$426,995
NET CASH FLOW	\$100,469	\$72,599	56%	\$66,757	\$156,981
AGGREGATE DEBT COVERAGE RATIO	1.24	1.17		1.14	1.37
RECOMMENDED DEBT COVERAGE RATIO	1.24				

CONSTRUCTION COST

	% of TOTAL	Per Unit	Per SF	TDHCA CC	TDHCA -Prior		APP - Orig	Owner CC	Per SF	Per Unit	% of TOTAL
Land Acquisition	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	0.00%
Building Acquisition	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	0.00%
Closing costs & acq. legal fees	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	0.00%
Off-Sites	2.96%	\$5,850	\$5.34	\$584,974	\$57,000	0%	\$57,000	\$584,974	\$5	\$5,850	2.90%
Sitework	16.31%	\$32,183	\$29.39	\$3,218,261	\$1,126,537	0%	\$1,126,537	\$3,218,261	\$29	\$32,183	15.94%
Site Amenities					\$216,463		\$216,463				
Other Construction Cost					\$0	#DIV/0!	\$0				
Building Costs	39.89%	\$78,730	\$71.90	\$7,873,013	\$7,873,013	0%	\$9,099,271	\$7,906,351	\$72	\$79,064	39.17%
Contingency					\$525,105	#DIV/0!	\$525,105				
Contractor's Fees	8.31%	\$16,393	\$14.97	\$1,639,342	\$1,371,736	21%	\$1,544,332	\$1,976,790	\$18	\$19,768	9.79%
Indirect Construction	7.26%	\$14,338	\$13.09	\$1,433,758	\$763,119	0%	\$763,119	\$1,433,758	\$13	\$14,338	7.10%
Developer's Fees	15.00%	\$22,724	\$20.75	\$2,272,400	\$1,943,239	3%	\$2,148,914	\$2,351,540	\$21	\$23,515	11.65%
Financing	11.29%	\$22,287	\$20.35	\$2,228,684	\$1,416,704	0%	\$1,416,704	\$2,228,684	\$20	\$22,287	11.04%
Reserves	2.46%	\$4,855	\$4.43	\$485,494	\$425,938	0%	\$425,938	\$485,494	\$4	\$4,855	2.41%
TOTAL COST	100%	\$197,359	\$180	\$19,735,926	\$15,718,854	2%	\$17,323,383	\$20,185,852	\$184	\$201,859	100%
Construction Cost Recap	58.16%	\$116,762	\$106.63	\$11,676,248			\$11,709,586	\$106.94	\$117,096	\$8.01%	

SOURCES OF FUNDS

							RECOMMENDED			
First Lien: Tarrant County Housing Finance Corporation	40%	\$79,150	\$72	\$7,915,000	\$7,924,000	0%	\$7,924,000	\$7,915,000	Developer Fee Available	
Other: The Development Corporation of Tarrant County	4%	\$8,000	\$7	\$800,000	\$800,000	0%	\$800,000	\$800,000	\$2,217,008	
Other: LDG Multifamily, LLC	4%	\$8,113	\$7	\$811,344	\$0	#DIV/0!	\$0	\$811,344	811,344	
Other: LDG Multifamily, LLC	1%	\$1,740	\$2	\$173,997	\$0	#DIV/0!	\$0	\$173,997	173,997	
Other: LDG Multifamily, LLC	1%	\$1,161	\$1	\$116,127	\$0	#DIV/0!	\$0	\$116,127	116,127	
HTC Equity: Garnet UHTC Fund XLVIII, LLC	37%	\$73,741	\$67	\$7,374,122	\$6,682,999	-10%	\$6,895,318	\$7,374,122	7,372,206	
Grant: City of Sansom Park Funding of Off-Site Costs	1%	\$1,582	\$1	\$158,228	\$0	#DIV/0!	\$0	\$158,228	158,228	
LDG Development, LLC Letter of Credit	2%	\$4,855	\$4	\$485,494	\$0	#DIV/0!	\$0	\$485,494	485,494	
Deferred Developer Fee: LDG Multifamily, LLC	12%	\$23,515	\$21	\$2,351,540	\$311,855	-654%	\$1,704,065	\$2,351,540	1,936,869	
Additional (Excess) Funds Req'd	-2%	(\$4,499)	(\$4)	(\$449,926)	\$0	#DIV/0!	\$0	\$0	0	
TOTAL SOURCES				\$19,735,926	\$15,718,854	-28%	\$17,323,383	\$20,185,852	\$19,769,264	87% 15-Yr Cumulative Cash Flow \$2,173,392

MULTIFAMILY COMPARATIVE ANALYSIS (continued)

Sansom Ridge Apartments , Sansom Park, # 16409

DIRECT CONSTRUCTION COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:				0
Adjustments				
Exterior Wall Finish	0.00%		0	\$0
	0.00%		0	0
	0.00%		0	0
Roofing			0.00	0
Subfloor			#DIV/0!	#DIV/0!
Floor Cover			3.07	336,165
Breezeways	\$0.00	0	0.00	0
Balconies	\$0.00	0	0.00	0
Plumbing Fixtures	\$1,070	0	0.00	0
Rough-ins	\$525	0	0.00	0
Built-In Appliances	\$1,780	100	1.63	178,000
Exterior Stairs	\$2,450	0	0.00	0
Heating/Cooling			2.33	255,135
Enclosed Corridors	(\$14.38)		0.00	0
Carpools	\$13.05	0	0.00	0
Garages	\$44.75	0	0.00	0
Comm &/or Aux Bldgs	\$0.00	0	0.00	0
Other:			0.00	0
Other:			0.00	0
Other: fire sprinkler	\$2.59	109,500	2.59	283,605
SUBTOTAL			#DIV/0!	#DIV/0!
Current Cost Multiplier	0.99		#DIV/0!	#DIV/0!
Local Multiplier	0.87		#DIV/0!	#DIV/0!
TOTAL DIRECT CONSTRUCTION COSTS			#DIV/0!	#DIV/0!
Plans, specs, survey, bldg permits	3.90%		#DIV/0!	#DIV/0!
Contractor's OH & Profit	11.50%		#DIV/0!	#DIV/0!
NET DIRECT CONSTRUCTION COSTS			#DIV/0!	#DIV/0!

PROPOSED PAYMENT COMPUTATION

First Lien: Tarrant County Hous	\$7,915,000	Amort	480
Int Rate	4.50%	DCR	1.24
Other: The Development Corpor	\$800,000	Amort	0
Int Rate	0.00%	DCR	1.24
Other: LDG Multifamily, LLC	\$811,344	Amort	0
Int Rate	3.00%	DCR	1.24
Other: LDG Multifamily, LLC	\$173,997	Amort	0
Int Rate	3.00%	DCR	1.24
Other: LDG Multifamily, LLC	\$116,127	Amort	0
Int Rate	3.00%	DCR	1.24

of floors

RECOMMENDED FINANCING STRUCTURE: TDHCA NOI

First Lien: Tarrant County Housing Finance Corporation	\$426,995
Other: The Development Corporation of Tarrant County	0
Other: LDG Multifamily, LLC	0
Other: LDG Multifamily, LLC	0
Other: LDG Multifamily, LLC	0
Other:	0
Other:	0
Other:	0
TOTAL DEBT SERVICE	\$426,995

First Lien: Tarrant County Housi	\$7,915,000	Amort	480
Int Rate	4.50%	DCR	1.24
Other: The Development Corpor	\$800,000	Amort	0
Int Rate	0.00%	Aggregate DCR	1.24
Other: LDG Multifamily, LLC	\$811,344	Amort	0
Int Rate	3.00%	Aggregate DCR	1.24
Other: LDG Multifamily, LLC	\$173,997	Amort	0
Int Rate	3.00%	Aggregate DCR	1.24
Other: LDG Multifamily, LLC	\$116,127	Amort	0
Int Rate	3.00%	Aggregate DCR	1.24
Other:	\$0	Amort	0
Int Rate		Aggregate DCR	1.24
Other:	\$0	Amort	0
Int Rate		Aggregate DCR	1.24
Other:	\$0	Amort	0
Int Rate		Subtotal DCR	1.24

LONG TERM OPERATING PRO FORMA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
EFFECTIVE GROSS INCOME	\$1,037,872	\$1,064,352	\$1,085,639	\$1,107,352	\$1,129,499	\$1,247,058	\$1,376,853	\$1,520,157	\$1,678,376	\$1,853,063	\$2,045,931	\$2,258,873
LESS: TOTAL EXPENSES	510,408	525,604	541,106	557,068	\$573,503	663,289	\$767,213	887,510	1,026,770	1,187,992	1,374,651	1,590,774
NET OPERATING INCOME	\$527,464	\$538,748	\$544,533	\$550,284	\$555,996	\$583,769	\$609,640	\$632,647	\$651,606	\$665,071	\$671,280	\$668,099
LESS: DEBT SERVICE	426,995	426,995	426,995	426,995	426,995	426,995	426,995	426,995	426,995	426,995	426,995	426,995
NET CASH FLOW	\$100,469	\$111,753	\$117,538	\$123,289	\$129,001	\$156,774	\$182,645	\$205,652	\$224,611	\$238,076	\$244,285	\$241,104
CUMULATIVE NET CASH FLOW	\$100,469	\$212,222	\$329,760	\$453,049	\$582,050	\$1,310,969	\$2,173,392	\$3,157,003	\$4,244,028	\$5,410,003	\$6,622,310	\$7,838,427
DEFERRED DEVELOPER FEE BALANCE	\$1,836,400	\$1,724,646	\$1,607,108	\$1,483,819	\$1,354,818	\$625,900	\$0	\$0	\$0	\$0	\$0	\$0
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.24	1.26	1.28	1.29	1.30	1.37	1.43	1.48	1.53	1.56	1.57	1.56
EXPENSE/EGI RATIO	49.18%	49.38%	49.84%	50.31%	50.78%	53.19%	55.72%	58.38%	61.18%	64.11%	67.19%	70.42%

HTC ALLOCATION ANALYSIS - Sansom Ridge Apartments , Sansom Park, # 16409

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S ACQUISITION ELIGIBLE BASIS	TDHCA ACQUISITION ELIGIBLE BASIS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
Acquisition Cost						
Purchase of land	\$0	\$0				
Purchase of buildings	\$0	\$0				
Closing costs & Acq. Legal Fees	\$0	\$0				
Off-Site Improvements	\$584,974	\$584,974			\$584,974	\$584,974
Sitework	\$3,218,261	\$3,218,261			\$3,218,261	\$3,218,261
Building Costs	\$7,906,351	\$7,873,013			\$7,906,351	\$7,873,013
Contingency	\$0	\$0				\$0
Contractor's Fees	\$1,976,790	\$1,639,342			\$1,587,643	\$1,587,643
Indirect Construction	\$1,433,758	\$1,433,758	\$0	\$0	\$1,309,742	\$1,309,742
Interim Financing	\$2,228,684	\$2,228,684	\$0	\$0	\$542,365	\$542,365
Developer Fees						
Developer Fees	\$2,351,540	\$2,272,400	\$0	\$0	\$2,217,008	\$2,217,008
Development Reserves	\$485,494	\$485,494				
TOTAL DEVELOPMENT COSTS	\$20,185,852	\$19,735,926	\$0	\$0	\$17,366,344	\$17,333,006

Deduct from Basis:						
	\$0					
Describe: Carports & Garages					\$360,000	\$360,000
Describe: Washer/Dryer					\$9,280	\$9,280
Describe:						
Describe:						
Describe:					\$0	\$0
TOTAL ELIGIBLE BASIS			\$0	\$0	\$16,997,064	\$16,963,726
High Cost Area Adjustment					130%	130%
TOTAL ADJUSTED BASIS			\$0	\$0	\$22,096,183	\$22,052,844
Applicable Fraction			100%	100%	100%	100%
TOTAL QUALIFIED BASIS			\$0	\$0	\$22,096,183	\$22,052,844
Applicable Percentage			0.00%	0.00%	3.23%	3.23%
TOTAL AMOUNT OF TAX CREDITS			\$0	\$0	\$714,343	\$712,942

Syndication Rate	1.0320	\$0	\$0	\$7,372,219	\$7,357,760
Total Tax Credits (Eligible Basis Method)				\$714,343	\$712,942
Syndication Proceeds				\$7,372,219	\$7,357,760
Approved Tax Credits				\$642,725	
Syndication Proceeds				\$6,633,099	
Requested Tax Credits				\$714,342	
Syndication Proceeds				\$7,372,206	
Gap of Syndication Proceeds Needed				\$9,309,074	
Total Tax Credits (Gap Method)				\$902,018	
Recommended Tax Credits				714,342	
Syndication Proceeds				\$7,372,206	

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount for Lakecrest Village Apartments (HTC #17410)

RECOMMENDED ACTION

WHEREAS, Lakecrest Village Apartments (the Development) received a 4% Housing Tax Credit (HTC) award in 2017 to acquire and rehabilitate 224 multifamily units in Houston, Harris County;

WHEREAS, rehabilitation of the Development has been completed, and Houston Leased Housing Associates V, LLLP (the Development Owner or Owner) requests, at cost certification, to increase the annual HTC amount to \$1,212,799, which is 123.04% of \$985,684, the amount of tax credits reflected in the Determination Notice;

WHEREAS, §42(m)(2) of the Internal Revenue Code allows an increase of tax credits for a bond financed project when the increase is determined necessary as demonstrated through the submission of the cost certification package;

WHEREAS, 10 TAC §10.402(c) requires approval by the Board if an increase to the amount of tax credits exceeds 110% of the amount of credit reflected in the Determination Notice; and

WHEREAS, a review of the cost certification package submitted by the Development Owner supports the need for the additional tax credits requested, and staff has determined that the increase is necessary for the viability of the transaction;

NOW, therefore, it is hereby

RESOLVED, that the housing tax credit increase for Lakecrest Village Apartments requested by the Development Owner is approved as presented to this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

Lakecrest Village Apartments received a 4% HTC award in 2017 to acquire and rehabilitate 224 multifamily units in Houston, Harris County. On May 31, 2017, a Determination Notice was issued with an approved annual tax credit amount of \$985,684. The residential buildings in the Development placed in service on December 31, 2018, and the final cost certification was received by the Department on May 1, 2019.

In conjunction with the cost certification, Ryan J. Lunderby, the representative for the Development Owner, requested to increase the annual tax credit award to \$1,212,799, an increase of \$227,115 (23.04%) from the amount reflected in the Determination Notice. Through the cost certification review process, the representative for the Development Owner explained that the Development incurred unforeseen delays and increased costs during construction, mainly as a result of Hurricane Harvey.

The construction contract was signed in June 2017, and construction started timely. However, progress slowed considerably due to complications from inclement weather and heavy rains resulting from Hurricane Harvey in August 2017. Several additions to the scope of the construction contract were made via change orders to repair direct hurricane damage. Major flooding in many of the units required significant mechanical, electrical and plumbing repairs. Hurricane damage resulted in change orders resulting in a total construction cost increase of \$1,867,409. An additional \$1,401,410 was also spent outside of the construction contract on multiple property repairs for the hurricane damage, including testing and remediation of mold. Insurance proceeds of \$3,268,819 were received to offset these additional construction costs. As a result, the costs associated with the hurricane repairs are not included in total development costs and in eligible basis, as they are restoration of already existing improvements.

Additional change orders and cost increases were related to project upgrades added to the construction scope, including upgrades to flooring, additional interior painting, installation of wireless smoke detectors in all units, HVAC replacement for all buildings, installation of exhaust fans in each laundry room, replacement of all unit entry doors, replacement of damaged interior doors including hardware, and landscaping upgrades. The total amount of change orders was \$5,156,333. Financing costs also increased significantly due to construction delays and a higher amount of capitalized interest primarily due to significant vacancy at the Development during construction also as a result of Hurricane Harvey.

All of the residential units were completed and placed in service on December 31, 2018. The new clubhouse was also substantially complete as of December 31, 2018; however, due to delays with the City of Houston inspection process, the new clubhouse building did not receive a temporary certificate of occupancy until January 31, 2019, and a permanent certificate of occupancy was not issued until February 20, 2019.

A comparison of the development costs from the time of the Application, in 2017, to cost certification indicates that total development costs increased over \$4.5M (16.6%), from \$27,610,767 to \$32,197,393. Construction costs, including contractor fees, increased over \$3.6M (34%), from \$10,584,400 to \$14,188,398. Indirect construction costs increased slightly (\$50K or 3.85%). Developer fees increased

almost \$700K (20.83%), from \$3,347,616 to \$4,044,991, and financing costs increased more than \$1.2M (11.7%), from \$1,153,360 to \$2,410,613.

The net syndication rate decreased from \$1.15 to \$1.07, resulting in fewer syndication proceeds per HTC, but due to upward adjusters and the requested increase of the HTC amount, the syndication proceeds at cost certification are over \$1.5M (13.9%) greater than at Application. The deferred developer fee amount decreased from over \$2.3M to approximately \$1.7M (26.89% decrease). The third-party debt increased \$3,640,000 from \$13,860,000 to \$17,500,000 (a 26.26% increase).

Staff's analysis of this transaction at cost certification has concluded that the Development supports a tax credit allocation of the requested amount, and that the requested increase is necessary for the viability of the transaction. This results in a 23.04% increase from the original annual HTC amount in the Determination Notice, going from \$985,684 to \$1,212,799. In accordance with 10 TAC §10.402(c), Board approval is required because the requested tax credit amount exceeds 110% of the HTC amount reflected in the Determination Notice. The Development Owner will be required to submit the Tax-Exempt Bond Credit Increase Request Fee required in 10 TAC §11.901(8) for the increase to the HTC amount prior to issuance of Forms 8609.

Staff recommends approval of the increase in the tax credit award as presented herein.



DOMINIUMSM

VIA EMAIL

March 31, 2020

Lucy Trevino
Senior Asset Manager
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

RE: Lakecrest Village (TDHCA #17410) Request for Increased Credit Amount

Dear Ms. Trevino,

Please accept this letter as a formal request to increase the credit amount for Lakecrest Village (TDHCA #17410) from \$985,684.00, as approved in the Determination Notice on May 25, 2017, to \$1,212,799.00.

Sincerely,

Ryan J. Lunderby
Vice President
Houston Leased Housing Associates V, LLLP

UNIT MIX/RENT SCHEDULE

Lakecrest Village Apartments, Houston, TX, # 17410

LOCATION DATA	
CITY:	Houston
COUNTY:	Harris
PROGRAM REGION:	6

UNIT DISTRIBUTION			
# Beds	# Units	% Total	
Eff			Income
			# Units
1			30%
2	80	35.7%	40%
3	91	40.6%	50%
4	53	23.7%	60%
			MR
TOTAL	224	100.0%	TOTAL
			224

PRO FORMA ASSUMPTIONS	
REVENUE GROWTH:	2.00%
EXPENSE GROWTH:	3.00%
HIGH COST ADJUSTMENT:	130%
APPLICABLE FRACTION:	100.00%
APP % - ACQUISITION:	3.22%
APP % - CONSTRUCTION:	3.32%
AVERAGE SF	1,020

UNIT MIX / MONTHLY RENT SCHEDULE

HTC		TDHCA Direct Loan Program		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC50%	\$843	0%		16	2	2	862	\$843	\$63	\$780	\$0	\$0.90	\$780	\$12,480	\$12,480	\$780	\$14.48	\$0		0.00	
TC60%	\$1,012	0%		28	2	2	862	\$1,012	\$77	\$935	\$0	\$1.08	\$935	\$26,180	\$26,180	\$935	\$30.37	\$0		0.00	
TC60%	\$1,012	0%		12	2	2	862	\$1,012	\$63	\$949	\$0	\$1.10	\$949	\$11,388	\$11,388	\$949	\$13.21	\$0		0.00	
TC60%	\$1,012	0%		24	2	2	862	\$1,012	\$63	\$949	\$0	\$1.10	\$949	\$22,776	\$22,776	\$949	\$26.42	\$0		0.00	
TC50%	\$973	0%		21	3	2	1,031	\$973	\$77	\$896	\$0	\$0.87	\$896	\$18,816	\$18,816	\$896	\$18.25	\$0		0.00	
TC60%	\$1,168	0%		24	3	2	1,031	\$1,168	\$96	\$1,072	\$0	\$1.04	\$1,072	\$25,728	\$25,728	\$1,072	\$24.95	\$0		0.00	
TC60%	\$1,168	0%		22	3	2	1,031	\$1,168	\$77	\$1,091	\$0	\$1.06	\$1,091	\$24,002	\$24,002	\$1,091	\$23.28	\$0		0.00	
TC60%	\$1,168	0%		24	3	2	1,031	\$1,168	\$77	\$1,091	\$0	\$1.06	\$1,091	\$26,184	\$26,184	\$1,091	\$25.40	\$0		0.00	
TC50%	\$1,086	0%		14	4	2	1,239	\$1,086	\$116	\$970	\$82	\$0.85	\$1,052	\$14,728	\$13,580	\$970	\$10.96	\$0		0.00	
TC60%	\$1,303	0%		1	4	2	1,182	\$1,303	\$91	\$1,212	(\$217)	\$0.84	\$995	\$995	\$1,212	\$1,212	\$1.03	\$0		0.00	
TC60%	\$1,303	0%		31	4	2	1,239	\$1,303	\$116	\$1,187	\$0	\$0.96	\$1,187	\$36,797	\$36,797	\$1,187	\$29.70	\$0		0.00	
TC60%	\$1,303	0%		7	4	2	1,239	\$1,303	\$116	\$1,187	\$0	\$0.96	\$1,187	\$8,309	\$8,309	\$1,187	\$6.71	\$0		0.00	
TOTALS / AVERAGES:				224			228,391				\$4	\$1.00	\$1,020	\$228,383	\$227,452	\$1,015	\$22.66	\$0	\$0	\$0.00	(\$1,015)

ANNUAL POTENTIAL GROSS RENT:

\$2,740,596 \$2,729,424

PRO FORMA ANALYSIS & DEVELOPMENT COSTS

POTENTIAL GROSS RENT

Secondary Income
Other Income:
Other Income:
POTENTIAL GROSS INCOME
Vacancy & Collection Loss
EO/Non-Rental Units/Concessions
EFFECTIVE GROSS INCOME

Per Unit/Month \$20.00

% of PGI -7.5%

TDHCA CC	TDHCA -Prior	% DIFF	APP - Orig	Owner CC
\$2,729,424	\$2,439,288	0%	\$2,413,896	\$2,740,596
\$53,760	\$53,760	-11%	\$58,948	\$48,000
		#DIV/0!		\$0
		#DIV/0!		\$0
\$2,783,184	\$2,493,048	0%	\$2,472,844	\$2,788,596
(\$208,739)	(186,979)	-33%	(185,463)	(139,430)
\$0	-	#DIV/0!	-	-
\$2,574,445	\$2,306,069	2.90%	\$2,287,381	\$2,649,166

\$17.86 Per Unit Per Month
\$0.00 Per Unit Per Month
\$0.00 Per Unit Per Month

\$17.86

-5.0% % of PGI

EXPENSES				% of FGI	Per Unit	Per SF			Per SF	Per Unit	% of FGI			
General & Administrative				3.27%	\$376	\$0.37	\$84,196	\$78,400	28%	\$78,400	\$107,520	\$0.47	\$480	4.06%
Management				3.50%	\$402	\$0.39	\$90,106	\$74,947	-1%	\$76,311	\$89,495	\$0.39	\$400	3.38%
Payroll & Payroll Tax				11.31%	\$1,300	\$1.27	\$291,141	\$296,800	-8%	\$296,800	\$268,800	\$1.18	\$1,200	10.15%
Repairs & Maintenance				6.42%	\$737	\$0.72	\$165,194	\$134,400	2%	\$190,400	\$168,000	\$0.74	\$750	6.34%
Electric/Gas				1.80%	\$207	\$0.20	\$46,461	\$42,784	102%	\$41,000	\$94,080	\$0.41	\$420	3.55%
Water, Sewer, & Trash				6.12%	\$703	\$0.69	\$157,524	\$300,000	11%	\$239,000	\$174,720	\$0.77	\$780	6.60%
Property Insurance				3.90%	\$448	\$0.44	\$100,300	\$97,455	-2%	\$98,560	\$98,560	\$0.43	\$440	3.72%
Property Tax	\$8,218,929	100%	2.53	8.08%	\$928	\$0.91	\$207,975	\$145,193	0%	\$193,940	\$208,772	\$0.91	\$932	7.88%
Reserve for Replacements				2.61%	\$300	\$0.29	\$67,200	\$67,200	0%	\$67,200	\$67,200	\$0.29	\$300	2.54%
Cable TV				0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0.00	\$0	0.00%
Supportive service contract fees				0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0.00	\$0	0.00%
TDHCA Compliance fees				0.35%	\$40	\$0.04	\$8,960	\$8,960	0%	\$8,960	\$8,960	\$0.04	\$40	0.34%
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)				0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0.00	\$0	0.00%
Security				1.31%	\$150	\$0.15	\$33,600	\$67,200	0%	\$67,200	\$33,600	\$0.15	\$150	1.27%
Other				0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0.00	\$0	0.00%
TOTAL EXPENSES				48.66%	\$5,592	\$5.48	\$1,252,657	\$1,313,339	5.35%	\$1,357,771	\$1,319,707	\$5.78	\$5,892	49.82%
NET OPERATING INCOME				51.34%	\$5,901	\$5.79	\$1,321,789	\$992,730	0.58%	\$929,610	\$1,329,459	\$5.82	\$5,935	50.18%

COMPARABLES USED		
TDHCA DB	DB Per Unit	Other
\$93,737	\$418	
\$99,168	\$443	
\$289,528	\$1,293	
\$165,194	\$737	
\$46,461	\$207	
\$157,524	\$703	
\$92,602	\$413	
\$182,978	\$817	
\$71,259	\$318	

DEBT

First Lien: CITI Bank First Mortgage-Tax Exempt	\$934,900	\$860,730	0%	\$868,750	\$934,900
Other: CITI Bank First Mortgage-Taxable	\$101,869		0%		\$101,869
TOTAL DEBT SERVICE	\$1,036,769	\$860,730	0%	\$868,750	\$1,036,769
NET CASH FLOW	\$285,020	\$132,000	3%	\$60,859	\$292,690
AGGREGATE DEBT COVERAGE RATIO	1.27	1.15		1.07	1.28
RECOMMENDED DEBT COVERAGE RATIO	1.27				

CONSTRUCTION COST

	% of TOTAL	Per Unit	Per SF	TDHCA CC	TDHCA -Prior		APP - Orig	Owner CC	Per SF	Per Unit	% of TOTAL
Land Acquisition	0.71%	\$1,027	\$1.01	\$230,000	\$230,000	0%	\$230,000	\$230,000	\$1	\$1,027	0.71%
Building Acquisition	30.97%	\$44,509	\$43.65	\$9,970,000	\$9,970,000	0%	\$9,970,000	\$9,970,000	\$44	\$44,509	30.97%
Closing costs & acq. legal fees	0.01%	\$10	\$0.01	\$2,184	\$0	0%	\$0	\$2,184	\$0	\$10	0.01%
Off-Sites	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	0.00%
Sitework	4.34%	\$6,243	\$6.12	\$1,398,447	\$400,650	0%	\$400,650	\$1,398,447	\$6	\$6,243	4.34%
Site Amenities					\$508,950		\$508,950				
Other Construction Cost					\$0	#DIV/0!	\$0				
Building Costs	35.34%	\$50,803	\$49.83	\$11,379,969	\$7,318,032	0%	\$7,617,032	\$11,379,969	\$50	\$50,803	35.34%
Contingency					\$822,763	#DIV/0!	\$902,400				
Contractor's Fees	4.38%	\$6,295	\$6.17	\$1,409,982	\$1,155,368	0%	\$1,155,368	\$1,409,982	\$6	\$6,295	4.38%
Indirect Construction	4.20%	\$6,032	\$5.92	\$1,351,207	\$1,301,074	0%	\$1,301,074	\$1,351,207	\$6	\$6,032	4.20%
Developer's Fees	15.00%	\$18,058	\$17.71	\$4,044,991	\$3,338,891	0%	\$3,347,616	\$4,044,991	\$18	\$18,058	12.56%
Financing	7.49%	\$10,762	\$10.55	\$2,410,613	\$1,153,360	0%	\$1,153,360	\$2,410,613	\$11	\$10,762	7.49%
Reserves	0.00%	\$0	\$0.00	\$0	\$1,024,317	#DIV/0!	\$1,024,317	\$0	\$0	\$0	0.00%
TOTAL COST	100%	\$143,738	\$141	\$32,197,393	\$27,223,406	0%	\$27,610,767	\$32,197,393	\$141	\$143,738	100%
Construction Cost Recap	39.69%	\$57,047	\$55.95	\$12,778,416			\$12,778,416	\$55.95	\$57,047	39.69%	

SOURCES OF FUNDS

							RECOMMENDED	
First Lien: CITI Bank First Mortgage-Tax Exempt	49%	\$70,313	\$69	\$15,750,000	\$13,860,000	-14%	\$13,860,000	\$15,750,000
Other: CITI Bank First Mortgage-Taxable	5%	\$7,813	\$8	\$1,750,000	\$0	#DIV/0!	\$0	\$1,750,000
HTC Equity: Stratford Capital Group- Equity & Adjusters	33%	\$47,134	\$46	\$10,558,000	\$11,382,372	7%	\$11,382,372	\$10,558,000
Stratford Capital Group-Upward Adjuster per Partnership Agreement	3%	\$4,911	\$5	\$1,100,000	\$0	#DIV/0!	\$0	\$1,100,000
Stratford Capital Group-Additional Credits above LPA Adjusted	4%	\$5,839	\$6	\$1,307,850	\$0	#DIV/0!	\$0	\$1,307,850
Deferred Developer Fee: Houston Leased Housing Development V, LLC	5%	\$7,730	\$8	\$1,731,543	\$1,981,034	13%	\$2,368,395	\$1,731,543
Additional (Excess) Funds Req'd	0%	\$0	\$0	\$0	\$0	#DIV/0!	\$0	\$0
TOTAL SOURCES				\$32,197,393	\$27,223,406	-18%	\$27,610,767	\$32,197,393

Developer Fee Available: \$4,044,991
% of Dev. Fee Deferred: 43%
15-Yr Cumulative Cash Flow: \$6,883,009

MULTIFAMILY COMPARATIVE ANALYSIS (continued)

Lakecrest Village Apartments, Houston, TX, # 17410

DIRECT CONSTRUCTION COST ESTIMATE				
CATEGORY	FACTOR	UNITS/ SF	PER SF	AMOUNT
Base Cost:				0
Adjustments				
Exterior Wall Finish	0.00%		0	\$0
	0.00%		0	0
	0.00%		0	0
Roofing			0.00	0
Subfloor			#DIV/0!	#DIV/0!
Floor Cover			3.07	701,160
Breezeways	\$0.00	0	0.00	0
Balconies	\$0.00	0	0.00	0
Plumbing Fixtures	\$1,070	0	0.00	0
Rough-ins	\$525	0	0.00	0
Built-In Appliances	\$1,780	224	1.75	398,720
Exterior Stairs	\$2,450	0	0.00	0
Heating/Cooling			2.33	532,151
Enclosed Corridors	(\$14.38)		0.00	0
Carports	\$13.05	0	0.00	0
Garages	\$44.75	0	0.00	0
Comm &/or Aux Bldgs	\$0.00	0	0.00	0
Other:			0.00	0
Other: fire sprinkler	\$2.59	228,391	2.59	591,533
SUBTOTAL			#DIV/0!	#DIV/0!
Current Cost Multiplier	0.99		#DIV/0!	#DIV/0!
Local Multiplier	0.87		#DIV/0!	#DIV/0!
TOTAL DIRECT CONSTRUCTION COSTS			#DIV/0!	#DIV/0!
Plans, specs, survey, bldg permits	3.90%		#DIV/0!	#DIV/0!
Contractor's OH & Profit	11.50%		#DIV/0!	#DIV/0!
NET DIRECT CONSTRUCTION COSTS			#DIV/0!	#DIV/0!

PROPOSED PAYMENT COMPUTATION

First Lien: CITI Bank First Mortg	\$15,750,000	Amort	420
Int Rate	4.84%	DCR	1.41

Other: CITI Bank First Mortgage	\$1,750,000	Amort	420
Int Rate	4.69%	DCR	1.27

# of floors	Other:	\$0	Amort	0
	Int Rate	0.00%	DCR	1.27

Other:	\$0	Amort	0
Int Rate	0.00%	DCR	1.27

Other:	\$0	Amort	0
Int Rate	0.00%	DCR	1.27

RECOMMENDED FINANCING STRUCTURE: TDHCA NOI

First Lien: CITI Bank First Mortgage-Tax Exempt	\$934,900
Other: CITI Bank First Mortgage-Taxable	101,869
Other:	0
TOTAL DEBT SERVICE	\$1,036,769

First Lien: CITI Bank First Mortg	\$15,750,000	Amort	420
Int Rate	4.84%	DCR	1.41

Other: CITI Bank First Mortgage	\$1,750,000	Amort	420
Int Rate	4.69%	Aggregate DCR	1.27

Other:	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.27

LONG TERM OPERATING PRO FORMA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
EFFECTIVE GROSS INCOME	\$2,574,445	\$2,696,905	\$2,750,843	\$2,805,860	\$2,861,977	\$3,159,854	\$3,488,735	\$3,851,845	\$4,252,748	\$4,695,377	\$5,184,076	\$5,723,639
LESS: TOTAL EXPENSES	1,252,657	1,291,819	1,329,630	1,368,556	\$1,408,631	1,627,460	\$1,880,568	2,173,355	2,512,073	2,903,966	3,357,422	3,882,158
NET OPERATING INCOME	\$1,321,789	\$1,405,086	\$1,421,214	\$1,437,304	\$1,453,347	\$1,532,394	\$1,608,166	\$1,678,490	\$1,740,675	\$1,791,412	\$1,826,654	\$1,841,481
LESS: DEBT SERVICE	1,036,769	1,036,769	1,036,769	1,036,769	1,036,769	1,036,769	1,036,769	1,036,769	1,036,769	1,036,769	1,036,769	1,036,769
NET CASH FLOW	\$285,020	\$368,317	\$384,444	\$400,535	\$416,578	\$495,625	\$571,397	\$641,721	\$703,906	\$754,643	\$789,885	\$804,712
CUMULATIVE NET CASH FLOW	\$285,020	\$653,337	\$1,037,781	\$1,438,316	\$1,854,894	\$4,175,858	\$6,883,009	\$9,953,642	\$13,352,670	\$17,029,739	\$20,915,792	\$24,918,973
DEFERRED DEVELOPER FEE BALANCE	\$1,446,523	\$1,078,206	\$693,762	\$293,227	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.27	1.36	1.37	1.39	1.40	1.48	1.55	1.62	1.68	1.73	1.76	1.78
EXPENSE/EGI RATIO	48.66%	47.90%	48.34%	48.77%	49.22%	51.50%	53.90%	56.42%	59.07%	61.85%	64.76%	67.83%

HTC ALLOCATION ANALYSIS - Lakecrest Village Apartments, Houston, TX, # 17410

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S ACQUISITION ELIGIBLE BASIS	TDHCA ACQUISITION ELIGIBLE BASIS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
Acquisition Cost						
Purchase of land	\$230,000	\$230,000				
Purchase of buildings	\$9,970,000	\$9,970,000	\$9,970,000	\$9,970,000		
Closing costs & Acq. Legal Fees	\$2,184	\$2,184				
Off-Site Improvements	\$0	\$0				
Sitework	\$1,398,447	\$1,398,447			\$1,312,426	\$1,312,426
Building Costs	\$11,379,969	\$11,379,969			\$11,379,969	\$11,379,969
Contingency	\$0	\$0				\$0
Contractor's Fees	\$1,409,982	\$1,409,982			\$1,409,982	\$1,409,982
Indirect Construction	\$1,351,207	\$1,351,207	\$0	\$0	\$1,214,921	\$1,214,921
Interim Financing	\$2,410,613	\$2,410,613	\$0	\$0	\$1,679,310	\$1,679,310
Developer Fees						
Developer Fees	\$4,044,991	\$4,044,991	\$1,495,500	\$1,495,500	\$2,549,491	\$2,549,491
Development Reserves	\$0	\$0				
TOTAL DEVELOPMENT COSTS	\$32,197,393	\$32,197,393	\$11,465,500	\$11,465,500	\$19,546,099	\$19,546,099

Deduct from Basis:						
	\$0					
Describe:						
Describe:						
Describe:						
Describe:					\$0	\$0
TOTAL ELIGIBLE BASIS			\$11,465,500	\$11,465,500	\$19,546,099	\$19,546,099
High Cost Area Adjustment					130%	130%
TOTAL ADJUSTED BASIS			\$11,465,500	\$11,465,500	\$25,409,929	\$25,409,929
Applicable Fraction			100%	100%	100%	100%
TOTAL QUALIFIED BASIS			\$11,465,500	\$11,465,500	\$25,409,929	\$25,409,929
Applicable Percentage			3.22%	3.22%	3.32%	3.32%
TOTAL AMOUNT OF TAX CREDITS			\$369,189	\$369,189	\$843,610	\$843,610

Syndication Rate	1.0691	\$3,946,945	\$3,946,945	\$9,018,903	\$9,018,903
Total Tax Credits (Eligible Basis Method)				\$1,212,799	\$1,212,799
Syndication Proceeds				\$12,965,847	\$12,965,847
Approved Tax Credits				\$985,684	
Syndication Proceeds				\$10,537,798	
Requested Tax Credits				\$1,212,799	
Syndication Proceeds				\$12,965,850	
Gap of Syndication Proceeds Needed				\$14,697,393	
Total Tax Credits (Gap Method)				\$1,374,764	
Recommended Tax Credits				1,212,799	
Syndication Proceeds				\$12,965,850	

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action on the 2020 Department of Energy Weatherization Assistance Program State Plan and Awards

RECOMMENDED ACTION

WHEREAS, the Department develops and submits a State Plan to the Department of Energy (DOE) each year to administer the Weatherization Assistance Program (WAP);

WHEREAS, the draft 2020 DOE WAP State Plan (the Plan) was approved for release for public comment at the Board meeting of February 27, 2020;

WHEREAS, the public comment period was open from March 6, 2020, to March 30, 2020, and public comment was received and is summarized in Attachment A of this action;

WHEREAS, consistent with DOE requirements (10 CFR §440.17) and as permitted by Tex. Gov't Code §2110.005 and 10 TAC §6.408, the Weatherization Assistance Program Policy Advisory Council met on Monday, March 30, 2020, by conference call, and upon review and discussion, recommended in favor of the Plan;

WHEREAS, the Department has prepared the final Plan including a list of the subgrantees to be awarded funds and the proposed award amounts based on the formula contained in 10 TAC §6.404, Distribution of WAP Funds for submission to DOE; and

WHEREAS, the Department expects to receive 2020 DOE WAP funds in the approximate amount of \$9,976,933;

NOW, therefore, it is hereby

RESOLVED, that the Plan including associated awards in the form presented to this meeting, is hereby approved with authority to make non-substantive technical and grammatical edits and corrections including the clarification that where "staff" is indicated the clause be noted as "Executive Director, or designee;"

FURTHER RESOLVED, that the Executive Director and his designees and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department to submit such plan, together with such grammatical and non-substantive technical corrections as they may deem necessary or advisable, to DOE;

FURTHER RESOLVED, that the awards of 2020 DOE WAP funds in the approximate amount of \$9,181,104 as indicated in plan Section IV.1 Subgrantees, be and are hereby approved as described therein; and

FURTHER RESOLVED, that any subsequent 2020 DOE WAP funds received will be similarly awarded in accordance with the approved method and formula or as needed to accommodate full utilization of funds among only those providers with ability to expend additional funds.

BACKGROUND

A draft of the Plan was approved at the Board meeting of February 27, 2020, for release for public comment. The draft Plan and announcement of a public comment period and public hearing was made available on the Department's website and by listserv email distribution, on Friday, February 28, 2020, in addition to being announced in the *Texas Register* issue dated March 6, 2020. The Department conducted a virtual public hearing on Wednesday, March 18, 2020, at 2:00 p.m. Austin local time via webinar in accordance with DOE guidance as a result of the COVID-19 disaster. The public comment period closed at 5:00 p.m. Austin local time on Monday, March 30, 2020. One public comment was received and is attached as Attachment A of this Action.

DOE regulations also require a Weatherization Assistance Program Policy Advisory Council (WAP PAC) be designated in the Plan in order to provide guidance and comment on the Plan. The WAP PAC members are appointed by the Department and broadly represent organizations and agencies throughout the State that represent low-income persons.

The WAP PAC meeting occurred on Monday, March 30, 2020, by conference call. After receiving a copy of the Plan along with the public comment received, the WAP PAC reviewed and discussed the Plan with public comment, and all present members expressed support for the Plan.

DOE Weatherization funding provides for the installation of weatherization measures to increase energy efficiency of a home including caulking, weather-stripping, adding ceiling, wall, and floor insulation, patching holes in the building envelope, duct work, and repair or replacement of energy inefficient heating and cooling systems. Additionally, the funds allow for subgrantees to complete financial audits, household energy audits, outreach and engagement activities, and program administration. Further, funding provides for State administration and State training and technical assistance activities. For 2020, of the \$9,976,933, approximately \$9,181,104 will be distributed to subgrantees as listed in the table below while the remaining \$795,829 will be allocated to the Department's administrative, training, and technical assistance functions.

The Plan includes awards of funds to subgrantees as listed in the table below.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter C, §1.302) includes a review of DOE WAP awards prior to contract execution. The review has been performed and awards are recommended by the Executive Award Review and Advisory Committee for the following subgrantees without condition:

2020 Department of Energy Weatherization Assistance Program Awards

	SUBRECIPIENT	Anticipated Award (\$)
1	Alamo Area Council of Governments	740,252
2	BakerRipley	1,118,332
3	Big Bend Community Action Committee	144,389
4	Brazos Valley Community Action Program	309,677
5	City of Fort Worth	446,001
6	Combined Community Action, Inc.	210,673
7	Community Action Committee of Victoria Texas	282,254
8	Community Action Corporation of South Texas	999,922
9	Community Council of South Central Texas, Inc.	194,812
10	Concho Valley Community Action Agency	179,230
11	Dallas County Health and Human Services	714,036
12	Economic Opportunities Advancement Corporation	267,210
13	El Paso Community Action Program, Project Bravo	416,466
14	Greater East Texas Community Action Program	827,181
15	Hill Country Community Action Association, Inc.	255,458
16	Nueces County Community Action Agency	163,067
17	Panhandle Community Services	259,797
18	Rolling Plains Management Corporation	392,604
19	South Plains Community Action Association, Inc.	237,650
20	Texoma Council of Governments	480,815
21	Travis County Health and Human Services and Veterans Services	284,010
22	West Texas Opportunities	257,268
	Total	\$9,181,104

Attachment A: Summary of Public Comment and Staff Recommendations

A virtual public hearing was held via webinar on March 18, 2020, wherein no comment was received. Comments were also accepted in writing during the public comment period which began on March 6, 2020, and ended on March 30, 2020, wherein one comment was received from Stella Rodriguez, Executive Director of the Texas Association of Community Action Agencies. A summary of the comment and the Department's response is below.

Section 7.12 of the Health and Safety Plan

COMMENT SUMMARY: Commenter identified an inconsistency in the maximum acceptable Carbon Monoxide (CO) readings of stoves between the Standard Work Specifications and this section of the Health and Safety Plan. Commenter's recommendations are to replace "25 parts per million" for cook stove burners to "visual inspection" and replace "150 parts per million" for cook stove ovens to "225 parts per million", which are both consistent with Building Performance Institute standards.

STAFF RESPONSE: Staff concurs with the commenter's recommendation and will revise the Plan to reflect the correct language so that it is consistent with the Standard Work Specifications and Building Performance Institute standards.

APPLICATION FOR FEDERAL ASSISTANCE SF-424

Version 02

9. Type of Applicant:

A State Government

10. Name of Federal Agency:

U. S. Department of Energy

11. Catalog of Federal Domestic Assistance Number:

81.042

CFDA Title:

Weatherization Assistance Program

12. Funding Opportunity Number:

DE-WAP-0002020

Title:

2020 Weatherization Assistance Program

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Statewide

15. Descriptive Title of Applicant's Project:

Provide Statewide Weatherization Assistance

APPLICATION FOR FEDERAL ASSISTANCE SF-424

Version 02

16. Congressional District Of:

a. Applicant: Texas Congressional District 01

b. Program/Project: TX-Statewide

Attach an additional list of Program/Project Congressional Districts if needed:

17. Proposed Project:

a. Start Date: 07/01/2020

b. End Date: 06/30/2021

18. Estimated Funding (\$):

a. Federal	8,976,933.00
b. Applicant	0.00
c. State	0.00
d. Local	0.00
e. Other	0.00
f. Program Income	0.00
g. TOTAL	8,976,933.00

19. Is Application subject to Review By State Under Executive Order 12372 Process?:

- a. This application was made available to the State under the Executive Order 12372 Process for review
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372

20. Is the applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation)

No

21. By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to**

I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency

Authorized Representative:

Prefix: Mr First Name: Bobby

Middle Name:

Last Name: Wilkinson

Suffix:

Title: Executive Director

Telephone Number: 5124753296

Fax Number:

Email: bobby.wilkinson@tdhca.state.tx.us

Signature of Authorized Representative:

Date Signed:

BUDGET INFORMATION - Non-Construction Programs

1. Program/Project Identification No. EE0007952		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 07/01/2020		
	5. Completion Date 06/30/2021		

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. 2020 WAP Formula Funds	81.042	\$ 1,000,000.00		\$ 8,976,933.00		\$ 9,976,933.00
2.						
3.						
4.						
5. TOTAL		\$ 1,000,000.00	\$ 0.00	\$ 8,976,933.00	\$ 0.00	\$ 9,976,933.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	Grant Program, Function or Activity				Total (5)
	(1) GRANTEE ADMINISTRA TION	(2) SUBGRANTE E ADMINISTRA	(3) GRANTEE T&TA	(4) SUBGRANTE E T&TA	
a. Personnel	\$ 219,963.00	\$ 0.00	\$ 187,128.00	\$ 0.00	\$ 407,091.00
b. Fringe Benefits	\$ 76,547.00	\$ 0.00	\$ 65,120.00	\$ 0.00	\$ 141,667.00
c. Travel	\$ 0.00	\$ 0.00	\$ 27,720.00	\$ 0.00	\$ 27,720.00
d. Equipment	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
e. Supplies	\$ 3,000.00	\$ 0.00	\$ 5,875.00	\$ 0.00	\$ 8,875.00
f. Contract	\$ 0.00	\$ 611,330.00	\$ 8,000.00	\$ 660,000.00	\$ 9,189,104.00
g. Construction	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
h. Other Direct Costs	\$ 14,000.00	\$ 0.00	\$ 3,250.00	\$ 0.00	\$ 17,250.00
i. Total Direct Charges	\$ 313,510.00	\$ 611,330.00	\$ 297,093.00	\$ 660,000.00	\$ 9,791,707.00
j. Indirect Costs	\$ 100,083.00	\$ 0.00	\$ 85,143.00	\$ 0.00	\$ 185,226.00
k. Totals	\$ 413,593.00	\$ 611,330.00	\$ 382,236.00	\$ 660,000.00	\$ 9,976,933.00
7. Program Income	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

BUDGET INFORMATION - Non-Construction Programs

1. Program/Project Identification No. EE0007952		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 07/01/2020		
	5. Completion Date 06/30/2021		

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		\$ 1,000,000.00	\$ 0.00	\$ 8,976,933.00	\$ 0.00	\$ 9,976,933.00

SECTION B - BUDGET CATEGORIES					
6. Object Class Categories	Grant Program, Function or Activity				Total (5)
	(1) PROGRAM OPERATIONS	(2) HEALTH AND SAFETY	(3) LIABILITY INSURANCE	(4) FINANCIAL AUDITS	
a. Personnel	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 407,091.00
b. Fringe Benefits	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 141,667.00
c. Travel	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 27,720.00
d. Equipment	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
e. Supplies	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 8,875.00
f. Contract	\$ 6,289,556.00	\$ 1,446,675.00	\$ 151,543.00	\$ 22,000.00	\$ 9,189,104.00
g. Construction	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
h. Other Direct Costs	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 17,250.00
i. Total Direct Charges	\$ 6,289,556.00	\$ 1,446,675.00	\$ 151,543.00	\$ 22,000.00	\$ 9,791,707.00
j. Indirect Costs	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 185,226.00
k. Totals	\$ 6,289,556.00	\$ 1,446,675.00	\$ 151,543.00	\$ 22,000.00	\$ 9,976,933.00
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: EE0007952, State: TX, Program Year: 2020)

IV.1 Subgrantees

Subgrantee (City)	Planned Funds/Units
Alamo Area Council of Governments (San Antonio)	\$740,252.00 93
BakerRipley (Houston)	\$1,118,332.00 144
Big Bend Community Action Committee (Marfa)	\$144,389.00 13
Brazos Valley Community Action Program (College Station)	\$309,677.00 34
Combined Community Action, Inc. (Giddings)	\$210,673.00 22
Community Action Committee of Victoria Texas (Victoria)	\$282,254.00 30
Community Action Corporation of South Texas (Alice)	\$999,922.00 128
Community Council of South Central Texas, Inc (Seguin)	\$194,812.00 20
Concho Valley Community Action Agency (San Angelo)	\$179,230.00 17
Dallas County Health & Human Services (Dallas)	\$714,036.00 90
Economic Opportunities Advancement Corporation (Waco)	\$267,210.00 28
El Paso Community Action Program, Project Bravo (El Paso)	\$416,466.00 50
Fort Worth, City of (Fort Worth)	\$446,001.00 55
Greater East Texas Community Action Program (Nacogdoches)	\$827,181.00 105
Hill Country Community Action Association, Inc. (San Saba)	\$255,458.00 26
Nueces County Community Action Agency (Corpus Christi)	\$163,067.00 16
Panhandle Community Services (Amarillo)	\$259,797.00 28
Rolling Plains Management Corporation (Crowell)	\$392,604.00 47
South Plains Community Action Association, Inc. (Levelland)	\$237,650.00 25
Texoma Council of Governments (Sherman)	\$480,815.00 59
Travis County Health and Human Services and Veterans Services (Austin)	\$284,010.00 31
West Texas Opportunities (Lamesa)	\$257,268.00 28
Total:	\$9,181,104.00 1,089

**U.S. Department of Energy
WEATHERIZATION ASSISTANCE PROGRAM (WAP)
WEATHERIZATION ANNUAL FILE WORKSHEET**

(Grant Number: EE0007952, State: TX, Program Year: 2020)

IV.2 WAP Production Schedule

Weatherization Plans	Units
Total Units (excluding reweatherized)	1,089
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	1,089
C	Total Units Reweatherized	00
D	Total Dwelling Units to be Weatherized and Reweatherized (B + C)	1,089
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	\$6,289,556.00
G	Total Dwelling Units to be Weatherized and Reweatherized (from line D)	1,089
H	Average Program Operations Costs per Unit (F divided by G)	\$5,775.53
I	Average Vehicles & Equipment Acquisition Cost per Unit (from line E)	\$0.00
J	Total Average Cost per Dwelling (H plus I)	\$5,775.53

IV.3 Energy Savings

Method used to calculate savings: <input checked="" type="checkbox"/> WAP algorithm <input type="checkbox"/> Other (describe below)			
	Units	Savings Calculator (MBtus)	Energy Savings
This Year Estimate	1089	29.3	31908
Prior Year Estimate	955	29.3	27982
Prior Year Actual	254	29.3	7442
Method used to calculate savings description:			

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: KJFranke@craction.com
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 Email: kswenson@sbcglobal.net
Health and Human Services Commission	Type of organization: Unit of State Government Contact Name: Toni Packard Phone: 5124384290 Email: toni.packard@hhsc.state.tx.us

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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
02/27/2020	TDHCA Board of Directors authorizes release of draft State Plan for public comment.
02/28/2020	Draft State Plan and notice of public hearing posted on the TDHCA website; public listserve announcement sent announcing availability of draft State Plan and public hearing details.
03/06/2020	Announcement of public hearing for draft State Plan published in Texas Register. Public comment period for draft State Plan begins.
03/18/2020	Public Hearing Webinar for the DOE State Plan begins at 2:00 pm (CST). Conducted virtually in accordance with DOE guidance as a result of the COVID19 pandemic.
03/30/2020	Comment period for the DOE State Plan ends at 5:00 pm (CST).
03/30/2020	WAPAC meeting regarding DOE State Plan.
04/23/2020	Final DOE State Plan and list of awardees presented at TDHCA Board of Directors meeting for approval. The meeting also serves as a Public Hearing.

IV.7 Miscellaneous

Recipient Business Officer

Michael De Young
Michael.deyoung@tdhca.state.tx.us
221 East 11th Street
Austin, Texas 78701
(512) 475-2125

Recipient Principal Investigator

Gavin Reid
gavin.reid@tdhca.state.tx.us
221 East 11th Street
Austin, Texas 78701
(512) 936-7828

Policy Advisory Council

The Policy Advisory Council ("PAC") is 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. The PAC meets annually at the end of the public hearing period to discuss the DOE plan and comments received.

The low-income elderly population is represented by the PAC members from Combined Community Action and the Greater East Texas Community Action Program. The low-income persons with disabilities population is represented by the PAC member from the Health and Human Services Commission.

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 potential effects of many health and safety measures, such as lead disturbances and other pollution occurrence items. 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.

2019 ACSI Action Plan (based on 2019 Survey)

After receiving the results of the 2019 ACSI Survey, TDHCA met with the Texas Association of Community Action Agencies (TACAA), representing the network of WAP Subgrantees, to analyze and discuss the results. With TACAA's input, TDHCA worked out a plan of action to address the concerns raised in the 2019 Survey. The action plan includes the following:

1. Provide four separate opportunities to comment on the DOE State Plan to include 1) a two week period of time to provide comments on the Plan before the Department begins drafting the Plan, 2) an informal two week period to comment on the draft Plan before going to the more formal public comment period, 3) the formalized public comment process lasting 25 days, and 4) a public hearing.
2. To enhance the network's familiarity with the Plan, before the formal public comment period closes the Department will explain the importance of the Plan, the reason for the Plan, and the different sections of the Plan to the network during one of the regular WAP network webcalls or via a stand-alone webinar.

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3. After the DOE Plan has been approved and submitted to DOE, the Department will survey the network asking for their feedback on the Plan development process and asking for suggestions on how to improve the plan process.
4. To ensure contracts are received and executed in time, Department staff will modify internal mechanisms so that boiler contract templates will be routed earlier.
5. Increased training opportunities and individualized Training and Technical Assistance will be provided with the addition of a new highly qualified WAP trainer (i.e. Chad Turner).
6. To improve communication, the Department will request feedback from monitored subgrantees by sending out a Post Monitoring Services survey after each monitoring visit.
7. To address cost allocation issues, the Department will seek out and fund training opportunities provided via third party consultants familiar with State of Texas and federal regulations.
8. Teach and train subgrantees on how to procure for an IREC trainer so they can receive individualized training and certifications on their own.
9. Develop and implement technical courses to increase performance and expenditures.
10. Continue to collaborate with the Compliance Division to develop guidance for subgrantees and to identify training needs amongst both individual subgrantees and the network as a whole.
11. To improve consistency, schedule regular meetings with Program and Compliance staff to discuss rising issues and trends in the WAP network.
12. To improve communication, disseminate to all levels a monthly WAP e-newsletter to mention important WAP related updates.
13. Include all WAP staff at each Subgrantee on WAP emails to ensure information reaches all levels.
14. Continue to update and maintain the TDHCA website regarding WAP best practices and information received from the federal and state levels. Each time an update occurs, TDHCA sends an email to the network notifying them of the update.
15. To assist with increasing certifications within the network, the Department will continue to make available a proctor for QCI testing.
16. Continue to host regularly scheduled network webcalls, provide training for new program managers and new Executive Directors, and individual agency trainings that are personalized to the specific needs of a subgrantee.

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This worksheet should be completed as specified in Section III of the Weatherization Assistance Program Application Package.

V.1 Eligibility

V.1.1 Approach to Determining Client Eligibility

Provide a description of the definition of income used to determine eligibility

Eligibility for program assistance is determined under the Federal Poverty Income Guidelines and calculated as described in 10 TAC §6.4.

Describe what household eligibility basis will be used in the Program

During the LIHEAP application process, households will be screened for DOE Weatherization benefits and determined eligible if their income is at or below 200% of the Federal Poverty Income Guidelines.

Describe the process for ensuring qualified aliens are eligible for weatherization benefits

The Welfare Reform Act, officially referred to as the Personal Responsibility and Work Opportunity Act of 1996, H.R. 3734, placed specific restrictions on the eligibility of aliens for "Federal means-tested public benefits" for a period of five years. As defined in a Federal Register notice dated August 26, 1997 (62 FR 45256) the Department of Health and Human Services (HHS) is interpreting "Federal means-tested public benefits" to include only those benefits provided under Federal means-tested, mandatory spending programs. HHS Information Memorandum LIHEAP-IM-25 dated August 28, 1997, states that all qualified aliens, regardless of when they entered the U.S., continue to be eligible to receive assistance and services under the Low-Income Home Energy Assistance Program (LIHEAP) if they meet other program requirements.

To ensure program continuity between LIHEAP and DOE Weatherization for all Subgrantees operating both programs, the DOE Weatherization Assistance Program will follow the interpretation as adopted by HHS. The Department has provided training and will continue to provide training to those Subgrantees who have elected to use the SAVE system to verify legal status.

The DOE and LIHEAP WAP are in compliance with LIHEAP-IM-99-10, issued June 15, 1999, which states that weatherization in a multifamily building is not a covered activity for status verification.

V.1.2 Approach to Determining Building Eligibility

Procedures to determine that units weatherized have eligibility documentation

Subgrantees maintain a client file for each unit weatherized, including documented proof that the Dwelling Unit is an eligible Dwelling Unit as defined in 10 CFR §440.22. The Department verifies that weatherized units have eligibility documentation during monitoring reviews.

Describe Reweatherization compliance

Texas limits reweatherization to 5% of all units weatherized. To ensure the cap is not exceeded, Subgrantees may not reweatherize a unit without prior approval from the Department.

Reweatherization will be allowed on units that have received weatherization prior to September 30, 1994. A new energy audit must be conducted on each unit reweatherized.

Units may be eligible for reweatherization under 10 TAC §6.403(i) which specifies:

Consistent with 10 CFR §440.18(e)(2), if a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit was partially weatherized under a federal program during the period September 30, 1975, through September

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30, 1994, the Dwelling Unit may receive further financial assistance for Reweathering.

Describe what structures are eligible for weatherization

10 TAC §6.2 and §6.403 includes the following definitions which describe structures eligible for weatherization:

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 is the same as the definition for Dwelling Unit in 10 CFR §440.3 Definitions)

Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.

Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.

Shelter--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.

Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.

Buildings with more than one Dwelling Unit under one roof must follow 10 TAC §6.414, Eligibility for Multifamily Dwelling Units and Shelters.

Describe how Rental Units/Multifamily Buildings will be addressed

In accordance with 10 CFR §440.22(b)(3), the Department requires that Subgrantees keep on file procedures that address protection of renters' rights, to ensure:

- Written permission of the building owner or his agent before commencing work.
- Cash/in-kind contribution from building owner when feasible.
- Benefits of the services accrued primarily to the low-income tenants residing in such units.
- For a reasonable period of time after completion, the household will not be subjected to rent increases (unless those increases are demonstrably related to other matters other than the weatherization work performed).
 - There are adequate procedures whereby the Grantee can receive tenant complaints and owners can appeal, should rental increases occur.
- No undue or excessive enhancement shall occur to the value of the Dwelling Unit.
- To secure the federal investment and to address issues of eviction from and sale of property, per 10 CFR §440.22(c), Grantees may seek landlord agreement to placement of a lien (or other contractual restrictions) upon the property being weatherized.

The Department will abide by 10 CFR §440.22, ensuring that not less than 66% of the eligible building units (50% for duplexes and four-unit buildings, and certain eligible types of large multifamily buildings) are dwelling units 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. WPN 16-5 provides guidance on the review and verification required for Department of Housing and Urban Development (HUD), Department of Agriculture (USDA), and Low Income Housing Tax Credit (LIHTC) buildings. Assessments and client file documentation for rental units and multifamily units are also detailed in the Multifamily Weatherization Best Practice posted on the Department's website at <http://www.tdhca.state.tx.us/community-affairs/wap/docs/WAP-BP-MFWeatherization.pdf>.

In order to weatherize large multifamily buildings containing 25 or more dwelling units or those with shared central heating (e.g., boilers) and/or shared cooling plants (e.g., cooling tower that use water as the coolant) regardless of the number of dwelling units, Subgrantees must obtain prior written approval through the Department. When necessary, the Department will seek DOE approval.

Subgrantees must submit to the Department a request for approval to weatherize large multifamily buildings. Request for permission must include evidence of significant energy savings because of upgrades to equipment, energy systems, common space, or the building shell. A significant energy savings is defined as having an SIR of 1.0 or greater in the energy audit.

Describe the deferral Process

A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subgrantee's weatherization

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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 Subgrantee must declare their intent to defer weatherization on an eligible unit on the assessment form. The assessment form must 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 Subgrantee shall weatherization work begin.

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.

Crewmembers or contractors who work on a unit that could or should be a deferral or walk-away do so at their own risk.

V.1.3 Definition of Children

Definition of children (below age): **18**

V.1.4 Approach to Tribal Organizations

Recommend tribal organization(s) be treated as local applicant?

If YES, Recommendation. If NO, Statement that assistance to low-income tribe members and other low-income persons is equal.

The 70th Texas Legislature created the Native American Restitutionary Program (Oil Overcharge Restitutionary Act, Texas Government Code, Chapter 2305) for the purposes of providing oil overcharge restitution to Texas Native Americans. In the Texas WAP, the Native-American Indian population is treated and served in the same manner as other applicants.

V.2 Selection of Areas to Be Served

The Texas WAP is available to eligible low-income households in all 254 counties of the state. Subgrantees are held responsible for all intake, eligibility, and weatherization activities. If the Subgrantee's performance record is satisfactory according to both state and federal regulations, then the Department may offer to renew the contract if the Subgrantee so desires. The Department's award committee may decline to recommend an award or place conditions on an award based upon its previous participation review as outlined in 10 TAC §1.302.

New or additional DOE subgrantees for counties that become unserved by the DOE WAP will be selected according to DOE regulations found in 10 CFR §440.15 and 10 TAC §1.302. If the Department determines it is necessary to permanently reassign a service area to a new subgrantee, the subgrantee will be chosen in accordance with 10 CFR §440.15. A new or additional subgrantee is defined as a CAA or other public or nonprofit entity that is not currently operating a Department-funded Weatherization Assistance Program. All counties are served by 22 Subgrantees.

The Department may deobligate all or part of the funds provided under this contract as outlined in 10 TAC §6.405. A Subgrantee's failure to expend the funds provided under this State plan in a timely manner may also result in the Subgrantee's ineligibility to receive additional funding during the program year.

Formula Distribution

The Department updates the budget allocation proportion by county and Subgrantee based on poverty income, elderly poverty, median household income (from the 2010 U.S. Census data), and climate data (from the National Climatic Data Center, Climate Normals, 2010), as outlined in 10 TAC §6.404.

The Department allocates funds to Subgrantees by applying a formula based upon the DOE allocation for program year; or if the allocation amount is not known, based on an assumption of level funding from the previous program year. Once the allocation amount is known, the formula is re-run. The allocation formulas reflect the 2010 Census data. If any carryover funds are available, they will be distributed by allocation formula and used to increase the number of units to be weatherized. The Department will adjust guidance to reflect the adjusted average expenditure limit per unit for the program year.

The fund allocations for individual service areas are determined by a 5-factor distribution formula as outlined in 10 TAC §6.404:

- (1) Number of non-elderly poverty households per county;

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- (2) Number of elderly poverty households per county;
- (3) Median income variance per county;
- (4) Inverse poverty household density ratio per county; and
- (5) County Weather Factor (Heating/Cooling Degree days per county) as a portion of State County Weather.

V.3 Priorities

The Department will ensure by contract that its Subgrantees give priority to weatherizing 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. Applicants from these groups must be placed at the top of a Subgrantee's waiting list. The Department ensures that Subgrantees give proper attention to these requirements through monitoring/evaluation of the Subgrantee.

V.4 Climatic Conditions

The climatic conditions for the State of Texas are imbedded in the algorithms of the Weatherization Assistant (WA 8.9) energy audit software tool engineered by the Oak Ridge National Laboratory for the Department of Energy. As part of the energy audit modeling, the Department requires the Subgrantee network to select the nearest weather station to the dwelling units. The Weather files imbedded in the WA 8.9 contains 30 year data of Heating and Cooling degree days for each weather station.

As described in the report prepared by the Pacific Northwest National Laboratory & Oak Ridge National Laboratory for the Department of Energy, the state of Texas has several IECC climate zones. http://apps1.eere.energy.gov/buildings/publications/pdfs/building_america/ba_climateguide_7_1.pdf.

These climate zones are used as an aid in helping Subgrantees to identify the appropriate climate designation for the counties in which they are providing WAP services. In addition to prescribing appropriate mechanical equipment (example of climate specific measures would be evaporative cooling which may be prescribed in the Hot Dry climate of Texas and not in the Mixed Humid part of Texas) the IRC prescriptive thermal envelope of measures are different. The climate zones found in Texas are as follows:

1. Hot-Humid

A hot-humid climate is defined as a region that receives more than 20 inches (50 cm) of annual precipitation and where one or both of the following occur:

- A 67°F (19.5°C) or higher wet bulb temperature for 3,000 or more hours during the warmest six consecutive months of the year; or
- A 73°F (23°C) or higher wet bulb temperature for 1,500 or more hours during the warmest six consecutive months of the year.

IRC Prescriptive Thermal Envelope Measures:

Zone 2A		Zone 3A	
Ceiling	R 38		R38
Windows	U 0.40		U 0.35
Walls	R13		R13 + 5
Floors	R13		R19
SHGC	0.25		0.25

2. Hot-Dry

A hot-dry climate is defined as a region that receives less than 20 inches (50 cm) of annual precipitation and where the monthly average outdoor temperature remains above 45°F (7°C) throughout the year.

IRC Prescriptive Thermal Envelope Measures:

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Zone 3B

Ceiling	R38
Windows	U 0.35
Walls	R13 + 5
Floors	R19
SHGC	0.25

3. Mixed-Humid

A mixed-humid climate is defined as a region that receives more than 20 inches (50 cm) of annual precipitation, has approximately 5,400 heating degree days (65°F basis) or fewer, and where the average monthly outdoor temperature drops below 45°F (7°C) during the winter months.

IRC Prescriptive Thermal Envelope Measures:

Zone 3A

Ceiling	R38
Windows	U 0.35
Walls	R13 + 5
Floors	R19
SHGC	0.25

4. Mixed-Dry

A mixed-dry climate is defined as a region that receives less than 20 inches (50 cm) of annual precipitation, has approximately 5,400 heating degree days (50°F basis) or less, and where the average monthly outdoor temperature drops below 45°F (7°C) during the winter months.

IRC Prescriptive Thermal Envelope Measures:

Zone 4

Ceiling	R49
Windows	U 0.35
Walls	R13 + 5
Floors	R19
SHGC	0.40

In addition to the 2015 IRC adopted by the State of Texas, several individual cities have adopted amendments to the code. The adoption and amendments to the 2015 IRC impact the WA 8.9 energy audits in that cities are required to evaluate user defined measures to meet the codes adopted by each individual City.

V.5 Type of Weatherization Work to Be Done

V.5.1 Technical Guides and Materials

Technical Guides and Materials

All technical guides (for all single family, mobile home, and multifamily buildings) and materials meet the specifications, objectives and desired outcomes outline in the Standard Work Specifications (SWS). Provided below is an electronic link to all the current, DOE approved field guides and/or standards for single family, mobile homes, and multifamily buildings as well as all other relevant program guidance materials. These materials are available to all Subgrantees and contractors at any time.

<http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

Further, the Department has several Weatherization Best Practices posted at: <http://www.tdhca.state.tx.us/communityaffairs/wap/wapbestpractices.htm>.

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Best practices are developed based upon repeat questions that require more clarity than simply an FAQ. These have proved highly effective in multiple ways: increased compliance, better understanding on how to assess and proceed, increased consistency across the Network, and reduction in calls for same issues. They often have multiple references and are based upon sound building science principles.

Materials and Work Standards

Subgrantee will include the substance of this section in all subcontracts.

A. Subrecipient shall weatherize eligible dwelling units using only weatherization materials which meet or exceed the standards prescribed by DOE in Appendix A of 10 CFR Part 440 and added approved materials noted in WPN 19-4.

B. All weatherization measures installed shall meet or exceed the standards prescribed by DOE in WPN 15-4 regarding Standard Work Specifications, as detailed in the Department’s Standard Work Specifications. All Subrecipient agreements and vendor contracts contain language which clearly documents the SWS specifications for work quality outlined in WPN 15-4, Section 2. A signed contract shall confirm that the organization understands and agrees to these expectations.

C. All weatherization work must be performed in accordance to the DOE approved energy audit procedures, 10 CFR Part 440 Appendix A, State of Texas adopted International Residential Code (or that of jurisdictions authorized by State law to adopt later editions).

Field guide types approval dates

Single-Family: 6/15/2018
Manufactured Housing: 6/15/2018
Multi-Family:

V.5.2 Energy Audit Procedures

Audit Procedures and Dates Most Recently Approved by DOE

Audit Procedure: Single-Family
Audit Name: Other (specify) NEAT: DOE Approved June 2, 2016
Approval Date: 6/2/2016

Audit Procedure: Manufactured Housing
Audit Name: Other (specify) MHEA: DOE Approved June 2, 2016
Approval Date: 6/2/2016

Audit Procedure: Multi-Family
Audit Name: Other (specify) NEAT: 5-24 individually heated and cooled units - DOE Approved June 2, 2016. For Multifamily buildings of 25 units or more the Department will seek DOE approval prior to the installation of any weatherization measures.
Approval Date:

Comments

TDHCA will submit to its Project Officer a request for approval of an audit tool by November 30, 2020, according to the instructions as described in WPN 19-4 and Attachment 1 of WPN 19-4. Prior to this date, TDHCA WAP staff will examine whether or not the current already-DOE-approved audit tool (i.e., NEAT and MHEA) is sufficiently identifying the most cost effective Energy Conservation Measures to install in homes across the various climate zones in Texas.

V.5.3 Final Inspection

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The Department has provided Subgrantees with sufficient T&TA funding to obtain and/or maintain required QCI and MF-QCI certifications by an IREC certified training provider. The Department tracks Subgrantee compliance with unit inspection requirements of WPN 15-4.

The Department has six certified QCI staff who maintain their certifications. The Department annually requires all Subgrantees to report the following for determining the number of units that the Department will inspect for compliance at each agency:

Option 1 (at minimum 5% compliance final inspection required): The Subgrantee will NOT allow the QCI staff member (or third party QCI) who conducts the Final Inspection on any DOE funded/reported unit to perform any other aspect(s) associated with that same unit. E.g., Initial Assessment, NEAT Audit, Work Order, etc.

Option 2 (10% compliance final inspection required): The Subgrantee will have a QCI staff member conduct the Final Inspection on every DOE funded/reported unit AND will also perform other aspect(s) associated with that same unit. E.g., Initial Assessment, NEAT Audit, Work Order, etc.

NOTE: As scheduling permits, compliance will conduct 10% final inspections on completed units for Option 1 as well.

TDHCA survey's the WAP network annually to determine which option is appropriate for each Subgrantee while developing the monitoring schedule. Prior to conducting an onsite monitoring, the option will be verified to ensure an adequate number of units are inspected.

All units are inspected by a certified QCI. In addition to final inspections, a completed QCI Final Inspection Certification Form is required. [QCI Final Inspection Certification Form \(PDF\)](#).

Subgrantees are required to follow work standards as per the SWS guidelines. This requirement is within Subgrantee contracts, and the SWS guide is posted on the Department [Program Guidance](#) Webpage.

All units must meet DOE requirements and pass a QCI inspection. Any unit that fails to be brought into compliance results in disallowed costs and a finding for the reason(s) of the disallowed cost is issued in the monitoring report. The initial T&TA is provided by training staff with email guidance providing resources to resolve the findings. This is then followed by individualized T&TA, or a referral to the appropriate Comprehensive training provider, as deemed appropriate.

V.6 Weatherization Analysis of Effectiveness

Pursuant to 10 TAC, Chapter 1, Subchapter C, §1.302, a review of a Subgrantee's compliance history in Department programs must be approved by the Department's Executive Award and Review Advisory Committee (EARAC) and provided to the Department's Board of Directors in order that the Board may consider the compliance history and make and document its award decisions with full knowledge of these matters. Prior to the award of DOE funds to any Subgrantee, EARAC reviews:

1. Summary information regarding findings identified during the last three years; and
2. If the Subgrantee is subject to the requirement of an annual single audit:
 - A. A report of any required single audit or single audit certification form that is currently past due;
 - B. If such single audit has been submitted to the Federal Audit Clearinghouse; and
 - C. If the most recent single audit report contained findings.

The Subrecipient Monitoring section, within the Compliance Division, submits information regarding its monitoring activity to EARAC. If EARAC finds that a Subgrantee has outstanding monitoring issues, their WAP award may be subject to conditions intended to avoid future noncompliance, and limit disallowed costs.

Issues identified during this review make the Subgrantee aware of areas requiring attention, both from a monitoring standpoint and a T&TA standpoint. The reviews not only hold the Subgrantee accountable, they also give the monitoring and T&TA sections guidance in planning future activities.

T&TA staff are copied on all monitoring reports and/or a staff meeting is held for monitors to debrief T&TA staff after each visit. In those meetings, monitoring staff relay issues found related to the Subgrantee as well as overall trends identified. Following the monitoring report, T&TA staff provide an initial email to the Subgrantee to provide resources for identified issues. T&TA staff applies this debrief information when determining the needs for agency-wide specific T&TA and to plan training curriculum.

Further, Subgrantee performance is reviewed periodically and at the end of the program year. The Department tracks subgrantee performance over time by reviewing their monthly production and expenditure reports. Subgrantees are required to submit a Production Report on the 15th of each month. If staff determines that a benchmark is missed or a subgrantee is falling behind on expenditure and/or production, a letter is issued from the Department and the subgrantee is required to submit a written Mitigation Action Plan according to 10 TAC §6.405.

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Additionally, based upon monthly submitted performance and expenditure reports, individualized TA is provided to ensure full expenditure and an adequate rate of production. T&TA staff analyze the reports submitted by subgrantees and provide T&TA when necessary. Such T&TA may include a course on production oriented management, proper reporting, procurement, and/or other relevant topics.

Analysis of reports includes the following:

- Number of homes completed;
- Number of applications pending;
- Number of homes in progress;
- Contract amount;
- Total funds expended;
- Balance of funds; and
- Special comments

The Department enforces the Deobligation/Reobligation of Awarded Funds rule as laid out in 10 TAC §6.405. While the Department's performance review process has not achieved full expenditure of funds each Program Year (e.g., PY 2017 due to Hurricane Harvey), the Department continuously assesses its processes and researches potential modifications in order to improve. For example, the Department has a Program Specialist who is tasked with the responsibility of overseeing the performance and expenditure report and production schedule process and to provide technical assistance to individual subrecipients who are on the pathway to non-expenditure of the full amount of their allocation.

V.7 Health and Safety

Attached to SF-424

V.8 Program Management

V.8.1 Overview and Organization

The Department is the state's lead agency responsible for affordable housing and community assistance programs. The Department annually administers funds derived from mortgage revenue bond financing and refinancing, federal grants, and federal tax credits.

In 1991, the 72nd Texas Legislature created the Department. The Department's enabling legislation combined programs from the Texas Housing Agency, the Community Development Block Grant Program from the Texas Department of Commerce, and the Texas Department of Community Affairs.

On September 1, 1992, two programs were transferred to the Department from the Texas Department of Human Services: the Low Income Home Energy Assistance Program and the Emergency Nutrition and Temporary Emergency Relief Program. Effective September 1, 1995, in accordance with House Bill 785, regulation of manufactured housing was transferred to the Department. In accordance with House Bill 7, effective September 1, 2002, the Community Development Block Grant and Local Government Services Programs were transferred to the newly created Office of Rural Community Affairs. Effective September 1, 2002, in accordance with Senate Bill 322, the Manufactured Housing Division became an independent entity administratively attached to TDHCA. As a state agency, the Department is under the authority of the Governor of the State of Texas.

The Department's services are offered through three program categories: Single Family Programs, Multifamily Finance Production, and Community Affairs, which administers the WAP.

The Department subcontracts with a network of Subgrantees that provide the WAP services. The network is comprised of community action agencies (CAAs), regional Councils of Government (COGs), and organizations in the other public or private nonprofit entity category (PPNPs). All network Subgrantees are provided a draft copy of the yearly weatherization state plan and a notice of the state public hearing. The public and all Subgrantees are invited and encouraged to participate in the public comment process.

Historically, the regular weatherization program year ran from April through March. Starting PY 2015, the weatherization program year has run from July

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through June.

The Department will continue to administer the program through Subgrantees in accordance with 10 CFR §440.15 provisions and State regulations. If existing Subgrantees are successfully administering the Program, the Department will offer to renew the contract if the Subgrantee so desires and if grant funds are available. When the Department determines that an organization is not administering the program satisfactorily, it may take the following action:

- Correction of the problem(s) with training or technical assistance;
- Re-assignment of the service area (or service area portion) to another existing Subgrantee; or,
- Solicitation or selection of a new or additional Subgrantee in accordance with 10 CFR §440.15 provisions.

A new or additional Subgrantee is defined as a CAA or other public or nonprofit entity that is not currently operating a DOE Weatherization Assistance Program.

Consolidation/downsizing: Any downsizing will occur through normal attrition through a Subgrantee's determination that it can no longer administer the program efficiently/effectively, or through the Department's determination that a Subgrantee can no longer administer the program efficiently/effectively.

Reassignment of service areas for just cause: In the event that a service area can no longer be served by a Subgrantee, the Department reserves the right to reassign service areas. If it appears necessary to permanently reassign the service area, a new Subgrantee may be chosen in an open, competitive solicitation process in accordance with 10 CFR §440.15, or the reassignment may become permanent.

V.8.2 Administrative Expenditure Limits

The Department will use 5% of its grant funds for state administration. An additional 5% will be distributed for local WAP field operations under contract. Contract funds are intended for local administration, liability insurance coverage, local fiscal audit, materials, labor, program support and health and safety measures. To help ensure that Subgrantees comply with the full and proper use of all the contract funds, written definitions are to be provided to Subgrantees on budget categories as deemed necessary. The Department has elected to provide the maximum allowable funds for Subgrantee administration to Subgrantees receiving less than \$350,000, so it has not included procedures for deciding which Subgrantees will receive additional funds. This decision is based on the following factors:

- Subgrantees often have to rely on other programs for WAP outreach and other administrative support;
- Subgrantees have had to adjust budgeting to keep pace with cost-of-living increases -- staff salaries, fringe benefits, rent, postage, travel, etc.;
- The State of Texas is 877 miles from Northern to Southern tips, 834 miles from Eastern to Western tips, and is comprised of a total of 266,807 square miles. The extra geography that Subgrantees have to cover to serve all the area's clients equitably requires additional staff, staff time, postage and phone costs, and vehicle wear and maintenance. (Source of Mileage Data: Texas Department of Transportation);
- Salaries, space, utilities, telephone, and similar costs associated with program support personnel should be charged to program support; and
- The increasing cost of maintaining appropriate qualified staff is challenging.

For Subgrantees receiving over \$350,000, the administrative allowance will be 5% of each subgrant. For Subgrantees receiving less than \$350,000, the administrative allowance will be 10% of each subgrant.

V.8.3 Monitoring Activities

The Department will monitor the Weatherization Assistance Program ("WAP") with the Monitoring staff included in the budget. Subgrantee is defined as an organization with whom the Department contracts and provides WAP funds.

Names and credentials of Department staff dedicated to monitoring DOE activities are:

- Robert Moore - over 8 years of weatherization experience as a Texas WAP Subgrantee, QCI certified, BPI & Lead certified, OSHA30
- Ben Rose - over 4years of weatherization experience as a Texas WAP Subgrantee, QCI certified, BPI & Lead certified
- Kevin Glienke – over 8 years of weatherization monitoring experience; BPI Certified; has attended DOE sponsored conferences; QCI certified

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All staff listed above conduct fiscal/administrative and inspection monitoring activities and are paid for out of administration (10%) and T&TA (30%) budget categories.

Compliance Subrecipient Monitoring is staffed with nine additional monitors not dedicated to weatherization. All of these qualified monitors may be tasked with fiscal and programmatic activities though funds provided by this State plan.

The Department will monitor each of the DOE Subgrantees during the contract period which will be July 1, 2020 through June 30, 2021. Many of the DOE Subgrantees also receive funds through the Department of Health and Human Services Community Service Block Grant and Low Income Home Energy Assistance Program. Whenever possible, all three programs will be monitored during one visit to the Subgrantee.

(See attached PY2020 Tentative Monitoring Schedule)

The Department understands DOE's expectation and will conduct at least one on-site visit annually to each Subrecipient for technical and fiscal/administrative monitoring.

Financial and Administrative monitoring will include, at minimum, a review of the Subgrantee's General Ledgers and policies and procedures (including procurement) as well as support documentation for reported expenditures. These documents will be reviewed to ensure compliance with DOE, Department and other applicable rules and regulations. The Department will monitor for eligibility through sampled client file reviews. Through sampled unit inspections, Department staff will monitor for installed measures that are allowable and meet or exceed DOE requirements. The Department will review whether charged measures were installed properly and determine compliance with health and safety procedures, client eligibility, energy audit procedures, client education procedures and compliance with the SWS.

The Department will inspect 5% of all completed weatherized units. In order to achieve the 5% inspection rate and comply with the requirements of WPN 15-4, the Department is requesting that Subgrantees with a QCI on staff do not have that staff member involved with the weatherized unit prior to final inspection. The Department defines prior involvement as performing the audit, creating the work order or performing any weatherization work on the weatherized unit. The Department has created a QCI Final Inspection Form for Subgrantees which will allow TDHCA to determine if a QCI employed by the Subgrantee had prior involvement with that unit. The Department will review each sampled QCI final inspection document to ensure compliance with the requirement to inspect 5% and will increase the required inspections if necessary.

The Department recognizes that there may be a need to perform additional unit inspections towards the end of the contract period to comply with the requirements of WPN 15-4 if there were not enough units available to sample during the full monitoring review.

More frequent monitoring visits (Fiscal/Administrative and/or Technical) may be conducted for Subgrantees with significant identified risk.

Monitors will complete evaluation instruments to determine a Subgrantee's compliance. The instruments cover Financial and Administrative requirements, health and safety procedures, client eligibility, energy audit procedures, client education procedures, and compliance with the SWS. Compliance Monitors also review the hard copy of the NEAT or MHEA audit which is required to be in the client file to assure that the scope of the work was directed by the audit.

Monitors scan documents as support if findings are noted.

The following list provides additional monitoring details that may occur during the monitoring review:

- Monitors may request copies of fiscal records/support documentation and perform a desk review to gauge the fiscal condition of the Subgrantee prior to onsite monitoring.
- As needed, monitors may perform a desk review of records requested but not provided during the onsite review and records requested to clarify issues identified during the onsite monitoring visit. The Department recognizes the requirement to issue the monitoring letter within 30 days of the review. The Department does not consider the review complete until receipt of information needed to ascertain compliance. Monitoring letters will be issued within 30 days of receipt of all necessary information.
- Monitors may test that weatherization activities including but not limited to: energy audits, energy conservation measures, incidental repair measures and health and safety measures are only performed by properly trained Retrofit Installer/Technicians, Crew Leaders, and Energy Auditors that have received comprehensive training (not necessarily certification) that is aligned with DOE's Job Task Analysis for the position in which the weatherization worker is employed.

The Department will issue monitoring reports within 30 days of completion of the review. Subgrantees are provided a 30 day corrective action period to respond and provide evidence of correction. On a case by case basis, the Department may grant an extension to respond to the report if there is good cause

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and the request is made during the corrective action period. The Department will review each response and determine if the Subgrantee has resolved the compliance issue. If the Department determines the issue is not resolved, the Subgrantee will be notified and required to submit an additional response(s) until the compliance issue is resolved. In certain circumstances, the Department may “close” a compliance issue when there remains no additional actions that can be taken to resolve the issue. At the conclusion of this process, any unresolved compliance issues will be reported to DOE, as will any noncompliance that appears in two consecutive monitoring reports. Instances of suspected fraud, waste, or program abuse will be reported immediately to DOE and the Texas State Auditors Office.

The Department will review the annual financial audits of each Subgrantee agency. The Department requires each Subgrantee to complete an Audit Certification form within 60 days of the end of the entity’s fiscal year. This is used to determine if a Single Audit is required. All single audits and management letters must be uploaded to the Federal Clearinghouse within nine months of the Subgrantee’s fiscal year end. Upon receipt of the Single Audit, a review is completed to determine if the packet submitted is complete and all opinions are provided. If the audit contains findings, they are reviewed and discussed by the Director of Internal Audit, the Director of Compliance and staff to determine the appropriate steps to ensure the entity corrects the issues identified in the audit report or management letter. The Department issues correspondence to the entity, identifying that corrective action measures must be performed and requiring that support documentation be provided. The entity is provided a time frame to complete the corrective action and to respond to the correspondence. The entity must correct all identified issues within six months of the Single Audit being submitted to the Federal Clearinghouse.

The Department’s Compliance Monitor(s) keep abreast of the required timeframe for the entity to complete the corrective action and to provide the response. When the response is received, the Department reviews the documentation to determine if the corrective action requirements have been met. If the issues have not been corrected, the Compliance Monitor and/or Compliance Subrecipient Monitoring Director will notify the Director of Compliance. The Director of Compliance may determine if the matter should be referred to the Department’s Enforcement Committee in accordance with Department rules and standard operating procedures. During the next monitoring visit to the entity, the Department will determine if the selection of expenditures or materials reviewed reflect compliance with the respective requirement.

If it is determined that the Subgrantee is not able to administer the weatherization program, the Department will follow the requirements in 10 TAC §2.202 Contract Closeout.

V.8.4 Training and Technical Assistance Approach and Activities

The Department provides Subgrantees with sufficient T&TA funding to obtain and/or maintain required certifications; such as: QCI, MF-QCI, Building Analyst/Energy Auditor, Lead Safe Renovator, Lead Safe Worker, and OSHA 10 or 30. All training provided includes requirements for compliance with Quality Work Specifications. The Department will conduct trainings based upon the following:

- Grant Requirements or as directed by DOE monitor or audit reports.
- Subgrantee Request. The Department has an online request system, with a T&TA menu list, or section for the Subgrantee to make a specific request or ask specific questions. The Department will contact the requestor and customize training to meet the need. <https://tdhca.wufoo.com/forms/request-for-ca-program-assistance>
 - In addition, submitted questions or requests are reviewed for creating FAQs or to identify topics for regional trainings, workshops, or individualized training.
- Monitor Reports. The Department’s compliance team shares monitoring issues with the training team. The training team will initially provide resources and guides to address any findings, and follow up with T&TA as required.
 - Trends across the Network can be addressed in regional trainings or workshops.
- Management Request. Management may make a specific request and dictate the type of training needed.

The Department has six certified QCI staff who monitor and/or train weatherization Subgrantees on quality weatherization work, proper diagnostics, documentation, and compliance. The Department has two certified BPI Proctors who administer exams for BPI written exams. The Department continues to provide T&TA to assist Subgrantees in preparing for and obtaining required certifications. The Department created an online Web-page dedicated to Quality Work Plan requirements that contains guidance and resources. <http://www.tdhca.state.tx.us/community-affairs/wap/quality-work-plan.htm>

NOTE: New Mexico Energy Smart Academy sometimes partners with local Subgrantees to provide IREC certified courses in Texas including MF-QCI and Energy Auditor.

Comprehensive Training:

The current focus for Comprehensive training will be ensuring all 22 Subgrantees have staff (or subcontractors as applicable) certified in the following job categories: Quality Control Inspector (QCI), Retrofit Installer (RI) and Crew Leader (CL). Because the Energy Auditor (EA) Certification

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is a prerequisite for QCI, TDHCA will not track EA separately. Comprehensive training will be provided by accredited IREC training providers and certification testing will be conducted by BPI certified proctors. TDHCA maintains the capacity to administer BPI written exams and is researching how to conduct BPI field exams as well.

Due to the rigorous nature of BPI certifications, TDHCA projects the following percentages of agencies will meet the certification requirements over the next two program years:

- QCI: 2020 – 95%, 2021 – 100%
- RI: 2020 – 50%, 2021 – 80%
- CL: 2020 – 50%, 2021 – 80%

In compliance with Section 4 of WPN 15-4, the Department will track that comprehensive training for each job category listed above is obtained and that retraining occurs thereafter every three years. Whereas it is the responsibility of the Department to provide funds for training through IREC training providers, it is the responsibility of the Subgrantee to ensure training is completed by staff and/or subcontractors. The Department will monitor Subgrantee progress and track credentials. Weatherization staff may not function unsupervised until training and certification requirements are met.

To assist Subgrantees with identifying appropriate staff to challenge BPI advanced certifications, TDHCA recommends successful training and completion of an appropriate BPI core certification such as Building Analyst or Envelope Professional.

Specific Training:

Specific training will be provided by Department training and technical assistance staff or a designee. With experience as Program Officers and Trainers, the staff has experience in Subgrantee monitoring, unit assessments, audits, materials installation, inspections, and the training and technical assistance that support each. The staff consists of:

- Laura Saintey – 10+ years experience in the construction industry and 9+ years experience in the WAP. QCI certified, Lead Safe Renovator, OSHA 10, BPI Building Analyst Professional, BPI Certified Proctor, and attended DOE sponsored conferences.
- Chad Turner – 18+ years of weatherization experience including as a Texas WAP Subgrantee, QCI certified, MF-QCI, BPI certified, OSHA 30 and attended DOE sponsored conferences.
- Jason Gagne – 4+ years experience in the WAP, QCI certified, BPI Building Analyst Professional, Lead certified, Energy Audit certified, OSHA 10, and attended DOE sponsored conferences.
- Kevin Glienke – 9+ years in weatherization monitoring and training, BPI certified, QCI certified, MFQCI, and attended DOE sponsored conferences.
- Robert Moore – 9+ years of weatherization experience including as a Texas WAP Subgrantee, QCI certified, BPI & Lead certified, OSHA 30 and attended DOE sponsored conferences.
- Ben Rose – 4+ years of weatherization experience as a Texas WAP Subgrantee, QCI certified, BPI and Lead Certified

T&TA staff provide new manager training, monitoring report based training, and technical assistance for multiple WAP Subgrantees. New manager training is required within three months of being hired. Subgrantees may request new manager training through the online training request system (i.e., Wufoo). Another form of mandatory training are trainings that arise out of necessity due to monitoring issues. Subgrantees are monitored as described in V.7.3 Monitoring Activities of this Plan and results of those monitoring visits are shared with T&TA staff. Any issues as a result of a monitoring visit are analyzed by T&TA staff to determine how best to train the Subgrantee to resolve the issue(s).

For onsite T&TA visits, a report will be produced indicating Subgrantee staff present, materials and documents presented to the Subgrantee, and expected outcomes.

Training to execute the Health and Safety Plan will occur via quarterly conference calls via a webinar platform which typically include health and safety concerns. Additionally, training and technical assistance occur throughout the year at random intervals on a case by case basis originating by way of monitoring trends and reports and requests from Subgrantees for assistance. Finally, the Department also hosts a webinar at the beginning of each Program Year to assist Subgrantees in the implementation of the new DOE State Plan and Health and Safety Plan.

Quarterly Network Calls

Agendas will be evaluated for topics based upon need and identified areas of concern. Topics will include:

- Program Requirements and Updates

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WEATHERIZATION ASSISTANCE PROGRAM (WAP)
STATE PLAN/MASTER FILE WORKSHEET

(Grant Number: EE0007952, State: TX, Program Year: 2020)

- Monitoring Concerns
- Technical Issues
- Health & Safety Concerns
- Upcoming Training Dates
- Resources

Projected Dates for PY 2020 WAP Network Calls:

- August 2020 – no WAP call, see Energy OutWest section below
- November 2020
- February 2021
- May 2021

A WAP specific E-newsletter will be distributed on a monthly basis to fill in the gap between quarterly calls to further focus the network on program and technical requirements, updates, and training opportunities.

The Department directs Subgrantees to the "Weatherization Assistant Online Training" on the Department's website for initial training of the state approved energy audit. Training staff will provide further technical assistance on a one-on-one basis as necessary.

The Department will address four key topics for 2020. The Department has chosen to focus on the following:

- Quality work through initial assessments
- Air sealing and duct sealing techniques
- Importance of aligning thermal and pressure boundaries
- Cost Allocation (provided by a third-party)

Energy OutWest

All Subgrantees will be encouraged to send at least one staff member to the Energy OutWest Conference in August 2020. In conjunction with the conference, TDHCA will host a mandatory WAP workgroup to garner network feedback on WAP operations and address program and technical concerns.

TDHCA will further reserve flexibility to respond to any T&TA needs that may arise because of grant requirements or as directed by DOE monitor or audit reports.

Ramifications for noncompliance with Comprehensive training and/or Specific training can be awards that contain condition(s) which the noncompliant Subgrantee must comply with in order to receive funding. Conditions can be minor (e.g., submittal of a credential to the Department) or severe (e.g., closely supervised final QCIs by Department training staff to determine quality of weatherization measures installed). Weatherization staff may not function unsupervised until any training and certification requirements are met.

Evaluation of Training Activities

Subgrantees will be given the opportunity to provide feedback through online training evaluations. These evaluations are reviewed to make improvements to future T&TA. Training staff will conduct periodic surveys to solicit input from Subgrantees as to their training needs and will evaluate pass rates for certification testing. In order to evaluate compliance with the Quality Work Specifications and the efficacy of its training activities, the training staff will review a Subgrantee's training activities semiannually and compare those to the Subgrantee's monitoring reports.

Program Evaluation

The Department utilizes an online contract system to collect expenditure and performance data from Subgrantees and compares that data to a production tool on a monthly basis. Training staff contact Subgrantees regarding various benchmarks throughout the program year.

Another method of evaluation is provided by the compliance division. The Department's compliance staff provides training staff with a copy of the Subgrantee's most recent monitor report, which is also used to assess individualized training needs. By viewing all Subgrantee monitor reports, training staff is also able to determine if there are any network trends which need to be addressed.

Client Education

The Department requires Subgrantees to provide client education to each client. Subgrantees are required to provide (at a minimum) educational

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materials in verbal and written format. Client education may include temperature strips that indicate the temperature in the room, energy savings materials, and instructions for equipment operation and/or maintenance.

Percent of overall trainings

Comprehensive Trainings:

Specific Trainings:

Breakdown of T&TA training budget

Percent of budget allocated to Auditor/QCI trainings:

Percent of budget allocated to Crew/Installer trainings:

Percent of budget allocated to Management/Financial trainings:

V.9 Energy Crisis and Disaster Plan

n/a

PY2020 Monitoring Schedule*

September - November 2020	December 2020 - February 2021	March - May 2021	June - August 2021
Baker Ripley	Community Action Corporation of South Texas	Alamo Area Council of Governments	Brazos Valley Community Action Programs
City of Fort Worth	Concho Valley Community Action Agency	Big Bend Community Action Committee, Inc.	Greater East Texas Community Action Program (GETCAP)
Combined Community Action, Inc.	Dallas County Department of Health and Human Services	Community Council of South Central Texas, Inc.	Panhandle Community Services
Community Action Committee of Victoria, Texas	Nueces County Community Action Agency	El Paso Community Action Program, Project Bravo, Inc.	Texoma Council of Governments
Economic Opportunities Advancement Corporation of PR XI	Rolling Plains Management Corporation	Travis County	
Hill Country Community Action Association, Inc.	South Plains Community Action Association, Inc.	West Texas Opportunities, Inc.	

* Schedule is subject to change based on production and/or other unforeseen circumstances.

Fiscal/Administrative (F/A)

These reviews will typically be done as a desk review. As often as possible, the F/A reviews will happen in the same month as the technical visit to hopefully end with one comprehensive WAP monitoring report. F/A reviews will be done by any available qualified compliance staff.

Technical/Inspections

These reviews will always be conducted onsite. Inspections will be conducted by state staff that are QCI certified. Full QCI inspections will be conducted on each unit reported as "inspected" by the state. Inspection percentages at each Subrecipient will be based off QCI staff and separation of assignments in accordance with WPN 15-4 (5 or 10%). TDHCA staff will also conduct LIHEAP inspections on the same trip to minimize visits to the Subrecipient, which is why trips begin so early in the DOE program year, because LIHEAP program year ends December 31.



WEATHERIZATION HEALTH AND SAFETY PLAN 2020

TEXAS WEATHERIZATION CONTACT INFORMATION

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Weatherization Grantee Health and Safety Plan

1.0 – GENERAL INFORMATION

Grantees are encouraged to enter additional information here that does not fit neatly in one of the other sections of this document.

Allowable Department of Energy (DOE) related health and safety (H&S) actions and expenditures are those necessary to maintain the physical well-being of both the occupants and/or weatherization workers where:

- Costs are reasonable as determined by The Department of Energy (DOE) in accordance with this approved Master Plan;
- The actions must be taken to effectively perform weatherization; or
- The actions are necessary as a result of weatherization work.

This plan will provide guidance to the Texas Weatherization Network. Health and Safety issues will be identified by Program Assessors during the initial assessment. Weatherization Crews (either subcontracted or in house) will perform the task(s) identified in the initial assessment and listed in the work order(s).

Weatherization agencies and their representatives, including subcontractors, are required to take all reasonable precautions against performing work on homes that will subject the occupants or themselves to health and/or safety risks. In cases where an occupant’s health is fragile, or an occupant has been identified to have a health condition, including allergies, and/or the crew work activities would themselves constitute a health and/or safety hazard, the occupant(s) at risk shall be required to leave during the performance of the work activities. In cases where an occupant is identified as having an allergy to a specific weatherization material, that material will not be installed. If comparable alternative materials are available and the occupant has no known allergies to the alternative materials and they meet DOE regulations, crews/contractors may substitute the alternative material(s). If no safe alternative material meeting DOE standards is available, the measure shall not be installed. This must be well documented in the client file.

This health and safety plan is taken from a DOE approved template. The text at the top of the template is boilerplate language and may not always apply to activities described in TDHCA’s DOE plan. Capitalized terms in the Plan have definitions in Chapters 1, 2, or 6 of Part 1, Title 10 of the Texas Administrative Code.

2.0 – BUDGETING

Grantees are encouraged to budget Health & Safety (H&S) costs as a separate category and, thereby, exclude such costs from the average cost per unit cost (ACPU) limitation. This separate category also allows these costs to be isolated from energy efficiency costs in program evaluations. Grantees are reminded that, if H&S costs are budgeted and reported under the program operations category rather than the H&S category, the related H&S costs must be included in the calculation of the ACPU and cost-justified through the approved energy audit.

Select which option is used below.

Separate Health and Safety Budget

Contained in Program Operations

3.0 – HEALTH AND SAFETY EXPENDITURE LIMITS

Pursuant to [10 CFR 440.16\(h\)](#), Grantees must set H&S expenditure limits for their Program, providing justification by explaining the basis for setting these limits and providing related historical experience.

Low percentages should include a statement of what other funding is being used to support H&S costs, while larger percentages will require greater justification and relevant historical support. It is possible that these limits may vary depending upon conditions found in different geographical areas. These limits must be expressed as a percentage of the ACPU. For example, if the ACPU is \$5,000, then an average expenditure of \$750 per dwelling would equal 15 percent expenditures for H&S.

15 percent is not a limit on H&S expenditures but exceeding this amount will require ample justification. These funds are to be expended by the Program in direct weatherization activities. While required as a percentage of the ACPU, if budgeted separately, the H&S costs are not calculated into the per-house limitation. DOE strongly encourages using the table below in developing justification for the requested H&S budget amount. Each H&S measure the Grantee anticipates addressing with H&S funds should be listed along with an associated cost for each measure, and by using historical data the estimated frequency that each measure is installed over the total production for the year.

It is also recommend reviewing recent budget requests, versus expenditures to see if previous budget estimates have been accurate. The resulting “Total Average H&S Cost per Unit” multiplied by the Grantee’s production estimate in the Annual File should correlate to the H&S budget amount listed in the Grantee’s state plan.

Should a Grantee request to have more than 15 percent of Program Operations used for health and safety purposes, DOE will conduct a secondary level of review. DOE strongly encourages use of this H&S template and matrix to help expedite this process.

5.0 – DEFERRAL/REFERRAL POLICY

Deferral of services may be necessary if H&S issues cannot be adequately addressed according to WPN 17-06 guidance. The decision to defer work in a dwelling is difficult but necessary in some cases. This does not mean that assistance will never be available, but that work must be postponed until the problems can be resolved and/or alternative sources of help are found. If, in the judgment of the auditor, any conditions exist which may endanger the health and/or safety of the workers or occupants, the unit should be deferred until the conditions are corrected. Deferral may also be necessary where occupants are uncooperative, abusive, or threatening. Grantees must be specific in their approach and provide the process for clients to be notified in writing of the deferral and what conditions must be met for weatherization to continue. Grantees must also provide a process for the client to appeal the deferral decision to a higher level in the organization.

Grantee has developed a comprehensive written deferral/referral policy that covers both H&S, and other deferral reasons?

Yes No

Where can this deferral/referral policy be accessed?

[10 TAC RULE §6.415](#)

6.0 – HAZARD IDENTIFICATION AND NOTIFICATION FORM(S)

Documentation forms must be developed that include at a minimum: the client's name and address, dates of the audit/assessment and when the client was informed of a potential H&S issue, a clear description of the problem, a statement indicating if, or when weatherization could continue, and the client(s) signature(s) indicating that they understand and have been informed of their rights and options.

Documentation Form(s) have been developed and comply with guidance?

Yes No

7.0 – HEALTH AND SAFETY CATEGORIES

For each of the following H&S categories identified by DOE:

- Explain whether you concur with existing guidance from WPN 17-06 and how that guidance will be implemented in your Program, if you are proposing an alternative action/allowability, or if the identified category will not be addressed and will always result in deferral. Alternatives must be comprehensively explained and meet the intent of DOE guidance.
- Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 17-06, Grantees must concur, or choose to defer all units where the specific category is encountered.
- “Allowable” items under WPN 17-06 leave room for Grantees to determine if the category, or testing, will be addressed and in what circumstances.
- Declare whether DOE funds or alternate funding source(s) will be used to address the particular category.
- Describe the explicit methods to remedy the specific category.
- Describe what testing protocols (if any) will be used.
- Define minimum thresholds that determine minor and major repairs
- Identify minimum documentation requirements for at-risk occupants
- Discuss what explicit steps will be taken to educate the client, if any, on the specific category if this is not explained elsewhere in the Plan. Some categories, like mold and moisture, require client education.
- Discuss how training and certification requirements will be provided for the specific category. Some categories, like Lead Based Paint, require training.
- Describe how occupant health and safety concerns and conditions will be solicited and documented

Grantees may include additional H&S categories for their particular Programs. Additional categories must include, at a minimum, all of the same data fields as the DOE-provided categories. Two additional tables have been created to utilize.

7.1 – AIR CONDITIONING AND HEATING SYSTEMS

Concurrence, Alternative, or Deferral

Concurrence with Guidance Alternative Guidance Results in Deferral

Air Conditioning Unallowable Measure Heating Unallowable Measure

Funding

DOE LIHEAP State Utility Other

How do you address unsafe or non-functioning primary heating/cooling systems?

“Red tagged”, inoperable, or nonexistent primary heating and/or cooling system replacement, repair, or installation is allowed due to extreme climate conditions in Texas for Vulnerable Populations.

Texas’ climate conditions include climate zones 2A, 2B, 3A, 3B, and 4B which can be described as Hot-Humid, Hot-Dry, and Mixed-Dry. This diversity in climate conditions requires Texas to have the flexibility to address all scenarios related to providing heating and cooling to Vulnerable Populations.

Subgrantee will use the ACCA approved Manual J to determine proper sizing of replacement heating and cooling appliances. All heating and cooling systems will be evaluated as an energy conservation measure before consideration as a health and safety measure.

If the heating/cooling system issue is determined to be beyond the scope of DOE WAP, weatherization agencies will defer the work and refer the client to other resource agencies who may be able to address the problem. Texas’ deferral policy and protocols shall always be strictly adhered to when deferring weatherization work. If the client is completely without cooling or heating, the weatherization agencies shall make a referral to an agency with funding that can provide Vulnerable Population clients with a portable air conditioner or temporary means of heat, such as a portable heat pump or blankets.

Texas requires HVAC system installation to follow local and state code and it must be performed by a licensed HVAC professional. Weatherization agencies may subcontract licensed HVAC companies/individuals to perform heating/cooling systems installations and repairs if they follow proper state procurement procedures.

When replacing a primary wood stove in a mobile/manufactured home the new unit must be listed for use with manufactured homes, and must be installed in accordance with their listings. Units that are not manufacturer approved, discovered during an initial assessment, should be replaced with an approved manufactured home appliance, under H&S. All state and local codes must be followed.

Vented space heaters shall be treated as furnaces. Combustion safety testing is required when combustion appliances are present. Weatherization Assessors and Final Inspectors must conduct the combustion appliance safety inspection. This includes all of the following: carbon monoxide testing, draft measurement, spillage evaluation, worst case depressurization of the combustion appliance zone (CAZ), a safe flue pipe, chimney or vent, adequate combustion air, and gas leakage as applicable. Combustion safety test results must be acted upon appropriately according to the Standard Work Specifications and BPI protocols.

How do you address unsafe or non-functioning secondary heating systems, including unvented secondary space heaters?

Maintenance and repair of secondary heating units is allowed.

Minor maintenance activities can be performed for traditional open masonry fireplaces and wood burning stove/pellet stoves. This would be a health and safety issue requiring photo documentation and receipt of services by the professional with a description of what services were performed. Inspection, repair and or cleaning shall be sub-contracted to a qualified solid fuel heating system vendor

An unsafe, unrepairable open masonry fireplace would be treated similarly to that of an unvented space heater if it is the primary source of heat. The fireplace must be rendered inoperable and replaced with a vented heating unit. The type of existing fuel will dictate the replacement. If the client has a combustion fuel source (e.g. - gas, propane, etc) then seal up the fireplace, and add a vented gas heater.

Testing will be required to assure adequate supply of electricity is available for existing standalone electric space heaters. This will be accomplished through the use of three wire circuit testers, GFI electrical outlet testers, and line voltage testers. Repair, replacement or installation is not allowed. Removal is recommended.

Removal is required, except as secondary heat where the unit conforms to ANSI Z21.11.2. Units that do not meet ANSI Z21.11.2 must be removed prior to weatherization but may remain until a replacement heating system is in place.

Testing for air-free carbon monoxide (CO) is to be performed. All units must have an ANSI Z21.11.1 label, and meet IRC and IFGC codes. The client must be informed of the dangers of unvented space heaters – CO, Moisture, and NO2. CO can be dangerous even if CO alarm does not sound.

Assessors must calibrate the CO tester outside the home and test the ambient air in the home; following the standards in the Standard Works Specifications:

- Perform an inspection of the heater. Any of the following conditions are grounds for repair or replacement:
 - Carbon monoxide (CO) test indicates ambient CO levels above 35 ppm
 - Bad burners (missing, broken, or otherwise un-repair-able)
 - Cross-fueled (between NG and LPG) and the orifices and/or pressure regulator have not been changed
 - Missing radiants
 - Open flame burners
 - Rubber supply lines
 - Charring or scorching

If the cause cannot be determined, Subgrantee must calibrate equipment and re-test. If still indeterminable, refer to local gas company. Any time replacement is deemed necessary, first consider performing the replacement as an ECM (energy saving measure) before replacing as a Health & Safety measure.

Indicate Documentation Required for At-Risk Occupants
The application will be used to determine if a household includes Vulnerable Populations (also known as at-risk occupants). Vulnerable Populations are defined as Elderly (60 or older), Disabled, or Children 5 and younger.
Testing Protocols
<p>Make sure primary systems are present, operable, and performing correctly.</p> <p>Check DOE-approved audit to determine if the system can be installed as an energy conservation measure (ECM) prior to replacement as an H&S measure.</p> <p>Determine and document presence of Vulnerable Populations when installing air-conditioning as a Health and Safety (H&S) measure.</p> <p>On combustion equipment, inspect chimney and flue and test for Combustion Appliance Zone (CAZ) depressurization.</p> <p>For solid fuel appliances look for visual evidence of soot on the walls, mantel or ceiling or creosote staining near the flue pipe.</p>
Client Education
<p>When deferral is necessary, provide information to the client, in writing, describing conditions that must be met in order for weatherization to commence. A copy of this notification must also be placed in the client file.</p> <p>Discuss appropriate use and maintenance of units.</p> <p>Provide all paperwork and manuals for any installed equipment.</p> <p>Discuss and provide information on proper disposal of bulk fuel tanks when not removed as part of the weatherization work.</p> <p>Where combustion equipment is present, provide safety information including how to recognize depressurization.</p>
Training
<p>Licensing and/or certification for HVAC installers as required by authority having jurisdiction (AHJ).</p> <p>CAZ depressurization test and inspection training effectiveness is evaluated during onsite monitoring.</p> <p>Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, results of monitoring reports, and requests by Subgrantees.</p>

7.2 - ASBESTOS - ALL				
What is the blower door testing policy when suspected Asbestos Containing Material (ACM) is identified?				
This is not allowed if vermiculite is present. Subgrantee will inspect pipe and other coverings for asbestos. Encapsulation is allowed by an AHERA asbestos control professional, and should be conducted prior to any blower door testing if the materials are friable.				
7.2a – Asbestos - in siding, walls, ceilings, etc.				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>

How do you address suspected ACM's in siding, walls, or ceilings that will be disturbed through the course of weatherization work?
Asbestos is the name given to a number of naturally occurring fibrous minerals with high tensile strength, the ability to be woven, and resistance to heat and most chemicals. Because of these properties, asbestos fibers have been used in a wide range of manufactured goods, including roofing shingles, ceiling and floor tiles, paper and cement products, textiles, coatings, and friction products such as automobile clutch, brake and transmission parts. It is difficult to tell whether a material contains asbestos simply by looking at it, unless it is labeled. If in doubt, treat the material as if it contains asbestos. Do not dust, sweep, or vacuum debris that may contain asbestos. Never saw, sand, scrape, or drill holes in asbestos materials.
Removal of siding is allowed to perform energy conservation measures. All precautions must be taken not to damage siding. Asbestos siding should never be cut or drilled. It is recommended, where possible, to insulate through home interior to avoid disturbing or removing the asbestos siding on the exterior of the home.
Testing Protocols
Testing is allowed by a certified AHERA tester. Visual inspection of exterior wall surface and subsurface, floors, walls, and ceilings for suspected ACM is required prior to drilling or cutting.
Client Education
In every instance, clients shall be informed both verbally and in writing that suspected asbestos containing materials are present. Clients shall also be informed as to the precautions that will be taken. Client written materials shall include information about the potential health risks associated with asbestos.
Training and Certification Requirements
The OSHA Fact Sheet on Asbestos is available on the Department's website under Health and Safety for all Subgrantees' use: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm On-going Health & Safety training will continue via regional training, Q&As and postings of FAQs to the Department Website: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm . Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees. AHERA certification required for testing and allowable removal.

7.2b – Asbestos - in vermiculite				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
How do you address suspected ACM's in vermiculite that will be disturbed through the course of weatherization work?				
When vermiculite is present, unless testing determines otherwise, take precautionary measures as if it contains asbestos, such as not using blower door tests and utilizing personal air monitoring while in attics. Encapsulation by an AHERA certified asbestos control professional shall be allowed. Removal shall not be allowed.				
Testing Protocols				
Testing is allowed by a certified AHERA tester.				
Client Education				
In every instance, clients shall be informed both verbally and in writing that suspected asbestos containing materials are present. Clients shall also be informed as to the precautions that will be taken. Client written materials shall include information about the potential health risks associated with asbestos.				

Training and Certification Requirements
<p>The OSHA Fact Sheet on Asbestos is available on the Department’s website under Health and Safety for all Subgrantees’ use: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm</p> <p>On-going Health & Safety training will continue via regional training, Q&As and postings of FAQs to the Department Website: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees. AHERA certification required for testing and allowable removal.</p>

7.2c – Asbestos - on pipes, furnaces, other small covered surfaces				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
How do you address suspected ACM’s (e.g., pipes, furnaces, other small surfaces) that will be disturbed through the course of weatherization work?				
Inspect pipes, furnaces, and other coverings for asbestos. Encapsulation is allowed by an AHERA asbestos control professional and should be conducted prior to any blower door testing. Removal may also be allowed by an AHERA asbestos control professional based on the situation as determined by the inspector or Agency Representative				
Testing Protocols				
Testing is allowed by a certified AHERA tester.				
Client Education				
In every instance, clients shall be informed both verbally and in writing that suspected asbestos containing materials are present. Clients shall also be informed as to the precautions that will be taken. Client written materials shall include information about the potential health risks associated with asbestos.				
Training and Certification Requirements				
<p>The OSHA Fact Sheet on Asbestos is available on the Department’s website under Health and Safety for all Subgrantees’ use: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm</p> <p>On-going Health & Safety training will continue via regional training, Q&As and postings of FAQs to the Department Website: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees. AHERA certification required for testing and allowable removal.</p>				

7.5 – BIOLOGICALS AND UNSANITARY CONDITIONS (ODORS, MUSTINESS, BACTERIA, VIRUSES, RAW SEWAGE, ROTTING WOOD, ETC.)				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Unallowable Measure <input type="checkbox"/>				
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>

What guidance do you provide Subgrantees for dealing with biological and/or unsanitary conditions in homes slated for weatherization?
<p>Remediation of conditions that may lead to or promote biological concerns and unsanitary conditions is allowed. Addressing bacteria and viruses is not an allowable cost. Deferral may be necessary in cases where a known agent is present in the home that may create a serious risk to occupants or weatherization workers.</p> <p>The use of personal protective equipment shall be strictly enforced. Respirators, protective eyewear, and protective clothing will be worn when there is suspicion or knowledge that biological agents may be present in order to eliminate or minimize crew exposure.</p> <p>In the past, remediation of conditions listed under this health and safety category was not allowed. It is allowable under WPN 17-7, except for the removal of known bacteria and viruses. Texas will assess the cost effectiveness and necessity of remediation of conditions that lead to or promote biological concerns and unsanitary conditions, on a case by case basis.</p>
Testing Protocols
A sensory inspection is required.
Client Education
Client must be informed of observed conditions. Clients must be provided information and explanation on how to maintain a sanitary home and steps to correct deferral conditions, if applicable.
Training
<p>On-going Health & Safety training will continue via regional training, Q&As and postings of FAQs to the Department Website: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees.</p>

7.6 – BUILDING STRUCTURE AND ROOFING				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees for dealing with structural issues (e.g., roofing, wall, foundation) in homes slated for weatherization?				
<p>Building rehabilitation is beyond the scope of the WAP. Homes with conditions that require more than incidental repair should be deferred.</p> <p>While conducting the initial audit, the building structure shall be inspected for structural integrity. Minor repairs to protect the DOE materials installed may be performed to protect the energy saving investment. Dwellings whose structural integrity is in question should be referred to agencies that deliver HUD funds or other appropriate local and state agencies. Weatherization services may need to be delayed or deferred until the dwelling can be made safe for crews/contractors and occupants. Incidental (minor) repairs necessary to effectively perform or preserve weatherization materials/measures are allowed. Refer to WPN 19-5 for further guidance on determining if incidental repairs are allowable.</p>				

How do you define “minor” or allowable structure and roofing repairs, and at what point are repairs considered beyond the scope of weatherization?
Minor repairs would be repairs that are necessary for weatherization work to proceed, and that can be allowed by WPN 19-5 if justified in the whole house SIR by the site-specific audit. Repairs would be beyond the scope of weatherization when causing the whole house SIR to drop below one. All repairs should be identified during the initial assessment. In the rare instance that necessary repairs are identified during the measure installation phase, a determination will be made if the repair is an Incidental or a Health & Safety cost. Incidental repair will necessitate that the site-specific audit be re-run, while H&S repairs do not.
If priority lists are used, and these repairs are designated as Incidental Repairs, at what point is a site-specific audit required?
N/A – Priority List is not used.
Client Education
Clients shall be notified verbally and in writing regarding any structurally compromised areas. Appropriate referral resources shall also be provided to the client.
Training
On-going Health & Safety training will continue via regional training, Q&As and postings of FAQs to the Department Website: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm . Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees.

7.7 – CODE COMPLIANCE				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees for dealing with code compliance issues in homes receiving weatherization measures?				
Correction of pre-existing code compliance issues is not an allowable cost other than where weatherization measures are being conducted. When correction of preexisting code compliance issues is triggered and paid for with WAP funds, Subgrantee must cite specific code requirements with reference to the weatherization measure(s) that triggered the code compliance issue in the client file.				
State and local (or jurisdiction having authority) codes must be followed while installing weatherization measures. Condemned properties and properties where “red tagged” health and safety conditions exist that cannot be corrected under this guidance should be deferred.				
WAP funds may be used when weatherization measures are being conducted. They may not be used simply to correct pre-existing code compliance issues.				
Acquire all required permits and licenses pertinent to installing weatherization measures. These vary by jurisdiction and it is the responsibility of each Subgrantee agency to know what the codes are in each of the areas they work, as well as what permits and licenses are required in each of the areas they work.				

What specific situations commonly trigger code compliance work requirements for your network? How are they addressed?
Condemned properties shall be deferred. Properties where “red-tagged” health and safety conditions exist, structural instability or damage (roof), electrical wiring type, condition or provisioning deficiencies, sewage drainage deficiencies that cannot be addressed with DOE H&S funding, should be deferred.
Client Education
Inform client of observed code compliance issues. Make appropriate referrals as necessary.
Training
Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees.

7.8 – COMBUSTION GASES				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
Testing Protocols				
<p>IRC 2015</p> <p>D.2 Occupant and Inspector Safety. Prior to entering a building, the inspector should have both a combustible gas detector (CGD) and CO detector turned on, calibrated, and operating. Immediately upon entering the building, a sample of the ambient atmosphere should be taken.</p> <p>A complete mechanical systems assessment is required to be completed on every home. The procedure includes collecting general information; collecting and recording mechanical systems information; visual and diagnostic inspection of the venting and distribution system; and, combustion analysis and diagnostic testing of gas/propane fired equipment, and post-installation safety tests for CO. Combustion safety testing is required when combustion appliances are present. Pre and post combustion appliance safety inspections include all of the following: carbon monoxide testing, draft measurement, spillage evaluation, and worst case depressurization of the combustion appliance zone (CAZ).</p> <p>As applicable, every combustion appliance will be checked for a safe flue pipe, chimney or vent, adequate combustion air, and gas leakage. DOE will not permit any DOE-funded weatherization work where the dwelling unit is heated with an unvented gas- and/or liquid-fueled space heater as the primary heat source. In such cases the primary space heater must be removed and a vented code compliant heat source must be installed prior to the installation of weatherization measures. DOE will allow unvented gas- or liquid-fueled space heaters to remain as secondary heat sources provided they comply with ANSI Z21.11.2, the IRC, and the IFGC. LIHEAP-WAP may replace non-compliant secondary unvented gas- or liquid-fueled space heaters.</p> <p>Client shall be provided with combustion safety and hazards information, including the importance of using exhaust ventilation when cooking and keeping burners clean to limit the production of CO.</p> <p>Best Practice:</p> <ul style="list-style-type: none"> • Combustion Appliance Zone (CAZ) Testing • Isolating the Combustion Appliance Zone (CAZ) 				

How are crews instructed to handle problems discovered during testing, and what are the specific protocols for addressing hazards that require an immediate response?
<p>Proper venting to the outside for combustion appliances, including gas dryers, is required. Correction of venting is allowed when testing indicates a problem.</p> <p>Based on CGD and CO detector readings, the inspector should take the following actions:</p> <p>(1) The CO detector indicates a carbon monoxide level of 70 ppm or greater. The inspector should immediately notify the occupant of the need for themselves and any building occupant to evacuate; the inspector shall immediately evacuate and call 911.</p> <p>(2) Where the CO detector indicates a reading between 30 ppm and 70 ppm. The inspector should advise the occupant that high CO levels have been found and recommend that all possible sources of CO should be turned off immediately and windows and doors opened. Where it appears that the source of CO is a permanently installed appliance, advise the occupant to keep the appliance off and have the appliance serviced by a qualified servicing agent.</p> <p>(3) Where CO detector indicates CO below 30 ppm the inspection can continue.</p>
Client Education
Client shall be provided with combustion safety and hazards information, including the importance of using exhaust ventilation when cooking and the importance of keeping burners clean to limit the production of CO.
Training
<p>On-going Health & Safety training will continue via regional training, Q&As and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees.</p>

7.9 – ELECTRICAL				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees for dealing with electrical hazards, including knob & tube wiring, in homes slated for weatherization?				
<p>Minor electrical repairs are allowed where health or safety of the occupant(s) may be at risk. Upgrades and repairs are allowed when necessary to perform specific weatherization measures.</p> <p>Aluminum wiring should be thoroughly inspected before any insulation work is done. If aluminum wiring is found to be active and in the areas to be insulated, no insulation should be added. When electrical repairs within the scope of the DOE WAP are required, the typical standard of remedy shall be to subcontract the repair work to a licensed electrician. All appropriate procurement procedures shall be followed when subcontracting. Testing shall include visual inspection, as well as voltage drop and voltage detection testing. Provide client information on overloading circuits and electrical safety and risks.</p>				

How do you define “minor” or allowable electrical repairs, and at what point are repairs considered beyond the scope of weatherization?
<p>Minor upgrades and repairs necessary for weatherization measures and where the health or safety of the occupant(s) is at risk may be allowed. Examples of minor repairs include exposed electrical connections, damaged or nonworking switches and receptacles, and damaged or unsafe electrical wire conditions.</p> <p>Prior to insulating around Knob and Tube wiring, cost effectiveness must be evaluated and barriers must be installed to keep insulation at least three inches from the K&T. If K&T is permanently disabled (cannot be energized again) then it may be insulated over.</p> <p>Best Practice:</p> <ul style="list-style-type: none"> • Knob & Tube Wiring
If priority lists are used, and these repairs are designated as Incidental Repairs, at what point is a site-specific audit required?
N/A – Priority List is not used.
Client Education
Provide information on overloading circuits and electrical safety and risks.
Training
<p>On-going Health & Safety training will continue via regional training, Q&As and postings of FAQs to the Department Website: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees.</p>

7.10 – FORMALDEHYDE, VOLATILE ORGANIC COMPOUNDS (VOCs), FLAMMABLE LIQUIDS, AND OTHER AIR POLLUTANTS				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>

What guidance do you provide Subgrantees for dealing with formaldehyde, VOCs, flammable liquids, and other air pollutants identified in homes slated for weatherization?

WAP workers may not remove pollutants. Removal of pollutants must be done by the client or a contracted professional prior to weatherization work being performed. If pollutants pose a risk to workers and removal cannot be performed by a professional or the client refuses to remove the pollutants, the unit must be deferred.

Visual, sensory, combustion appliances inspection/testing, and completion of Client Questionnaire and Inspection Checklist shall be the primary detection method. All reasonable steps shall be taken to limit worker exposure to VOCs, air pollutants and biological contaminants utilizing OSHA PPE guidelines. Many VOCs are human-made chemicals that are used and produced in the manufacture of paints, paint thinner, petroleum fuels, sealants, and refrigerants. When using products known to emit VOCs, increase ventilation is required. Meet or exceed any label precautions. Identify, and if possible, have client or a contracted professional remove the source. Biological contaminants include bacteria, molds, mildew, viruses, animal dander and cat saliva, house dust, mites, cockroaches, and pollen. Identification of these contaminants can indicate elevated relative humidity level in a home and improper ventilation which would need to be addressed. State and local codes and regulations regarding disposal of toxic household wastes must be followed. Texas WAP crews/contractors shall take every precaution necessary to minimize exposure to air pollutants.

When using chemicals and products that may contain any of the pollutants within this category, strict adherence to label instructions and precautions shall be required. Known pollutants must be removed by the client or a contracted professional prior to performance of weatherization work.

Health and Safety Guidance

- [EPA Guidance on Common Household Wastes & Materials](#)
- [Indoor Air Quality](#)

Testing Protocols

Sensory inspection shall be the primary detection method.

Client Education

Clients must be informed of any conditions and/or associated risks observed. Client must be given written information on safety and proper disposal of household pollutants, if applicable.

Training

Guidance on how to recognize potential hazards and when removal is necessary is posted to the Department Website: <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>
On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to the Department Website: <http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>
Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees.

7.11 – FUEL LEAKS
(PLEASE INDICATE SPECIFIC FUEL TYPE IF POLICY DIFFERS BY TYPE)

Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
Remediation Protocols				
<p>Natural gas and LP gas piping system inspection and leakage testing will be conducted. An inspection of the accessible gas piping and connections, from the natural gas meter or LP gas tank to a point where the supply line connects to the gas valve of all appliances shall be completed.</p> <p>When a minor gas leak is found on the utility side of service, the utility service must be contacted before work may proceed.</p> <p>Where the auditor confirms gas leakage or identifies deficiencies in gas piping materials, connections, components, or supports, the deficiencies shall be marked and noted in project documentation. The homeowner/occupant shall be notified that repairs must be made. The auditor shall recommend that the homeowner/occupant immediately notify the gas company and/or a qualified professional to evaluate and perform all necessary repairs. Notify utilities and temporarily halt work when leaks are discovered that are the responsibility of the utility to address.</p>				
How do you define allowable fuel leak repairs, and at what point are repairs considered beyond the scope of weatherization?				
<p>Allowable repairs/replacement includes but is not limited to: Worn and/or leaking flexible gas lines and any flexible connectors manufactured prior to 1973; Worn or damaged gas valves; and Appliance gas valve/regulator housing and connections.</p>				
Client Education				
Inform clients in writing if fuel leaks are detected.				
Training				
Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees.				

7.12 – GAS OVENS / STOVETOPS / RANGES

Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>

What guidance do you provide Subgrantees for addressing unsafe gas ovens/stoves/ranges in homes slated for weatherization?
<p>Replacement of cook stoves may be done with unrestricted funds from a funding source other than DOE. Repair and cleaning are allowed.</p> <p>Cook Stoves with high CO:</p> <ul style="list-style-type: none"> • Clean or repair. • If it still has high CO levels, then see if another funding source is able to pay for the stove replacement. • If no other source, the house must be deferred until the occupant can address the stove. • Houses with stoves with CO levels of 225 ppm as measured or higher which cannot be remedied must be deferred. The money spent trying to fix it, unsuccessfully, would be charged to Program Support. <p>The Department has defined maximum acceptable CO readings of stoves as follows:</p> <p>(1) Cook stove burners will only require a visual inspection of flame quality and proper operation.</p> <p>(2) 225 ppm CO as measured maximum acceptable readings for cook stove ovens.</p>
Testing Protocols
<p>Test gas ovens and burners for CO.</p> <p>Inspect cooking burners and ovens for operability and flame quality.</p>
Client Education
<p>Inform clients of the importance of using exhaust ventilation when cooking and the importance of keeping burners clean to limit the production of CO.</p>
Training
<p>Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees.</p>

7.13 – HAZARDOUS MATERIALS DISPOSAL				
[LEAD, REFRIGERANT, ASBESTOS, MERCURY (INCLUDING CFLS/FLUORESCENTS), ETC.]				
(PLEASE INDICATE MATERIAL WHERE POLICY DIFFERS BY MATERIAL)				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
Client Education				
<p>Inform client in writing of hazards associated with hazardous waste materials being generated/handled in the home.</p>				

Training
<p>Appropriate Personal Protective Equipment (PPE) for working with hazardous waste materials.</p> <p>Disposal requirements and locations.</p> <p>Health and environmental risks related to hazardous materials.</p> <p>Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, and requests by Subgrantees.</p>
Disposal Procedures and Documentation Requirements
<p>Refrigerants shall be pumped into a recovery tank and disposed at an EPA approved site.</p> <p>Proper disposal procedures for Asbestos are available at Texas Commission on Environmental Quality (TCEQ):</p> <p>Special Waste Disposal: http://www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw_specialwaste.html</p> <p>Texas WAP crews/contractors will follow all EPA RRP requirements for disposal of lead as well as state and local code requirements.</p> <p>Disposal procedures for mercury will follow TCEQ guidance available here: https://www.tceq.texas.gov/assets/public/comm_exec/pubs/rg/rg-377.pdf</p>

7.14 – INJURY PREVENTION OF OCCUPANTS AND WEATHERIZATION WORKERS (MEASURES SUCH AS REPAIRING STAIRS AND REPLACING HANDRAILS)				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees regarding allowable injury-related repairs (e.g., stairs, handrails, porch deck board)?				
<p>Workers must take all reasonable precautions against performing work on homes that will subject workers or occupants to health and safety risks. Porch or stair repairs that would be required to make a home safe for weatherization workers are not an allowable measure in the program. Such situations are considered to be beyond the scope of Texas WAP.</p>				
How do you define “minor” or allowable injury prevention measures, and at what point are repairs considered beyond the scope of weatherization? Quantify “minor” or allowable injury prevention measures.				
<p>Minor injury prevention measures can include minor electrical repairs as described in section 7.9. Proper safety protocols should be followed to reduce risk of injury as described in sections 7.20 and 7.23. Any other injury prevention measure would be considered beyond the scope of WAP and shall result in unit deferral.</p>				
Training				
<p>OSHA 10 for crew members and OSHA 30 for supervisors will be scheduled by the Subgrantee in accordance with local policies.</p>				

7.15 – LEAD BASED PAINT

Concurrence, Alternative, or Deferral

Concurrence with Guidance Alternative Guidance Results in Deferral

Funding

DOE LIHEAP State Utility Other

Safe Work Protocols

Weatherization requires all weatherization crews/contractors working in pre-1978 housing to be trained in Lead Safe Weatherization (LSW) and follow EPA's Lead; Renovation, Repair and Painting Program (RRP) rule. Deferral is required when the extent and condition of lead-based paint in the house would potentially create further health and safety hazards.

In all pre-1978 homes, crews/contractors must assess the physical condition of the home prior to conducting an audit. Texas recommends assuming that lead paint may be present in any house built prior to 1978 and to follow the proper DOE LSW protocols, OSHA regulations and EPA regulations in all pre-1978 homes. Mobile homes are exempt because lead was not used in the original manufacture of mobile homes. However, crews/contractors must be alert to any mobile home remodels/add-ons that could have contained lead-based paint or varnish.

Texas WAP crews/contractors will follow all EPA RRP requirements for disposal as well as state and local code requirements.

Deferral is required when the extent and condition of lead-based paint in the house would potentially create further H&S hazards.

Only those costs directly associated with the testing and lead safe practices for surfaces directly disturbed during weatherization activities are allowable.

State policy mandates all workers on site on any weatherization project, whether they be a crew based employee of one of the sub-contractors or a private sector contractor, must complete an eight (8) hour Lead Safe Worker Practices Workshop.

Best Practice:

- [Lead-safe Process and RRP Requirement](#)

WX Videos

- [12 Steps to Lead Safety](#)
- [Health & Safety Series: Respirators & Personal Protective Equipment](#)

Health and Safety Guidance

- [Lead; Renovation, Repair, and Painting Program; Lead Hazard Information;](#)
- [Renovate Right](#)

Testing Protocols
Testing is allowed per RRP requirements. Job site set up and cleaning verification is required by a Certified Renovator. Texas WAP crews/contractors will use LSW work practices that decrease the amount of dust generated.
Client Education
All Subgrantees are required to provide a copy of "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" to an adult occupant prior to work starting on the home. This procedure is documented by a written acknowledgement that the adult occupant has received the brochure and that the information was not only distributed, but also explained, or certify in writing that a brochure had been delivered to an adult occupant and the provider has been unsuccessful in obtaining a written acknowledgement, as directed in the publication. Confirmation of receipt of this brochure by the client will be maintained in the client file.
Training and Certification Requirements
Each Subgrantee must be an EPA Certified Firm and have a Certified Lead Renovator on staff. The Subgrantee is responsible to obtain and maintain the required certifications.
Documentation Requirements
Documentation in the client file must include Certified Renovator certification; any training provided on-site; description of specific actions taken; lead testing and assessment documentation; and, photos of site and containment set up. Include the location of photos referenced if not in file.

7.16 – MOLD AND MOISTURE				
(INCLUDING BUT NOT LIMITED TO: DRAINAGE, GUTTERS, DOWN SPOUTS, EXTENSIONS, FLASHING, SUMP PUMPS, DEHUMIDIFIERS, LANDSCAPE, VAPOR RETARDERS, MOISTURE BARRIERS, ETC.)				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees for dealing with moisture related issues (e.g., drainage, gutters, down spouts, moisture barriers, dehumidifiers, vapor barrier on bare earth floors) in homes slated for weatherization?				

Limited water damage repairs can be addressed by weatherization workers. Correction of moisture and mold creating conditions are allowed when necessary in order to weatherize the home and to ensure the long term stability and durability of the measures. Where severe mold-like substance and moisture issues cannot be addressed, deferral is required.

Visual assessment is required and diagnostics such as moisture meters are recommended pre-assessment and prior to final inspection. The assessment shall assure existing mold-like conditions are noted, documented and disclosed to the client; and, shall assure existing building envelope conditions do not contribute to mold-like growth when weatherization measures are applied. Mold-like substance assessment means a visual assessment combined with certain allowable diagnostics. It does not mean testing for mold. **DOE funds may not be used to test for mold-like substances.**

Texas WAP crews/contractors shall follow the Mold/Moisture Assessment Checklist when conducting the mold-like substances assessment at the time of the audit. Assessment shall include a general examination of the building to include:

- Examine structure, maintenance activities, occupancy patterns
- Visually look for mold-like substances and water staining
- Look for evidence of standing water
- Look for evidence of condensation
- Check basement or crawl space and attic for proper venting and exhaust

Outdoors:

- Soil grade or drainage toward foundation
- Standing water adjacent to foundation
- Wall and roof damage allowing water intrusion
- Missing or blocked rain gutters
- No downspout extensions
- Firewood stacked adjacent to house
- Excessive shrubbery around foundation

Heating/cooling systems:

- Air intakes: debris (organic) vs. clean air
- Filters: dirty, damp, poor type
- Heat exchangers: dirty & damp coils, condensate pans, drainage, stagnant water
- Ducts: contamination, moisture

Occupied Space:

- Plumbing leaks
- Water stains on walls, ceilings and around windows
- Musty odor
- Surface Condensation (especially during mild weather)
- Mold-like substances on carpeting
- Humidifiers
- Window air conditioners
- Lack of bathroom, kitchen exhaust
- Clothes dryer not vented to outside
- Firewood stored indoors

<ul style="list-style-type: none"> Wet clothes drying indoors <p>The DOE Training Resource:</p> <ul style="list-style-type: none"> Mold and Moisture given by Michael Vogel of MSU Weatherization Training Center is available to all Subgrantees through TDHCA’s website. <p>Best Practice:</p> <ul style="list-style-type: none"> Mold-safe Process
How do you define “minor” or allowable moisture-related measures, and at what point is work considered beyond the scope of weatherization?
Defined in Mold-Safe process flow-chart http://www.tdhca.state.tx.us/community-affairs/wap/docs/WAP-BP-Mold-Flowchart.pdf
Client Education
Provide client notification and disclaimer on mold-like substances and moisture awareness. The unified weatherization form that identifies if there are mold-like substances, must be included in the client files, regardless of whether there is mold-like substance in the home or not. A Mold -Like Substance Notification and Release Form for Texas Weatherization Programs must be filled out if mold or mold-like substances are found in the home. Texas Department of State Health Services, Consumer Mold Information Sheet is required to be given to clients who have moisture problems or mold-like substances, as part of client education.
Training
The DOE power-point presentation training on Mold and Moisture given by Michael Vogel of MSU Weatherization Training Center is available to all Subgrantees through TDHCA’s website: http://www.tdhca.state.tx.us/community-affairs/wap/wap-training-videos.htm . Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, results of monitoring reports, and requests by Subgrantees.

7.17 – PESTS				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees for dealing with pests and pest intrusion prevention in homes slated for weatherization?				
Pest removal is allowed only where infestation would prevent weatherization or poses a health and safety concern for workers. Infestation of pests may be cause for deferral where it cannot be reasonably removed.				
Determine whether the pest infestation would prevent or hamper the weatherization work. If removal is a viable and cost-effective option, take the necessary steps to remove the pest infestation problem so that the weatherization work can proceed. If removal is not a viable and cost-effective option or significant health and safety risks exist, defer the weatherization work and provide client with appropriate referral information.				
Best Practice:				
<ul style="list-style-type: none"> Pests 				

Define Pest Infestation Thresholds, Beyond Which Weatherization Is Deferred
Costs beyond \$50 in labor and materials to mitigate pest infestations will be addressed by TDHCA to determine if deferral is necessary.
Testing Protocols
Assessment of presence and degree of infestation and risk to worker.
Client Education
Inform client of observed pest condition and associated risks and document in client file.
Training
How to assess presence and degree of infestation, associated risks, and deferral policy. Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, results of monitoring reports, and requests by Subgrantees.

7.18 – RADON
Concurrence, Alternative, or Deferral
Concurrence with Guidance <input checked="" type="checkbox"/> Alternative Guidance <input type="checkbox"/> Results in Deferral <input type="checkbox"/>
Funding
DOE <input checked="" type="checkbox"/> LIHEAP <input type="checkbox"/> State <input type="checkbox"/> Utility <input type="checkbox"/> Other <input type="checkbox"/>
What guidance do you provide Subgrantees around radon?
TDHCA will provide Subgrantees with a Radon Informed Consent Form and the EPA's <i>A Citizen's Guide to Radon</i> . State specific resources can be found at: https://www.epa.gov/radon/find-information-about-local-radon-zones-and-state-contact-information#stateradon The Texas Department of State Health Services website also contains useful information: <ul style="list-style-type: none"> • Radon
Testing Protocols
Testing is not authorized in Texas WAP as Texas has no areas of "Highest Potential," according to the United States Environmental Protection Agency standards.
Client Education
Provide all clients EPA's <i>A Citizen's Guide to Radon</i> and inform them of radon related risks. https://www.epa.gov/radon/citizens-guide-radon-guide-protecting-yourself-and-your-family-radon
Training and Certification Requirements
Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, results of monitoring reports, and requests by Subgrantees.
Documentation Requirements
Client signed informed consent form.

7.19 – SAFETY DEVICES: SMOKE AND CARBON MONOXIDE ALARMS, FIRE EXTINGUISHERS

Concurrence, Alternative, or Deferral

Concurrence with Guidance Alternative Guidance Results in Deferral

Funding

DOE LIHEAP State Utility Other

What is your policy for installation or replacement of the following:

Smoke Alarms:

Smoke alarms may be installed where alarms are not present or are inoperable.

At minimum, all Dwelling Units should have at least one smoke alarm on each level, including one near the combustion zone and at least one near the bedrooms. Ceiling-mounted smoke alarms must be mounted at least 6 inches from any wall. Wall-mounted smoke alarms must be installed at least 6 but less than 18 inches from the ceilings. They should always be installed according to applicable local codes or ordinances.

Smoke Alarms shall be installed per IRC. R314.3 Location. Smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside each separate sleeping area in the immediate vicinity of the sleeping room.
3. On each additional story of the dwelling, including basements and habitable attics and not including crawl spaces and uninhabitable attics. In Dwelling Units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.
4. Smoke alarms shall be installed not less than 3 feet (914 mm) horizontally from the door or opening of a bathroom that contains a bathtub or shower unless this would prevent placement of a smoke alarm required by Section R314.3.

Carbon Monoxide Alarms:

Per ASHRAE 62.2, at least one CO alarm must be present in every home. Combustion appliances must be installed to the IRC or local code regulations.

CO alarms must be installed where alarms are not present or are inoperable.

A CO alarm should also be installed in accordance with SWS. Always install CO alarms according to the manufacturer's instructions.

R315.3 Location. Carbon monoxide alarms in Dwelling Units shall be installed outside, in the immediate vicinity, of each separate sleeping area. Where a fuel-burning appliance is located within a bedroom or its attached bathroom, a carbon monoxide alarm shall be installed within the bedroom.

R315.6.1 General. Household carbon monoxide detection systems shall comply with NFPA 720. Carbon monoxide detectors shall be listed in accordance with UL 2075.

R315.6.4 Combination detectors. Combination carbon monoxide and smoke detectors shall be permitted to be installed in carbon monoxide detection systems in lieu of carbon monoxide detectors, provided that they are listed in accordance with UL 2075 and UL 268.

Fire Extinguishers: A fire extinguisher may be provided in homes with solid fuel burning equipment. The fire extinguisher must be installed according to the manufacturer's standards and local code in the vicinity of the primary heating source.				
Testing Protocols				
Check existing alarms for operation. Verify operation of installed alarms.				
Client Education				
The client will be provided with the manufacturer's information sheet on use of smoke/CO detectors.				
Training				
Location and code requirements for installation of alarms. Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, results of monitoring reports, and requests by Subgrantees.				
7.20 – OCCUPANT HEALTH AND SAFETY CONCERNS AND CONDITIONS				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>		Alternative Guidance <input type="checkbox"/>		Results in Deferral <input type="checkbox"/>
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees for soliciting the occupants' health and safety concerns related to components of their homes?				
A Health & Safety Questionnaire/ Checklist for use by Subgrantees can be found under Client and Field Assessment Forms on the Department Website: http://www.tdhca.state.tx.us/communityaffairs/wap/guidance.htm				
What guidance do you provide Subgrantees for determining whether occupants suffer from health conditions that may be negatively affected by the act of weatherizing their home?				
Subgrantee must discuss results of survey with clients and potential measures list to determine if any measures could have an effect on the client's health.				
What guidance do you provide Subgrantees for dealing with potential health concerns when they are identified?				
When a person's health may be at risk and/or the work activities could create an H&S hazard the at-risk occupant will be required to take appropriate action based on the severity of the risk. Temporary relocation of Vulnerable Populations may be allowed. Failure or inability to take appropriate actions will result in a deferral.				
Client Education				
Provide client information of any known risks. Provide worker contact information so client can inform of any issues.				
Documentation Form(s) have been developed and comply with guidance?			Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

7.21 – VENTILATION AND INDOOR AIR QUALITY

Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
Identify the Most Recent Version of ASHRAE 62.2 Implemented (optional: identify Addenda used)				
Texas WAP has adopted the ASHRAE 62.2 2016 standard.				
Testing and Final Verification Protocols				
Required measurements, including fan flow of existing fans installed equipment, will be captured on the TDHCA provided Blower Door and Duct Blower Data Sheet (XLS) . Pre and post measurements must be calculated using the ASHRAE 62.2-2016 Calculator or other certified software.				
Client Education				
Provide client with information on function, use, and maintenance (including location of service switch and cleaning instructions) of ventilation system and components. Provide client with equipment manuals for installed equipment. Include disclaimer that ASHRAE 62.2 does not account for high polluting sources or guarantee indoor air quality.				
Training				
Training for use of the new ASHRAE 62.2-2016 Calculator is available on the RedCalc website and TDHCA provides training on the difference between the 2013 and 2016 standard on an as needed basis.				
Tools and Guides: <ul style="list-style-type: none"> • Exhaust Fan Flow Meter Quick Guide (PDF) • Single-Family Homes: Standard Work Specifications Field Guide (PDF) 				

7.22 – WINDOW AND DOOR REPLACEMENT, WINDOW GUARDS

Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide to Subgrantees regarding window and door replacement and window guards?				
Replacement, repair, or installation is not an allowable health and safety cost but may be allowed as an efficiency measure if cost justified. When working on windows follow LSW requirements for pre-1978 homes.				
Testing Protocols				
Not applicable				
Client Education				
Provide written information on lead risks wherever issues are identified.				

Training
<p>Guidance is provided through two best practices: Window Repair or Replacement Door Repair or Replacement</p> <p>Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, results of monitoring reports, and requests by Subgrantees.</p>

7.23 – WORKER SAFETY (OSHA, ETC.)		
Concurrence, Alternative, or Deferral		
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>
Funding		
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/> Utility <input type="checkbox"/> Other <input type="checkbox"/>
How do you verify safe work practices? What is your policy for in-progress monitoring?		
<p>Workers must follow OSHA standards and Safety Data Sheets (SDS) and take precautions to ensure the health and safety of themselves and other workers. SDS must be posted wherever workers may be exposed to hazardous materials.</p> <p>As part of the safety for crew, assessors will identify health and safety hazards according the OSHA method “Focus Four” which includes, electrical, fall protection, caught in and between, and struck-by hazards. The client will be informed in writing of any hazards and the associated risks that may have been observed.</p> <p>Health and Safety Guidance OSHA Focus Four</p>		
Training and Certification Requirements		
<p>OSHA 10 for crew members and OSHA 30 for supervisors will be scheduled by the Subgrantee in accordance with local policies. SDS must be present at the work sites.</p>		

7.24 – WATER HEATERS		
Concurrence, Alternative, or Deferral		
Concurrence with Guidance <input type="checkbox"/>	Alternative Guidance <input checked="" type="checkbox"/>	Results in Deferral <input type="checkbox"/>
Funding		
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/> Utility <input type="checkbox"/> Other <input type="checkbox"/>
Remediation Protocols		
<p>Replacement or repair of water heaters is allowed on a case by case basis. The Subgrantee must initially attempt to qualify existing Water Heater as an ECM. If the Water Heater does not rank, the Subgrantee may repair or replace the existing unit as a Health and Safety Measure with the caveat that there is a documented threat to the health and/or safety of the occupant(s). Further details are discussed in the Water Heater Replacement Best Practice on the TDHCA Website: http://www.tdhca.state.tx.us/community-affairs/wap/docs/WAP-BP-WaterHeaterRepairorReplace.pdf</p>		
Testing Protocols		
<p>Appropriate combustion appliance testing and water temperature testing.</p>		

Client Education
Clients shall be given all manufacturers information on the appropriate use and maintenance of water heating units.
Training
Initial training for new staff hires is conducted by the Subgrantee. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, results of monitoring reports, and requests by Subgrantees.

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action on release of the draft 2021 Low Income Home Energy Assistance Program State Plan for public comment

RECOMMENDED ACTION

WHEREAS, the U.S. Department of Health and Human Services (USHHS) requires that the Department submit a State Plan every year in order to receive its allotment of Low Income Home Energy Assistance Program (LIHEAP) funds;

WHEREAS, the Department has prepared a draft 2021 LIHEAP State Plan (the Plan); and

WHEREAS, USHHS requires that a draft Plan be released for public comment and the State requires a public hearing prior to the submission of the Plan to USHHS;

NOW, therefore, it is hereby

RESOLVED, that the draft Plan, in the form presented to this meeting, is hereby approved to be released for public comment, public hearing, posted on the Department's website and published in the *Texas Register*;

RESOLVED, that if USHHS releases different guidance after Board approval, the Board authorizes staff to make needed conforming changes and non-substantive changes to the Plan, and to change the public hearing dates and the comment period; and

FURTHER RESOLVED, that the final Plan with consideration of final grant guidance, public comment and technical corrections made by staff, along with award recommendations for subrecipients, will be presented to the Board no later than July 2020.

BACKGROUND

USHHS requires that the State of Texas submit a LIHEAP State Plan each year on or before September 1st in order to receive its allotment of LIHEAP funds. In response to this requirement, the Department has prepared a draft 2021 LIHEAP State Plan.

The Plan, upon approval by the Board, will be posted on the Department's website, published in the *Texas Register*, released for public comment and public hearing(s) will be held. Depending on the situation regarding COVID-19 in late May, the public hearing(s) will be either four public hearings held around the state or two virtual public hearings conducted via webinar. Public hearings provide the

opportunity for comment from the public and the subrecipient network. If the situation allows for in – person public hearings, they will be held as follows:

- Austin - Tuesday, May 26, 2020, 5:30 p.m.-6:00 p.m. in Room 116, TDHCA Headquarters, 221 East 11th Street, Austin, TX 78701
- Fort Worth – Wednesday, May 27, 2020, 2:00 p.m.-2:30 p.m. at Southside Community Center, 959 E. Rosedale, Fort Worth, TX 76104
- Houston – Wednesday, May 27, 2020, 5:30 p.m.-6:00 p.m. at Baker Ripley, Inc., Aberdeen Campus, Education Center, 3838 Aberdeen Way, Houston, TX 77025
- Odessa - Thursday, May 28, 2020, 2:00 p.m.- 2:30 p.m. at West Texas Opportunities, 1415 East 2nd, Odessa, TX 79762

If the Department cannot conduct in-person public hearings, two virtual public hearings will be held via webinar as follows:

- Wednesday, May 27, 2020 from 2:00 p.m.-3:00 p.m.
 - Via GoToWebinar
 - To Register:
<https://attendee.gotowebinar.com/register/6842808822375322637>
 - Dial-in number: +1 (415) 930-5321, access code 351-573-674
 - (Persons who use the dial-in number and access code without registering online will only be able to hear the public hearing and will not be able to ask questions or provide comments.)
- Wednesday, May 27, 2020 from 5:15 p.m.- 6:15 p.m.
 - Via GoToWebinar
 - To Register:
<https://attendee.gotowebinar.com/register/8052177054929158157>
 - Dial-in number: +1 (562) 247-8321, access code 210-536-015
 - (Persons who use the dial-in number and access code without registering online will only be able to hear the public hearing and will not be able to ask questions or provide comments.)

The public comment period to accept comments regarding the Plan will be open from Friday, May 8, 2020, through Monday, June 1, 2020, at 5:00 p.m. Austin local time. Written comments concerning the Plan may be submitted to the Texas Department of Housing and Community Affairs, Community Affairs Division, P.O. Box 13941, Austin, TX 78711-3941, or by email to gavin.reid@tdhca.state.tx.us. Comments are due no later than 5:00 p.m. Austin local time, Monday, June 1, 2020.

Upon completion of the public hearing(s) and public comment period, staff may modify the Plan, if appropriate, based on public comment. Staff will also include any changes required by federal guidance, although staff anticipates they will be minimal, if any. Staff anticipates presenting the revised Plan with consideration for final grant guidance, public comment, technical corrections made by staff, along with

recommendations for subrecipient awards to the Board for review and final approval no later than July 2020.

This Plan is not reflective of the allocation of LIHEAP funds under the CARES Act. The Department anticipates that USHHS will require a separate submission for the planning of those funds. A separate board item is on this agenda addressing the programming of CARES Act LIHEAP funds.

LIHEAP funds, as reflected in the Plan, are utilized in the following three ways:

- The Department allocates at least 75% of the LIHEAP funds to the Comprehensive Energy Assistance Program (CEAP), which provides utility assistance to eligible households, including crisis assistance and services to reduce home energy needs.
- The Department allocates up to 15% of the LIHEAP funds to the WAP. There is generally greater flexibility with LIHEAP weatherization funds than U.S. Department of Energy (DOE) weatherization funds, so continuing to allocate some portion of these funds for this activity allows households to receive more comprehensive assistance than were they to be served solely by DOE WAP funds.
- The Department allocates 10% of LIHEAP funds for Department and subrecipient administration.

In review of the Plan, attached, it should be noted that the Plan follows a template and series of required responses pre-determined by USHHS with character limitations and specific instructions. Also, the Plan is provided in blackline form reflecting the changes being recommended since the publication of the 2020 LIHEAP State Plan.

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

MODEL PLAN

PUBLIC LAW 97-35, AS AMENDED

FEDERAL FISCAL YEAR 2020~~1~~

GRANTEE: Texas Department of Housing and Community Affairs

EIN: 17426105429

ADDRESS: P.O. Box 13941

Austin, Texas 78711-3941

LIHEAP COORDINATOR: Michael DeYoung

EMAIL: michael.deyoung@tdhca.state.tx.us

TELEPHONE: (512) 475-2125 **FAX: (512) 475-3935**

CHECK ONE: TRIBE / TRIBAL ORGANIZATION _____ STATE X _____ INSULAR AREA _____

**Department of Health and Human Services
Administration for Children and Families
Office of Community Services
Washington, DC 20447**

August 1987, revised 05/92, 02/95, 03/96, 12/98, 11/01

OMB Approval No. 0970-0075

THE PAPERWORK REDUCTION ACT OF 1995 (Pub. L. 104-13)

Use of this model plan is optional. However, the information requested is required in order to receive a Low Income Home Energy Assistance Program (LIHEAP) grant in years in which the grantee is not permitted to file an abbreviated plan. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Assurances

The Texas Department of Housing and Community Affairs agrees to:

(1) use the funds available under this title to--

(A) conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy, consistent with paragraph (5);

(B) intervene in energy crisis situations;

(C) provide low-cost residential weatherization and other cost-effective energy-related home repair; and

(D) plan, develop, and administer the State's program under this title including leveraging programs, and the State agrees not to use such funds for any purposes other than those specified in this title;

(2) make payments under this title only with respect to--

(A) households in which one or more individuals are receiving--

(i) assistance under the State program funded under part A of title IV of the Social Security Act;

(ii) supplemental security income payments under title XVI of the Social Security Act;

(iii) food stamps under the Food Stamp Act of 1977; or

(iv) payments under section 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed an amount equal to 150 percent of the poverty level for such State; or

(i) an amount equal to 60 percent of the State median income;

except that a State may not exclude a household from eligibility in a Federal fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income.

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this title, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(4) coordinate its activities under this title with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program), under the supplemental security income program, under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under the low-

income weatherization assistance program under title IV of the Energy Conservation and Production Act, or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(5) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clauses 2(A) and 2(B) of this subsection;

(6) to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this title, to give special consideration, in the designation of such agencies, to any local public or private nonprofit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 or any other provision of law on the day before the date of the enactment of this Act, except that--

(A) the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

(B) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the Federal fiscal year preceding the Federal fiscal year for which the determination is made;

(7) if the State chooses to pay home energy suppliers directly, establish procedures to--

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this title;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) ensure that the provision of vendor payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this Act that seek to reduce home energy costs, minimize the risks of home energy crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs;

(8) provide assurances that--

(A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and

(B) the State will treat owners and renters equitably under the program assisted under this title;

(9) provide that--

(A) the State may use for planning and administering the use of funds under this title an amount not to exceed 10 percent of the funds payable to such State under this title for a Federal fiscal year; and

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this title and will not use Federal funds for such remaining cost (except for the costs of the activities described in paragraph (16));

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursement of and accounting for Federal funds paid to the State under this title, including procedures for monitoring the assistance provided under this title, and provide that the State will comply with the provisions of chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act");

(11) permit and cooperate with Federal investigations undertaken in accordance with section 2608;

(12) provide for timely and meaningful public participation in the development of the plan described in subsection (c);

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness; and

(14) cooperate with the Secretary with respect to data collecting and reporting under section 2610.

(15) beginning in Federal fiscal year 1992, provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations (such as community action agencies, area agencies on aging and not-for-profit neighborhood-based organizations), and in States where such organizations do not administer functions as of September 30, 1991, preference in awarding grants or contracts for intake services shall be provided to those agencies that administer the low-income weatherization or energy crisis intervention programs.

* This assurance is applicable only to States, and to territories whose annual regular LIHEAP allotments exceed \$200,000. Neither territories with annual allotments of \$200,000 or less nor Indian tribes/tribal organizations are subject to Assurance 15.

(16) use up to 5 percent of such funds, at its option, to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors, and report to the Secretary concerning the impact of such activities on the number of households served, the level of direct benefits provided to those households, and the number of households that remain unserved.

Certification to the Assurances: As Chief Executive Officer, I agree to comply with the sixteen assurances contained in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended. By signing these assurances, I also agree to abide by the standard assurances on lobbying, debarment and suspension, and a drug-free workplace.

Signature of the Tribal or Board Chairperson or Chief Executive Officer of the State or Territory.

Signature: _____

Title: ~~Acting~~Executive Director, Texas Department of Housing and Community Affairs

Date: ~~August, 2019~~2020

The Governor of Texas has delegated the responsibility of signing this document to the Executive Director of the Texas Department of Housing and Community Affairs. A copy of the letter is attached.

The EIN (Entity Identification Number) of the Texas Department of Housing & Community Affairs, which receives the grant funds, appears on the cover of this application.

In the above assurances which are quoted from the law, "State" means the 50 States, the District of Columbia, an Indian Tribe or Tribal Organization, or a Territory; "title" of the Act refers to Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (OBRA), as amended, the "Low Income Home Energy Assistance Act"; "section" means Section 2605 of OBRA; and, "subsection" refers to Section 2605(b) of OBRA.

Section 1¹

Program Components, 2605(a), 2605(b)(1) – Assurance 1, 2605(c)(1)(C)

1.1 Check which components you will operate under the LIHEAP program. (Note: You must provide information for each component designated here as requested elsewhere in this plan.)

Dates of Operation²

<input checked="" type="checkbox"/>	Heating assistance	Start date: 10/01/20 19	End date: 09/30/202 1
<input checked="" type="checkbox"/>	Cooling assistance	Start date: 10/01/20 19	End date: 09/30/202 1
<input checked="" type="checkbox"/>	Crisis assistance	Start date: 10/01/20 19	End date: 09/30/202 1
<input checked="" type="checkbox"/>	Weatherization assistance	Start date: 10/01/20 19	End date: 09/30/202 1

Estimated Funding Allocation, 2604(c), 2605(k)(1), 2605(b)(9), 2605(b)(16) – Assurances 9 and 16

1.2 Estimate what amount of available LIHEAP funds will be used for each component that you will operate: **The total of all percentages must add up to 100%**

- 15~~0~~% heating assistance
- 45~~0~~% cooling assistance
- 10~~25~~% crisis assistance

Up to 15% weatherization assistance³

0% carryover to the following Federal fiscal year

10% administrative and planning costs

0% services to reduce home energy needs including needs assessment (Assurance 16)

0% used to develop and implement leveraging activities

100% **TOTAL**

¹ Capitalized terms are defined in Title 10, Chapters 1, 2, or 6 (as applicable) of the Texas Administrative Code or by federal law.

² ~~Dates of operation signify periods in which we most expect seasonal usage.~~ Identification of these periods does not limit the payment of assistance on any “seasonal” basis.

³ If 15% is not used for weatherization assistance, the balance will be added to heating, cooling, or crisis assistance as needed.

Alternate Use of Crisis Assistance Funds, 2605(c)(1)(C)

1.3 The funds reserved for winter crisis assistance that have not been expended by March 15 will be reprogrammed to:

- Heating assistance
- Weatherization assistance
- Cooling assistance
- Other (specify): funds are utilized for all eligible components

Categorical Eligibility, 2605(b)(2)(A) – Assurance 2, 2605(c)(1)(A), 2605(b)(8A) – Assurance 8

1.4 Do you consider households categorically eligible if one household member receives one of the following categories of benefits in the left column below? Yes No

Program	Cooling	Heating	Crisis	Weatherization
Temporary Assistance for Needy Families	No	No	No	No
Supplemental Security Income	Yes	Yes	Yes	Yes
Supplemental Nutrition Assistance Program	No	No	No	No
Means-tested Veterans Programs	Yes	Yes	Yes	Yes

1.5 Do you automatically enroll households without a direct annual application?
 Yes No

1.6 How do you ensure there is no difference in the treatment of categorically eligible households from those not receiving other public assistance when determining eligibility and benefit amounts?
 Texas provides Categorical Eligibility for SSI and Means-Tested Veterans Programs into its program. State rules have a provision that there is to be no difference in the treatment of Categorically Eligible Households. The Department has a system for persons to submit complaints, and the monitoring reviews would also note any differences in treatment of persons that are or are not Categorically Eligible.

SNAP Nominal Payments

1.7 Do you allocate LIHEAP funds toward a nominal payment for SNAP households? If you answered “yes” to question 1.71 you must provide a response to 1.7b, 1.7c, 1.7d.

- a. Yes No
- b. Amount of Nominal Assistance: \$ ___ NA _____
- c. Frequency of Assistance:
 - Once per year
 - Once every five years
 - Other (describe): _____ NA _____

d. How do you confirm that the household receiving a nominal payment has an energy cost or need?

Determination of Eligibility – Countable Income

1.8 In determining a household's income eligibility for LIHEAP, do you use gross income or net income?

- Gross Income (except for self-employment or farm income or gambling/lottery winnings) ⁴
 Net Income

1.9. Select all of the applicable forms of countable income used to determine a household's income eligibility for LIHEAP. ⁵

- Wages (except as prohibited by the Workforce Investment Act of 1998)
 Self-employment income
 Contract income
 Payments from mortgage or sales contracts
 Unemployment Insurance
 Strike pay
 Social Security Administration (SSA) benefits
 Including MediCare deduction Excluding MediCare deduction
 Supplemental Security Income (SSI)
 Retirement / pension benefits
 General Assistance benefits (except as excluded by federal law or 10 TAC §6.4-)
 Temporary Assistance for Needy Families (TANF) benefits (except for one-time payments)
 Supplemental Nutrition Assistance Program (SNAP) benefits
 Women, Infants, and Children Supplemental Nutrition Program (WIC) benefits
 Loans that need to be repaid
 Cash gifts
 Savings account balance
 One-time lump-sum payments, such as rebates/credits, refund deposits, etc.
 Jury duty compensation
 Rental income
 Income from employment through Workforce Investment Act (WIA)
 Income from work study programs
 Alimony
 Child support
 Interest, dividends, or royalties
 Commissions
 Legal settlements
 Insurance payments made directly to the insured
 Insurance payments made specifically for the repayment of a bill, debt, or estimate
 Veterans Administration (VA) benefits (except for 38 USC 1315, 1521, 1541, 1542)
 Earned income of a child under the age of 18
 Balance of retirement, pension, or annuity accounts where funds cannot be withdrawn without a penalty.
 Income tax refunds
 Stipends from senior companion programs, such as VISTA
 Funds received by household for the care of a foster child
 AmeriCorps Program payments for living allowances, earnings, and in-kind aid.
 Reimbursements (for mileage, gas, lodging, meals, etc.)

⁴ Exceptions on use of net income are provided for in 10 TAC §6.4.

⁵ [Any income received by a household that is received from a federal, State, local government, or disaster relief agency that is in excess of the amounts of what would be received if not for the CARES Act legislation, will be excluded per 10 TAC §6.4\(c\)\(28\).](#)

Other Any item not excluded in 10 TAC §6.4 or by other federal law

Section 2 - HEATING ASSISTANCE

Eligibility, 2605(b)(2) – Assurance 2

2.1 Designate the income eligibility threshold used for the heating component:

Household Size	Eligibility Guidelines	Eligibility Threshold
All Household Sizes	USHHS Poverty Guidelines	150%
All Household Sizes	State Median Income	60% ⁶

2.2 Do you have additional eligibility requirements for **HEATING ASSISTANCE**?

Yes No ⁷

2.3 Check the appropriate boxes below and describe the policies for each.

- | | Yes | No |
|--|-------------------------------------|-------------------------------------|
| ● Do you require an assets test? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Do you have additional/differing eligibility policies for: | | |
| ● Renters? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters living in subsidized housing? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters with utilities included in the rent? ⁸ | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Do you give priority in eligibility to: | | |
| ● Elderly? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Disabled? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Young children? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Households with high energy burdens? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Other? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Households with high energy consumption | | |

⁵⁶ In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, Texas will use the highest of 150% of the poverty guidelines or 60% of the State's median income (SMI). The State may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department's Executive Director. Texas will communicate this designation to affected Subrecipients through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

⁵⁷ 10 TAC §6.307(fe) states: "A Dwelling Unit cannot be served if the meter is utilized by another Household that is not part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if: (1) the members of the separate structures that share a meter meet the definition of a Household per §6.2 of this Chapter (relating to Definitions); (2) the members of the separate structures that share a meter submit one application as one Household; and (3) all persons and applicable income from each structure are counted when determining eligibility."

⁷⁸ Per 10 TAC §6.309(h)(89), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent.

Determination of Benefits, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)

2.4 Describe how you prioritize the provision of heating assistance to vulnerable households, e.g., benefit amounts, application period, etc.

Subrecipients use a rating system which determines priority based on persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Households with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Benefit amounts are determined on a sliding scale based on the Household's income. ~~The number of benefit payments is based on Households with~~ the presence of a vulnerable member such as the Elderly, Persons with Disabilities, and Households with Young Children do not have a limit on the number of benefit payments, but adhere to the same benefit amounts. The maximum benefit amount is determined per program year based on Household need, is split between heating and cooling assistance, and is not required to be applied equally to heating and cooling costs.

2.5 Check the variables you use to determine your benefit levels. (Check all that apply):

- Income
- Family (household) size
- Home energy cost or need:
 - Fuel type
 - Climate/region
 - Individual bill
 - Dwelling type
 - Energy burden (% of income spent on home energy)
 - Energy need
 - Other (Describe: Alternative Billing Method)

Other Description: Other - Utility assistance payment can be based on the previous twelve (12) month's home energy consumption history or, if this data is unavailable, payments may be based on payments of the current program year's bill or utilize an alternative billing method (ABM) for clients with incomplete billing histories. The Department recommends an alternative billing method where the subrecipient determines the average consumption amount (kWh, therms, MCF, gallons, etc.) per month, for each household size and type based on a minimum sample size of 30 files that contain complete billing histories. Subrecipients can propose other types of ABMs. The ABM proposed by the subrecipient must be approved by the Department prior to utilization.

The amount of benefit/assistance that an applicant is eligible for is based on their level of household income. Per 10 TAC §6.309(e), Households with incomes 0-50% of Federal Poverty Income Guidelines (FPIG) have a maximum of \$1,6200 for the Utility ~~Payment~~ Assistance Component and the Household Crisis Assistance Component; Households with incomes at 51%-75% FPIG have a maximum of \$1,5400 per Component; Households with incomes 76%-150% FPIG have a maximum of \$1,4000 per Component; and there is a maximum of up to \$53,000 for Service and Repair of heating and cooling units. The maximum total eligible assistance is \$8,25,400.

Benefit Levels, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)

2.6 Describe estimated benefit levels for FY 2020:

\$1 Minimum benefit \$~~8,25,400~~ Maximum benefit

Note: Households are eligible for up to \$1,620 under ~~u~~Utility ~~A~~assistance ~~C~~component and up to \$1,620 under ~~Household~~Crisis ~~Assistance~~ Component. The level of assistance is dependent on Household income and meeting CEAP program eligibility requirements. Non-vulnerable population households with inoperable heating and cooling units may be eligible for an additional \$~~53,000~~ for service and repair of existing heating and cooling units when the Household meets crisis conditions. county is experiencing Extreme Weather Conditions. Vulnerable Population Households, regardless of ~~weather-crisis~~ conditions, that include at least one member that is Elderly, Disabled, or a Child age 5 or younger, may receive service and repair of existing heating and cooling units not to exceed \$~~53,000~~. All households experiencing a life-threatening crisis may be eligible to receive ~~or a~~ portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) ~~regardless of weather conditions.~~ If any component(s) of the heating or cooling, or heating and cooling system cannot be repaired using parts, Subrecipients can replace the component(s) in order to repair the heating or cooling, or heating and cooling system under the ~~Household~~Crisis ~~Assistance e~~Component.

The State of Texas does not have a minimum benefit amount. The amount of benefit/assistance indicates \$1.00, because the OLDC system requires that a figure be inserted in the minimum amount.

The amount of benefit/assistance that an applicant is eligible for is based on their level of household income. Households with incomes 0-50% of Federal Poverty Income Guidelines (FPIG) have a maximum of \$1,620 for the Utility ~~Payment~~Assistance Component and the ~~Household~~Crisis ~~Assistance~~ Component, incomes at 51%-75% FPIG up to \$1,510 per Component; incomes 76%-150% FPIG up to \$1,400 per Component; and up to \$~~53,000~~ for Service and Repair of heating and cooling units. The maximum total eligible assistance is \$~~8,25,400~~.

The maximum benefit amount per household is \$~~8,25,400~~ per program year and could be reached if a household received up to \$1,620 in Crisis Assistance, \$1,620 in Utility Assistance, and a \$~~53,000~~ repair or replacement of a heating or cooling unit or crisis-related purchase of portable heating and cooling units ~~(the latter limited to periods when the county is experiencing Extreme Weather Conditions).~~ Vulnerable Households that include at least one member that is Elderly, Disabled, or a Child age 5 or younger, may receive service and repair of existing heating and cooling units not to exceed \$~~53,000~~. All households experiencing a life-threatening crisis may be eligible to receive ~~or a~~ portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) ~~regardless of weather conditions.~~

2.7 Do you provide in-kind (e.g., blankets, space heaters) and/or other forms of benefits?

Yes No -- If yes, describe.

~~Under energy crisis, a~~ non-vulnerable Households may receive service and repair of existing heating and cooling units not to exceed \$~~53,000~~ if the Household is experiencing crisis conditions~~when the county is experiencing Extreme Weather Conditions.~~ Vulnerable Households that include at least one member that is Elderly, Disabled, or a Child age 5 or younger, may receive service and repair of existing heating and cooling units not to exceed \$~~53,000~~. All Households experiencing a life-threatening crisis may be eligible to receive ~~or a~~ portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) ~~regardless of weather conditions.~~

Eligible Households may receive temporary shelter not to exceed the annual household expenditure limit for the duration of the contract period in the limited instances when natural disasters result in energy supply shortages or other energy-related emergencies. Eligible Households may receive emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing. When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures as described in 10 TAC §6.310 (ec), which include blankets, fans, air conditioners, and generators.

Section 3: COOLING ASSISTANCE

Eligibility, 2605(c)(1)(A), 2605(b)(2) – Assurance 2

3.1 Designate the income eligibility threshold used for the cooling component:

#	Household Size	Eligibility Guidelines	Eligibility Threshold
1	All Household Sizes	USHHS Poverty Guidelines	150%
2	All Household Sizes	State Median Income	60% ⁹

3.2 Do you have additional eligibility requirements for **COOLING ASSISTANCE**

Yes No

3.3 Check the appropriate boxes below and describe the policies for each.

	<u>Yes</u>	<u>No</u>
● Do you require an assets test?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
● Do you have additional/differing eligibility policies for:		
● Renters?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
● Renters living in subsidized housing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
● Renters with utilities included in the rent? ¹⁰	<input type="checkbox"/>	<input checked="" type="checkbox"/>
● Do you give priority in eligibility to:		
● Elderly?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
● Disabled?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
● Young children?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
● Households with high energy burdens?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

⁹ In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, Texas will use the highest of 150% of the poverty guidelines or 60% of the State’s median income. Texas may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department’s Executive Director. The State will communicate this designation to affected Subrecipients through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

¹⁰ Per 10 TAC §6.309(h)(89), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer’s rent.

- Other?
Households with high energy consumption

3.3 Check the appropriate boxes below and describe the policies for each.

Explanations of policies for each “yes” checked above:

10 TAC §6.307(~~de~~) states “Subrecipients must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.”

Priority must be given to Elderly, Disabled, Households with Young Children, and Households with High Energy Burden and High Energy Consumption.

3.4 Describe how you prioritize the provision of cooling assistance to vulnerable households, e.g., benefit amounts, application periods, etc.

Subrecipients use a rating system which determines priority based on persons in Households 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. Benefit amounts are determined on a sliding scale based on the Household’s income. ~~The number of benefit payments is based on Households with~~ the presence of a vulnerable member such as the Elderly, Persons with Disabilities, and Households with Young Children do not have a limit on the number of benefit payments, but adhere to the same benefit amounts. The maximum benefit amount is determined per-program year based on Household need, is split between heating and cooling assistance, and is not required to be applied equally to heating and cooling costs.

Determination of Benefits, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)

3.5 Check the variables you use to determine your benefit levels. (Check all that apply):

- Income
- Family (household) size
- Home energy cost or need
 - Fuel type
 - Climate/region
 - Individual bill
 - Dwelling type
 - Energy burden (% of income spent on home energy)
 - Energy need
 - Other (describe)

Benefit Levels, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)

3.6 Describe benefit levels:

\$1 Minimum benefit \$~~8,25,400~~ Maximum benefit

Note: Households are eligible for up to \$1,6200 under Utility Assistance Component and up to \$1,6200 under Household-Crisis Assistance Component dependent on Household income and meeting eligibility requirements. Non-vulnerable population households may be eligible for an additional \$~~53,000~~ for service and repair of existing heating and cooling units when the Household meets crisis condition~~county is experiencing Extreme Weather Conditions~~. Vulnerable Population Households with an inoperable heating and cooling unit, regardless of ~~weather-crisis~~ conditions, that include at least one member that is Elderly, Disabled, or a Child age 5 or younger, may receive service and repair of existing heating and cooling units not to exceed \$~~53,000~~. All Households experiencing a life-threatening crisis may be eligible to receive~~or a~~ portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort)~~regardless of weather conditions~~. If any component(s) of the heating or cooling, or heating and cooling system cannot be repaired using parts, Subrecipients can replace the component(s) in order to repair the heating or cooling, or heating and cooling system under the Household-Crisis Assistance Component.

The State of Texas does not have a minimum benefit amount. The amount of benefit/assistance indicates \$1.00, because the OLDC system requires that a figure be inserted in the minimum amount.

The amount of benefit/assistance that an applicant is eligible for is based on their level of household income. Households with incomes at 0-50% of Federal Poverty Income Guidelines (FPIG) have a maximum of \$1,6200 for the Utility ~~Payment~~-Assistance Component and the Household-Crisis Assistance Component; Households with incomes at 51%-75% FPIG have a maximum of \$1,5100 per Component; Households with incomes 76%-150% FPIG have a maximum of \$1,4000 per Component; and there is a maximum of up to \$~~53,000~~ for Service and Repair of heating and cooling units. The maximum total eligible assistance is \$~~8,25,400~~.

The maximum benefit amount per household is \$~~8,25,400~~ per program year and could be reached if a ~~H~~household received up to \$1,6200 in Crisis Assistance, \$1,6200 in Utility Assistance, and a \$~~53,000~~ repair or replacement of a heating or cooling unit or crisis-related purchase of portable heating and cooling units ~~(the latter limited to periods when the county is experiencing Extreme Weather Conditions)~~. Vulnerable Households that include at least one member that is Elderly, Disabled, or a Child age 5 or younger, may receive service and repair of existing heating and cooling units not to exceed \$~~53,000~~. All Households experiencing a life-threatening crisis may be eligible to receive~~or a~~ portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort)~~regardless of weather conditions~~.

3.7 Do you provide in-kind (e.g., fans, air conditioners) and/or other forms of benefits?

Yes No -- If yes, describe.

~~Under energy crisis, a n~~Non-vulnerable Households may receive service and repair of existing heating and cooling units not to exceed \$~~53,000~~ if the Household is experiencing crisis conditions~~when the county is experiencing Extreme Weather Conditions~~. Vulnerable Households that include at least one member that is Elderly, Disabled, or a Child age 5 or younger, may receive service and repair of existing heating and cooling units not to exceed \$~~53,000~~. All Households experiencing a Life-Threatening Crisis may be eligible to receive~~or a~~ portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort)~~regardless of weather conditions~~.

Eligible Households may receive temporary shelter not to exceed the annual household expenditure limit for the duration of the contract period in the limited instances when natural disasters result in energy supply shortages or other energy-related emergencies. Eligible Households may receive emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing. When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures as described in 10 TAC §6.310 (ce), which include blankets, fans, air conditioners, and generators.

~~Repair of existing heating and cooling units, purchase of portable heating/cooling units: Only as a result of natural disasters, provision of temporary shelter, blankets, fans, costs for certain transportation, air conditioners, and generators is allowed under conditions specified in 10 TAC §6.309 and §6.310.~~

Section 4: CRISIS ASSISTANCE,

Eligibility - 2604(c), 2605(c)(1)(A)

4.1 Designate the income eligibility threshold used for the crisis component:

#	Household Size	Eligibility Guidelines	Eligibility Threshold
1	All Household Sizes	USHHS Poverty Guidelines	150%
2	All Household Sizes	State Median Income	60% ¹¹

4.2 Provide your LIHEAP program’s definition for determining a crisis.

~~A bona fide Household Crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Household, particularly Vulnerable Population Households (the Elderly, Persons with Disabilities, or Children age 5 and younger). A utility disconnection notice may constitute a Household energy crisis. Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the following conditions, as defined in 10 TAC §6.301 (relating to Background and Definitions):~~

- ~~(1) Extreme Weather Conditions, with assistance provided within 48 hours;~~
- ~~(2) Disaster, with assistance provided within 48 hours; or~~
- ~~(3) Life Threatening Crisis, with assistance provided within 18 hours.~~

4.3 What constitutes a life-threatening crisis?

~~A Life Threatening Crisis exists when the life of at least one person in the applicant Household who is a U.S. Citizen, U.S. National, or a Qualified Alien would likely, in the opinion of a reasonable person, be endangered if utility assistance or heating and cooling assistance is not provided due to a Household member who needs electricity for life-sustaining equipment or whose medical professional has prescribed that the person with a medical condition requires that the ambient air temperature be maintained at a certain temperature. Examples of life-sustaining equipment include, but are not limited to, kidney dialysis machines, oxygen concentrators, and cardiac monitors. Documentation must not be requested about~~

¹¹ In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, Texas will may use the highest of 150% of the poverty guidelines or 60% of the State’s median income (“SMI”). Texas may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department’s Executive Director. Texas will communicate this designation to affected Subrecipients through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

the medical condition of the applicant, but the applicant must state that such a device is required in the Dwelling Unit to sustain life.

~~A life-threatening crisis exists when at least one person in the applicant Household would be adversely affected 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 customer report) to the degree that, in the opinion of a reasonable person, the effect could cause loss of 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 be requested about the medical condition of the applicant/customer but must state that such a device is required in the Dwelling Unit to sustain life.~~

~~Per 10 TAC §6.310 (f): Time Limits for Assistance. Subrecipients shall ensure that for customers who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application, and completes the eligibility process.~~

~~Per 10 TAC §6.310(g): Subrecipients must maintain written documentation in customer files showing the crises resolved within appropriate timeframes. Subrecipients must maintain documentation in customer files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.~~

~~Acceptable means of intervention would be entering into an agreement with the vendor to accept a pledge and continue service or in cases where the vendor requires other payment arrangements, arrangements can be made. Crisis assistance, whether for utility payment assistance, disconnection notice, life-threatening crisis, temporary shelter, emergency fuel deliveries, assistance related to natural disasters shall be considered part of the total maximum Household allowable assistance. Service and repair or purchase of heating or cooling, or heating and cooling units for up to \$3,000 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components~~

Crisis Requirements, 2604(c)

- 4.4 Within how many hours do you provide an intervention that will resolve the energy crisis for eligible households? 48 Hours
- 4.5 Within how many hours do you provide an intervention that will resolve the energy crisis for eligible households in life-threatening situations? 18 Hours¹²

Crisis Eligibility, 2605(c)(1)(A)?

- 4.6 Do you have additional eligibility requirements for **CRISIS ASSISTANCE?**

¹² Pursuant to §2604(c)(2) of the LIHEAP Statute, the Department provides "some form of assistance that will resolve the energy crisis" not later than 18 hours after a household applies for crisis benefits if such household is eligible to receive such benefits and is in a life-threatening situation.

Yes No

4.7 Check the appropriate boxes below and describe the policies for each.

- | | Yes | No |
|---|--|--|
| ● Do you require an assets test? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Do you give priority in eligibility to: | | |
| ● Elderly? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Disabled? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Young children? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Households with high energy burdens? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Other?
Households with high energy consumption | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● In order to receive crisis assistance: ¹³ | | |
| ● Must the household have received a shut-off notice or have a near empty tank? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Must the household have been shut off or have an empty tank? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Must the household have exhausted their regular heating benefit? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Must renters with heating costs included in their rent have received an eviction notice? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Must heating/cooling be medically necessary? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Must the household have non-working heating or cooling equipment? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Other? | <input checked="" type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input checked="" type="checkbox"/> |
| <u>Explanation for Other: Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the following conditions, as defined in 10 TAC §6.301 (relating to Background and Definitions):</u> | | |
| <u>(1) Extreme Weather Conditions, with assistance provided within 48 hours;</u> | | |
| <u>(2) Disaster, with assistance provided within 48 hours; or</u> | | |
| <u>(3) Life Threatening Crisis, with assistance provided within 18 hours.</u> | | |
| ● Do you have additional/differing eligibility policies for: | | |
| ● Renters? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters living in subsidized housing? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters with utilities included in the rent? ¹⁴ | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Determination of Benefits

4.8 How do you handle crisis situations?

¹³ The program has different requirements depending on whether the household contains a member of a priority group.

¹⁴ Per 10 TAC §6.309(h)(89), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from client's rent.

Separate component

Fast Track

Other

4.9 If you have a separate component, how do you determine crisis assistance benefits?

Amount to resolve crisis, up to a maximum of \$1,6200

Other
Heating and cooling equipment repair or replace up to \$53,000

Crisis Requirements, 2604(c)

4.10 Do you accept applications for energy crisis assistance at sites that are geographically accessible to all households in the area to be served?

Yes No

Explain: In addition to what is already stated in Section 2604(c)(3) regarding the requirement that each subrecipient accept applications at sites that are geographically accessible to all Households in the area to be served, 10 TAC §6.313(cd) states:- "Subrecipient shall handle Reasonable Accommodation requests, in accordance with §1.204 of this title (relating to Reasonable Accommodations)." 10 TAC §1.204 (b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed. Subrecipients shall accept applications at sites that are geographically and physically accessible to all Households requesting assistance. If Subrecipient's office is not accessible, Subrecipient shall make reasonable accommodations to ensure that all Households can apply for assistance."

4.11 Do you provide individuals who have physical disabilities the means to:

■ Submit applications for crisis benefits without leaving their homes?

Yes No If no, explain.

Applications can be mailed in. In some cases, applications may be completed online or the organization will go to the applicant's home to take the application.

■ Travel to the sites at which applications for crisis assistance are accepted?

Yes No If yes, explain.

If you answered "No" to both questions 4.11, please explain alternative means of intake to those who are homebound or physically disabled.

Benefit Levels, 2605(c)(1)(B)

4.12 Indicate the maximum benefit for each type of crisis assistance offered.

Winter Crisis \$ 0 maximum benefit

Summer Crisis \$ 0 maximum benefit

Year-round Crisis \$ 1,6200 maximum benefit

4.13 Do you provide in-kind (e.g., blankets, space heaters, fans) and/or other forms of benefits?

Yes No If yes, describe.

~~Under energy crisis, a Non-Vulnerable Household may receive service and repair of existing heating and cooling units not to exceed \$53,000 if the Household is experiencing crisis conditions. when the county is experiencing Extreme Weather Conditions. Vulnerable Households that include at least one member that is Elderly, Disabled, or a Child age 5 or younger, may receive service and repair of existing heating and cooling units not to exceed \$3,000 or a portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) regardless of weather conditions.~~

~~Eligible Households may receive temporary shelter not to exceed the annual household expenditure limit for the duration of the contract period in the limited instances when natural disasters result in energy supply shortages or other energy related emergencies. Eligible Households may receive emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing. When natural disasters result in energy supply shortages or other energy related emergencies,~~

LIHEAP will allow home energy related expenditures as described in 10 TAC §6.310(ce).

All Households experiencing a Life-Threatening Crisis may be eligible to receive portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort).

Eligible Households may receive temporary shelter not to exceed the annual household expenditure limit for the duration of the contract period in the limited instances when natural disasters result in energy supply shortages or other energy-related emergencies. Eligible Households may receive emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing. When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures as described in 10 TAC §6.310(c), which include blankets, fans, air conditioners, and generators.

Repair of existing heating and cooling units, purchase of portable heating/cooling units. Only as a result of natural disasters, provision of temporary shelter, blankets, fans, costs for certain transportation, air conditioners, and generators is allowed under conditions specified in 10 TAC §6.309 and §6.310.

4.14 Do you provide for equipment repair or replacement using crisis funds?

Yes No

4.15 Check appropriate boxes below to indicate type(s) of assistance provided:

Type of Assistance	Winter Crisis	Summer Crisis	Year-round Crisis
Heating system repair			X
Heating system replacement (only components of a central HVAC system)			X
Cooling system repair			X
Cooling system replacement (only components of a central HVAC system)			X
Wood stove purchase			
Pellet stove purchase			
Solar panel(s)			
Utility poles / Gas line hook-ups			
Other (Specify): For Households which include a member of a Vulnerable Population, service and repair or purchase of portable heating and cooling units can be provided if a system is non-existent up to \$ 5 3000. For Households who do not have a member of a Vulnerable Population, such assistance is limited to times when the county is experiencing Extreme Weather Conditions.			X

4.16 Do any of the utility vendors you work with enforce a winter moratorium on shut offs? If you respond “Yes” to question 4.16, you must respond to question 4.17. Yes No

4.17 Describe the terms of the moratorium and any special dispensation received by LIHEAP clients during or after the moratorium period.

Specific to energy assistance clients, §25.483(i) of the Texas Public Utilities Commission rules provides that a Retail Electric Provider (REP) shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider. Additionally, the rule provides that if an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) (relating to Privacy of Customer Information), the REP shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided; and that a REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the TDU.

There are protections for several other categories of clients and situations applicable to LIHEAP clients served:

§25.483(g) provides that a REP shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent Critical Care Residential Customer when that customer establishes that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill.

§25.483(h) provides that a REP shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a Chronic Condition Residential Customer pursuant to 25.497 with noted rule exceptions.

§25.483(j) provides that a REP shall not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan upon request by the customer that complies with the requirements of 25.480 (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term “extreme weather emergency” shall mean a day when:

(A) the previous day’s highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or

(B) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.

Section 5: WEATHERIZATION ASSISTANCE

Eligibility, 2605(c)(1)(A), 2605(b)(2) – Assurance 2

5.1 Designate the income eligibility threshold used for the weatherization component:

#	Household Size	Eligibility Guidelines	Eligibility Threshold
1	All Household Sizes	USHHS Poverty Guidelines	150%
2	All Household Sizes	State Median Income	60% ¹⁵

5.2 Do you enter into an interagency agreement to have another government agency administer a **WEATHERIZATION component?** Yes No

5.3 If yes, name the agency. N/A

5.4 Is there a separate monitoring protocol for weatherization? Yes No

WEATHERIZATION - Types of Rules

¹⁵ In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, Texas will use the highest of 150% of the poverty guidelines or 60% of the State’s median income (“SMI”). Texas may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department’s Executive Director. TDHCA will communicate this designation to affected Subrecipients through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

5.5 Under what rules do you administer LIHEAP weatherization? (Check only one.)

Entirely under LIHEAP (not DOE) rules

Entirely under DOE WAP (not LIHEAP) rules

Mostly under LIHEAP rules with the following DOE WAP rule(s) where LIHEAP and WAP rules differ: (Check all that apply.)

Income Threshold

Weatherization of entire multi-family housing structure is permitted if at least 66% of units (50% in 2- & 4-unit buildings) are eligible units or will become eligible within 180 days.

Weatherization of shelters temporarily housing primarily low income persons (excluding nursing homes, prisons, and similar institutional care facilities).

Other (describe): Adhere to DOE WAP regulation 10 CFR Section 440.18(f)(2) regarding re-weatherization. 10 TAC Part 1, Chapter 6, Subchapter D, Weatherization Assistance Program, is one area where the LIHEAP funded weatherization program adheres to DOE regulations. TDHCA uses a priority list for LIHEAP households at 150% or below USHHS poverty income level. Energy-related home repair: TDHCA will allow the use of LIHEAP weatherization funds for structural and ancillary repairs only if required to enable effective weatherization. If LIHEAP funds are included in a DOE unit, the SIR/audit must be used to justify all measures.

Mostly under DOE WAP rules, with the following LIHEAP rule(s) where LIHEAP and WAP rules differ: (Check all that apply.)

Income Threshold.

Weatherization not subject to DOE WAP maximum statewide average cost per dwelling unit.

Weatherization measures are not subject to DOE Savings to Investment Ratio (SIR) standards.

Other (describe)

Eligibility, 2605(b)(5) – Assurance 5

5.6 Do you require an assets test?

<u>Yes</u>	<u>No</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>

5.7 Do you have additional/differing eligibility policies for:

- Renters?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------
- Renters living in subsidized housing?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

5.8 Do you give priority in eligibility to:

- Elderly?
 - Disabled?
 - Young children?
 - Households with high energy burdens?
 - Other?
- Explanation: Households with high energy consumption

Benefit Levels

5.9 Do you have a maximum LIHEAP weatherization benefit/expenditure per household?

5.10 If yes, what is the maximum amount? \$8,000

NOTE: unless additional expenditure is authorized in writing by the Department. **Types of Assistance, 2605(c)(1), (B) & (D)**

5.11 What LIHEAP weatherization measures do you provide? (Check all categories that apply.)

- Weatherization needs/assessments/audits
- Caulking and insulation
- Storm windows
- Furnace/heating system modifications/repairs
- Furnace replacement
- Cooling system modifications/repairs
- Water conservation measures
- Compact fluorescent light bulbs
- Energy related roof repair
- Major appliance repairs
- Major appliance replacement
- Windows/sliding glass doors
- Doors
- Water Heater
- Cooling system replacement

Other (describe)

Solar screens or window film. Smart thermostats, miscellaneous repairs up to \$500 for structural and ancillary only if required to enable effective weatherization; Window screens to help prevent exposure to the Zika virus for Households with pregnant women.

If any of the questions require further explanation or clarification that could not be made in the fields provided, attach a document with said explanation here.

Section 6: Outreach, 2605(b)(3) – Assurance 3, 2605(c)(3)(A)

6.1 Select all outreach activities that you conduct that are designed to assure that eligible households are made aware of all LIHEAP assistance available:

Place posters/flyers in local and county social service offices, offices of aging, Social Security offices, VA, etc.

Publish articles in local newspapers or broadcast media announcements.

Include inserts in energy vendor billings to inform individuals of the availability of all types of LIHEAP assistance.

Mass mailing(s) to prior-year LIHEAP recipients.

Inform low income applicants of the availability of all types of LIHEAP assistance at application intake for other low-income programs.

Execute interagency agreements with other low-income program offices to perform outreach to target groups.

Other (specify):

Section 7: Coordination, 2605(b)(4) – Assurance 4

7.1 Describe how you will ensure that the LIHEAP program is coordinated with other programs available to low-income households (TANF, SSI, WAP, etc.)

Joint application for multiple programs

Intake referrals to/from other programs

One-stop intake centers

Other – describe:

Section 8: Agency Designation, 2605(b)(6) – Assurance 6

8.1 How would you categorize the primary responsibility of your State agency?

- Administration Agency
- Commerce Agency
- Community Services Agency
- Energy/Environment Agency
- Housing Agency
- Welfare Agency
- Other – describe:

Alternate Outreach and Intake, 2605(b)(15) – Assurance 15

8.2 How do you provide alternate outreach and intake for HEATING ASSISTANCE?

Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), and presentation at area events.

8.3 How do you provide alternate outreach and intake for COOLING ASSISTANCE?

Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), and presentation at area events.

8.4 How do you provide alternate outreach and intake for CRISIS ASSISTANCE?

In instances of natural disaster, subrecipients coordinate with other assistance organizations (shelters, Red Cross, etc.). Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), and presentation at area events.

Question 8.5	Heating	Cooling	Crisis	Weatherization
8.5a. Who determines client eligibility?	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits	Local governments , CAAs and Other Nonprofits	Local governments, CAAs and Other Non-profits
8.5b. Who processes benefit payments to gas and electric vendors?	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits	Local governments , CAAs and Other Nonprofits	N/A
8.5c. Who processes benefit payments to bulk fuel vendors?	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits	Local governments , CAAs and Other Nonprofits	N/A
8.5d. Who performs installation of weatherization measures?	N/A	N/A	N/A	Local governments, CAAs and Other Nonprofits-most subcontract with local contractors

Note for 8.5: In the USHHS-OLDC system where the State Plan is entered, it only allows states to select one type of entity. The Department will select Nonprofits; although we will also contract with Units of government and CAAs.

8.6 What is your process for selecting local administering agencies?

The Department ensures that to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of Title 42 U.S.C. §§8621, et seq. special consideration is given to any local public or private nonprofit agency which was receiving CSBG or LIHEAP funds.

(1) The Department before giving such special consideration, determines that the agency involved meets program and fiscal requirements established by law and by the Department; and

(2) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Department gives special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made.

Currently, the Department administers all aspects of program delivery through subrecipients that have demonstrated that they are operating the program in accordance with the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and Department rules. If subrecipients are successfully administering the program, the Department may offer to renew the contract.

Under this model, if the Department determines that an organization is not administering the program satisfactorily, corrective actions are taken to remedy the problem. Thereafter, if a subrecipient fails to administer the program correctly, the Department will proceed with the process provided for in Department rules of removing funds and reassign the service area or a portion to another existing subrecipient or conduct solicitation or selection of a new subrecipient in accordance with the Low-Income Home Energy Assistance Act of 1981. The affected subrecipient may request a hearing in accordance with §2105.204 of the Texas Government Code.

However, the Department retains the right to go through a procurement process for some or all aspects of the LIHEAP program.

8.7 How many local administering agencies do you use? 37

8.8 Have you changed any local administering agencies from last year? Yes No

8.9 If so, why?

- Agency was in noncompliance with grantee requirements for LIHEAP
- Agency is under criminal investigation
- Added agency
- Agency closed
- Other – describe – voluntary relinquishment

Section 9: Energy Suppliers, 2605(b)(7) – Assurance 7

9.1 Do you make payments directly to home energy suppliers?

Heating Yes No

Cooling Yes No

Crisis Yes No

Are there exceptions? Yes No

If yes, describe:

9.2 How do you notify the client of the amount of assistance paid?

The administering agency informs them once the determination is made.

9.3 How do you assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment?

Vendor agreements are used in all components. The Department provides subrecipients with a Department approved Vendor Agreements to utilize. The document can be found at the Department's website at <https://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm>

9.4 How do you assure that no household receiving assistance under this title will be treated adversely because of their receipt of LIHEAP assistance?

Vendor Agreements are used in all components. The Department provides subrecipients with a Department approved Vendor Agreement to utilize. The document can be found at the Department's website at <https://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm>

9.5 Do you make payments contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households? Yes No. If so, describe the measures unregulated vendors may take.

Section 10: Program, Fiscal Monitoring, and Audit, 2605(b)(10) – Assurance 10

10.1. How do you ensure good fiscal accounting and tracking of LIHEAP funds?

1. Review annual audits
2. Monitor fiscal records
3. Review current and prior year monthly expenditure and performance reports

Audit Process

10.2. Is your LIHEAP program audited annually under the Single Audit Act and OMB Circular A-133? Yes No

10.3. Describe any audit findings rising to the level of material weakness or reportable condition cited in the A-133 audits, Grantee monitoring assessments, inspector general reviews, or other government agency reviews of the LIHEAP agency from the most recently audited federal fiscal year.

Finding ¹⁶	Type	Brief Summary	Resolved?	Action Taken
<p>Additional controls are needed for expenditure of LIHEAP funds. <u>NA</u></p>	<p>Non Compliance</p>	<p>Department charged LIHEAP grant \$57.19 related to travel to a meeting held for Texas Interagency for the Homeless. Expense was not related to LIHEAP and is therefore disallowed.</p>	<p>Pending HHS Response to Close Review</p>	<p>In regards to travel, the Department has provided a copy of the Department's internal employee travel policies and procedures which instructs both the program area (employee and management) and the financial administration area to review invoices for proper charging to each of the federal grants. Additionally, the Department has reversed the charges to the LIHEAP grant for \$57.19, and has provided the backup documentation for the reversal of the accounting record. Subgrantee contracts reflect that they are held to the guidelines in the Department's rules. For LIHEAP CEAP Program, those rules are found at 10 TAC §6.308, Allowable Subrecipient Administrative and Program Service Costs. For Weatherization activities with LIHEAP funds, 10 TAC §6.409(a) and (b) under the LIHEAP Weatherization Requirements.</p>

¹⁶Based on USHHS OCS LIHEAP Compliance Review Letter of July 2018. The word subgrantee is used in this chart to reflect the language in the review letter, but the entity type described is called a Subrecipient in the Department's rules.

<p>Additional controls are needed for revision to LIHEAP State Plan</p>	<p>Non Compliance</p>	<p>FY 2016 LIHEAP State Plan estimated using zero percent LIHEAP funds. At the beginning of 2016, TDHCA was not providing Assurance 16 activities; however, after public feedback started providing it. Though TDHCA revised the budgets in subgrantee contracts to allocate 5% for Assurance 16 activities, the FY 2016 LIHEAP plan was not updated to reflect the change.</p>	<p>Pending HHS Response to Close Review</p>	<p>The Department has revised our standard operating procedures to reflect a revised internal process that coordinates programmatic decisions (such as the one cited in the LIHEAP program) with an internal conversation designed to provide a review of the existing plan with any proposed changes that may necessitate an amendment to the plan. The revised process is designed to ensure that LIHEAP funds are programmed in a compliant manner and in accordance with the LIHEAP Plan. In addition to the revision of the plan, the revised operating procedure contemplates any additional internal action (such as receiving Board approval) for the requested change and provides for coordination among Department divisions in order to remain compliant with the federal grant award.</p>
<p>Additional controls needed regarding waste, fraud, and abuse</p>	<p>Non Compliance</p>	<p>TDHCA does not provide its subgrantees with guidance on preventing, detecting or reporting LIHEAP-related instances of suspected waste, fraud, and abuse. TDHCA stated each</p>	<p>Pending HHS Response to Close Review</p>	<p>The Department has revised its guidance to the subgrantee network and has conducted a training webinar in the fall of 2018 and reviewed the guidance, expectations, and next steps for subgrantee agencies in regards to reporting fraud, waste, and abuse. During the</p>

		<p>subgrantee is responsible for deciding how to handle fraud, waste, and abuse. This can lead to inconsistent procedures among subgrantees. There is also an increased risk that subgrantees are unaware of the expectations with regard to preventing, detecting and reporting suspected waste, fraud, and abuse or the consequences of such activities.</p>		<p>webinar, the Department facilitated discussion about proper Fraud, Waste, and Abuse controls and establishing and maintaining a culture that identifies risks provides mitigations, and properly follows through on allegations of fraud, waste, and abuse.</p>
<p>Lack of supporting documentation for general ledger transactions</p>	<p>Non Compliance</p>	<p>TDHCA was unable to provide adequate documentation for some of the transactions that were tested and monitors were unable to determine that LIHEAP funds were used for necessary and allowable purposes.</p>	<p>Pending HHS Response to Close Review</p>	<p>The Department provided documentation for general ledger transactions for five (#3,4,5,6,8, 13) of the six transactions from identified Subgrantees. The sixth transaction, (#15) in the amount of \$103 was incorrectly coded and the Department has reversed the \$103 charge to correct the coding error.</p>

10.4. Audits of Local Administering Agencies

What types of annual audit requirements do you have in place for local administering agencies/district offices?

Local agencies/district offices are required to have an annual audit in compliance with 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).¹⁷

Local agencies/district offices are required to have an annual audit (other than 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)).

10.4 (continued)

Local agencies/district offices 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) or other independent audits are reviewed by Grantee as part of compliance process.

Grantee conducts fiscal and program monitoring of local agencies/district offices.

Compliance Monitoring

10.5. Describe the Grantee’s strategies for monitoring compliance with the Grantee’s and Federal LIHEAP policies and procedures by:

Grantee employees:

Internal program review

Departmental oversight

Secondary review of invoices and payments

Other program review mechanisms are in place. Describe: Cross Division peer review of documents

Local Administering Agencies/District Offices:

On-site evaluation

Annual program review

Monitoring through Central Database

Desk reviews

Client File Testing/Sampling

Other program review mechanisms are in place. Describe: Desk review of 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance); A review of the Subrecipient’s resolution of prior monitoring or Single Audit reports is performed prior to awarding new contracts.

10.6. Explain, or attach a copy of, your local agency monitoring schedule and protocol.

See attached monitoring schedule and monitoring instruments.

Describe how you select local agencies for monitoring reviews?

On-site monitoring visits and desk reviews are mechanisms used for in-depth investigation and overall assessment, respectively. The Department will conduct on-site monitoring reviews and desk reviews of contracts based on an assessment of risk of non-compliance ~~and failure to achieve performance outcomes~~ with program requirements. Subrecipient monitors review necessary program documents and

¹⁷ For 2019, Subrecipients will follow the audit requirements in 45 CFR 75 Subpart F, as applicable, and the requirements in the Texas Single Audit Act.

financial records through desk reviews and on-site reviews ~~to ascertain compliance with program requirements~~. Selection of contracts for monitoring is primarily based on risk assessment. LIHEAP subrecipients are monitored at least once every three years. This is a component of the risk assessment score. If a subrecipient also has Community Service Block Grant funds, the LIHEAP monitoring may be done at the same time. ~~Subrecipients that leverage LIHEAP funds with DOE funds for weatherization are subject to an inspectiona programmatic, fiscal and inspection~~ review according to the DOE monitoring schedule (once a year). Contracts may also be selected for monitoring based on other factors, such as prior findings, complaints, or special requests.

10.7. Site Visits: Onsite monitoring visits are conducted at least once every three years. The Department will inspect a minimum of 5% of all LIHEAP weatherized units reported as complete.

Desk Reviews: Some materials are requested and reviewed at the Department's office prior to the onsite visit.

10.8. How often is each local agency monitored? At least once every three years.

10.9. What is the combined error rate for eligibility determinations? (Optional question) Optional

10.10. What is the combined error rate for benefit determinations? (Optional question)
Optional

10.11. How many local agencies are currently on corrective action plans for eligibility and/or benefit determination issues? (Number only) ~~10~~

10.12. How many local agencies are currently on corrective action plans for financial accounting or administrative issues? (Number only) ~~10~~

Section 11: Timely and Meaningful Public Participation, 2605(b)(12) – Assurance 12, 2605(c)(2)

11.1 How did you obtain input from the public in the development of your LIHEAP plan?

Check all that apply:

- Tribal Council meeting(s)
- Public Hearing(s)
- Draft Plan posted to website and available for comment
- Hard copy of plan is available for public view and comment
- Comments from applicants are recorded
- Request for comments on draft Plan is advertised
- Stakeholder consultation meeting(s)
- Comments are solicited during outreach activities
- Other, describe:

11.2 What changes did you make to your LIHEAP plan as a result of this participation?

~~Changed the LIHEAP WAP cost per unit in Section 5.10 from \$6,500 to \$8,000.~~

Public Hearings, 2605(a)(2)

11.3 List the date(s) and location(s) that you held public hearing(s) on the proposed use and

distribution of your LIHEAP funds?

Date	Event Description
Tuesday, May 26 ²⁸ , 20 19 ²⁰ from 5:30 ^{5:00} p.m. - 6:30 ^{6:00} p.m.	LIHEAP Plan Public Hearing – TDHCA Headquarters, Room 116, 221 East 11 th Street, Austin, Texas 78701
Tuesday ^{Wednesday} , May 27 ²⁸ , 20 19 ²⁰ from 26:00 ^{26:00} - 27:30 ^{27:30} p.m.	LIHEAP Plan Public Hearing –Southside Community Center, 959 E. Rosedale, Fort Worth, TX 76104
Wednesday, May 27 ²⁹ , 20 19 ²⁰ from 5:30 ^{5:00} p.m.- 6:30 ^{6:00} p.m.-:	LIHEAP Plan Public Hearing –Baker Ripley Office, 3838 Aberdeen Way, Houston, TX 77025 LIHEAP Plan Public Hearing – West Texas Opportunities Offices, 1415 East 2nd Street, Odessa, TX 79762
Thursday, May 28 ³⁰ , 20 19 ²⁰ from 26:00 ^{26:00} p.m.- 27:30 ^{27:30} p.m.	LIHEAP Plan Public Hearing – West Texas Opportunities Offices, 1415 East 2nd Street, Odessa, TX 79762 LIHEAP Plan Public Hearing –Baker Ripley Office, 3838 Aberdeen Way, Houston, TX 77025

If the Department cannot conduct in-person public hearings due to the ongoing public health concern related to COVID-19, two virtual public hearings will be held via webinar as follows:

- Wednesday, May 27, 2020 from 2:00 p.m.-3:00 p.m.
 - Via GoToWebinar
 - To Register: <https://attendee.gotowebinar.com/register/6842808822375322637>
 - Dial-in number: +1 (415) 930-5321, access code 351-573-674
 - (Persons who use the dial-in number and access code without registering online will only be able to hear the public hearing and will not be able to ask questions or provide comments.)

- Wednesday, May 27, 2020 from 5:15 p.m.- 6:15 p.m.
 - Via GoToWebinar
 - To Register: <https://attendee.gotowebinar.com/register/8052177054929158157>
 - Dial-in number: +1 (562) 247-8321, access code 210-536-015
 - (Persons who use the dial-in number and access code without registering online will only be able to hear the public hearing and will not be able to ask questions or provide comments.)

11.4 How many parties commented on your plan at the hearing(s)? **2**

11.5 Summarize the comments you received at the hearing(s).

COMMENT SUMMARY #1:

Section 1.4, Categorical Eligibility

Commenter states that with increasing LIHEAP funds the Department must widen the population pool to other categories of benefits allowed by the USHHS as categorically eligible. It is requested that the Temporary Assistance for Needy Families (TANF) and the Supplemental Nutrition Assistance Program

~~(SNAP) programs should be marked 'Yes' as a basis upon which households could be considered categorically eligible for cooling, heating, crisis, and weatherization.~~

COMMENT SUMMARY #2:

~~Section 4.6, Crisis Eligibility~~

~~Commenter states that by responding to the question asking if there are additional eligibility requirements for crisis assistance with a 'No', the Plan is not consistent with §6.310 of the TAC and therefore should be marked 'Yes'.~~

COMMENT SUMMARY #3:

~~Section 5.5, Weatherization Types of Rules~~

~~Commenter references the use of a priority list for LIHEAP households and requests that the Department host a meeting with LIHEAP providers to jointly design the priority list in order to ensure program issues such as varying climates/regions, housing stock, etc. are adequately addressed.~~

COMMENT SUMMARY #4:

~~Section 5.9 and 5.10, Benefit Levels~~

~~Commenter requests that the LIHEAP WAP cost per unit be removed so there is no maximum benefit/expenditure per household or that the maximum cost per unit be significantly increased to allow full weatherization of homes since it is only a one time benefit. Commenter would like to complete all weatherization measures without regard to a cost per unit.~~

COMMENT SUMMARY #5:

~~General Comment~~

~~Commenter requests that the Department host an in-person meeting between Department staff and LIHEAP providers to seek solutions to redesign the CEAP and minimize administrative costs.~~

COMMENT SUMMARY #6:

~~General Comment~~

~~Commenter requests and recommends several changes to the priority list.~~

11.6 What changes did you make to your LIHEAP plan as a result of the comments received at the public hearing(s)? ~~For Comment Summary #4, rather than completely removing the LIHEAP WAP cost per unit ceiling as the commenter requested, staff determined that an increase in the cost per unit from \$6,500 to \$8,000 would be more beneficial and made this change in the Plan at Section 5.10.~~

Section 12: Fair Hearings, 2605(b)(13) – Assurance 13

12.1 How many fair hearings did the grantee have in the prior Federal fiscal year?

None ~~at this time.~~

12.2 How many of those fair hearings resulted in the initial decision being reversed? N/A

12.3 Describe any policy and/or procedural changes made in the last Federal fiscal year as a result of fair hearings? None

12.4 Describe your fair hearing procedures for **households whose applications are denied**.
Subrecipient contracts include the following section:

~~SECTION 39.~~ APPEALS PROCESS

In compliance with the LIHEAP Act, Subrecipient must provide an opportunity for a fair administrative hearing to individuals whose application for assistance is denied, terminated or not acted upon in a timely manner. Subrecipient must establish a denial of service complaint procedure in accordance with 10 TAC §6.8 of the State Rules. The rule states:

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

(1) Subrecipients shall provide a written denial of assistance notice to applicant within ten (10) calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipients shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within ten (10) business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven (7) calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

(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 third calendar day following the decision (three 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.

(c) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) days of notification of an adverse decision.

(d) Applicants/customers 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 Tex. Gov't Code, Chapter 2001.

(e) The hearing under subsection (d) shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13, relating to Contested Case Hearing Procedures, of this title.

(f) If the applicant/customer appeals to the Department, the funds should remain encumbered until the Department completes its decision.

12.5 When and how are applicants informed of these rights?

Within ten days of the determination, the subrecipient must provide written notification to the applicant.

12.6 Describe your fair hearing procedures for **households whose applications are not acted on in a timely manner.**

An Applicant requests a hearing with the Subrecipient initially. If not satisfied with the results of the Subrecipient's hearing, the Applicant then appeals to the Texas Department of Housing and Community Affairs. The Department then schedules a fair administrative hearing.

~~The LIHEAP Comprehensive Energy Assistance Program contract has a provision stating that applicants have an opportunity for a fair administrative hearing for persons whose application for assistance is denied, terminated, or not acted upon in a timely manner. Refer to attachment "Section 12 Question 12.6 & 12.7_2018_LIHEAP_contract_Section38_appealsprocess."~~

~~Subrecipients are required to have a written policy and to inform applicants and clients of their right to a hearing. Applicants or clients who request a hearing will be granted one by the subrecipient. If the applicant or client is not satisfied with the decision, they can appeal the decision in writing to the Department. Applicants/customers 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.~~

~~Additionally, the Department has an online complaint system and staff phone numbers are posted online. In general, applicants who have a complaint are given contact information for TDHCA at the time the subrecipient receives the complaint. Applicants who call are encouraged to use the online system. Staff documents the complaint and proceeds as if the complaint were a denial of services appeal. Staff researches the complaint and work with the subrecipient and/or complainant to resolve the complaint. Complainants will then receive a final determination from staff.~~

~~10 TAC §6.8, relating to Potential Applicant/Applicant/Customer Denials and Appeals Rights was amended in 2018 to add hearing rights for potential applicants. 10 TAC §1.13 describes the Contested Case Hearing Procedures. Please refer to the attachment for question 12.6 and 12.7.~~

12.7 When and how are applicants informed of these rights?

Applicants are informed of their rights either by 1) informing them on the application itself, 2) handing them a document with such information at the time of application, 3) displaying posters at intake offices, or 4) providing them the information in the denial of LIHEAP assistance letter that is mailed to the applicant.

~~Subrecipient shall provide a written denial of assistance notice to applicant within ten (10) calendar days of the determination. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) calendar days of receipt of the denial notice. Subrecipients~~

~~must establish a written procedure for the handling of denials of service and shall establish a denial of service complaint procedure to address written complaints from program applicants/customers.~~

~~Applicants who have a complaint are given contact information for TDHCA at the time the complaint is received by the Subrecipient.~~

~~Please refer to the attachment of Texas Administrative Code related to question 12.6 and 12.7. Applicants are to be provided a written denial of assistance notice within ten (10) calendar days of the determination and shall include written notice of the right of a hearing. 10 TAC §6.8 (b)(1).~~

Section 13: Reduction of home energy needs, 2605(b)(16) – Assurance 16

13.1 Describe how you use LIHEAP funds to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance?

N/A- The State does not use funds under Assurance 16.

13.2 How do you ensure that you don't use more than 5% of your LIHEAP funds for these activities?

NA-The State does not use funds under Assurance 16.

13.3 Describe the impact of such activities on the number of households served in the previous Federal fiscal year.

NA-The State does not use funds under Assurance 16.

13.4 Describe the level of direct benefits provided to those households in the previous Federal fiscal year.

NA-The State does not use funds under Assurance 16.

13.5 How many households applied for these services?

NA-The State does not use funds under Assurance 16.

13.6 How many households received these services?

NA-The State does not use funds under Assurance 16.

Section 14: Leveraging Incentive Program, 2607A

14.1 Do you plan to submit an application for the leveraging incentive program?

Yes No

14.2 Describe instructions to any third parties and/or local agencies for submitting LIHEAP leveraging resource information and retaining records. NA

14.3 For each type of resource and/or benefit to be leveraged in the upcoming year that will meet the requirements of 45 C.F.R. § 96.87(d)(2)(iii), describe the following:

Resource	What is the type of resource or benefit?	What is the source(s) of the resource?	How will the resource be integrated and coordinated with LIHEAP?
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NA	NA	NA	NA

Section 15: Training

15.1 Describe the training you provide for each of the following groups:

a. Grantee Staff:

Formal training on grantee policies and procedures

How often?

Annually

Biannually

As needed

Other – Describe:

Employees are provided with policy manual

Other – Describe:

Employees are provided with a notebook with plans, rules, the contract, and budget. The Department training team provides grantee staff with programmatic training. New staff are provided an orientation training, and invited to attend Subrecipient trainings as well.

b. Local Agencies:

Formal training conference

How often?

Annually

Biannually

As needed

Other – Describe: The Department offers a manager training for newly hired managers or Executive Directors, as needed, which is then followed up with individualized technical assistance. The Department conducts quarterly network calls and/or webinars to update Subrecipients on changes. The Department provides training at an annual conference which is sponsored by the Texas Association of Community Action Agencies. The Department provides Energy Audit training to agencies as needed, along with Department posted Energy Audit Student Guide and Best Practices on its website. The Department provides a template for developing the Annual Service Delivery Plan and a guide for developing it. The Department develops data tools and trains agencies on how to analyze their data to improve efficiency and productivity.

On-site training

How often?

Annually

Biannually

As needed

Other –

The Department identifies key areas for training needs based upon monitor reports and Subrecipient-grantee requests. The Department provides on-site training as needed to individual agencies or through regional trainings on a variety of topics such as: process mapping, production, data analysis, intake, client file documentation, weatherization assessments, audits, final inspections, working with contractors, and reporting.

- Employees are provided with policy manual
- Other – Describe: The Department uses an online- portal that agencies use daily for quick responses to questions or for requesting training. The Department schedules a webinar each quarter to provide information, training, and technical assistance to the local agencies. The Department hosts an additional weatherization quarterly webinar to provide updates on rules, regulations, and technical issues that are identified. The Department creates tools, guides, best practices, and FAQs that are posted on program webpages.

c. Vendors

- Formal training conference
 - How often?
 - Annually
 - Biannually
 - As needed
 - Other – Describe:
- Policies communicated through vendor agreements
- Policies are outlined in a vendor manual
- Other – Describe:

15.2 Does your training program address fraud reporting and prevention?

- Yes
- No

Section 16: Performance Goals and Measures, 2605(b)

16.1 Describe your progress toward meeting the data collection and reporting requirements of the four required LIHEAP performance measures. Include timeframes and plans for meeting these requirements and what you believe will be accomplished in the coming federal fiscal year.

The Department was able to meet the four LIHEAP performance measures.

The Department currently requires subrecipients to upload data related to the four performance measures into our State reporting system. The Department has made this reporting a contractual requirement for all LIHEAP subrecipients. The Department periodically reviews uploaded summary reports and offers technical assistance to subrecipients who may not understand what to report or may not upload the data in a timely fashion. ~~The Department is currently working on merging the uploaded data with our current reporting system and capturing client level data in addition to performance measure data. We hope to have this project completed for use in reporting PY2019 data in 2020. We will continue to work on implementing this project, which will include testing, prior to roll out of the new system.~~

Section 17: Program Integrity, 2605(b)(10)

17.1 Fraud Reporting Mechanisms

a. Describe all mechanisms available to the public for reporting cases of suspected waste, fraud, and abuse. Select all that apply.

- Online Fraud Reporting
- Dedicated Fraud Reporting Hotline
- Report directly to local agency/district office or Grantee office

- Report to State Inspector General or Attorney General
- Forms and procedures in place for local agencies/district offices and vendors to report fraud, waste, and abuse.
- Other – describe:

Note: TDHCA’s website has a webpage named “Report Fraud, Waste, and Abuse by TDHCA Management and Staff” directing persons who suspect fraud, waste, and abuse by TDHCA management and staff to report to the State Auditor’s Office at <https://sao.fraud.texas.gov/ReportFraud/>. Subrecipients are required to establish fraud, waste, and abuse procedures.

17.1 (continued)

b. Describe strategies in place for advertising the above-referenced resources. Select all that apply.

- Printed outreach materials
- Addressed on LIHEAP application
- Website
- Other – describe:

17.2 Identification Documentation Requirements

a. Indicate which of the following forms of identification are required or requested to be collected from LIHEAP applicants or their household members.

Type of Identification Collected	Collected from Whom?		
	Applicant Only	All Adults in HH	HH Members Seeking Assistance*
Social Security Card is photocopied and retained	Required <input type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>
Social Security Number (without actual card)	Required <input type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>
Government-issued identification card (e.g.,: driver’s license, state ID, Tribal ID, passport, etc.)	Required <input checked="" type="checkbox"/>	Required <input checked="" type="checkbox"/>	Required <input checked="" type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>

#	Other	Applicant Only Required	Applicant Only Requested	All Adults in Household Required	All Adults in Household Requested	All Household Members Required	All Household Members Requested
1	Other: clients provide identification to the subrecipients at the time of application. See attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Households may include members who are not seeking assistance and may not be included in the household count. A live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household.

b. Describe any exceptions to the above policies: NA

17.3 Identification Verification

Describe what methods are used to verify the authenticity of identification documents provided by clients or household members. Select all that apply.

- Verify SSNs with Social Security Administration
- Match SSNs with death records from Social Security Administration or state agency
- Match SSNs with state eligibility/management system (e.g., SNAP, TANF)
- Match with state Department of Labor system
- Match with state and/or federal corrections system
- Match with state child support system
- Verification using private software (e.g., The Work Number)
- In-person certification by staff (for tribal grantees only)
- Match SSN/Tribal ID number with tribal database or enrollment records (for tribal grantees only)
- Other – describe:

Subrecipients verify the authenticity of identification documents provided by clients who are not U.S. citizens or nationals. That verification is made through the Systematic Alien Verification for Entitlements (SAVE) system.

17.4 Citizenship/Legal Residency Verification

What are your procedures for ensuring that household members are U.S. citizens or aliens who are qualified to receive LIHEAP benefits?

- Clients sign an attestation of citizenship or legal residency
- Clients' submission of Social Security cards is accepted as proof of legal residency
- Noncitizens must provide documentation of immigration status
- Citizens must provide a copy of their birth certificate, naturalization papers, or passport
- Noncitizens are verified through the SAVE system
- Tribal members are verified through Tribal database/Tribal ID card
- Other – describe: U.S. Nationals will have to provide documentation of that status.

17.5 Income Verification

What methods does your agency utilize to verify household income?

- Require documentation of income for all adult household members
 - Pay stubs
 - Social Security award letters
 - Bank statements
 - Tax statements
 - Zero-income statements
 - Unemployment Insurance letters
 - Other – describe: Court Documents or government benefit statements as applicable.

- Computer data matches:
 - Income information matched against state computer system (e.g., SNAP, TANF)
 - Proof of unemployment benefits verified with state Department of Labor
 - Social Security income verified with SSA
 - Utilize state directory of new hires
- Other – describe:

17.6 Protection of Privacy and Confidentiality

Describe the financial and operating controls in place to protect client information against improper use or disclosure.

- Policy in place prohibiting release of information without written consent
- Grantee LIHEAP database includes privacy/confidentiality safeguards
- Employee training on confidentiality for:
 - Grantee employees
 - local agencies/district offices
- Employees must sign confidentiality agreement
 - Grantee employees
 - local agencies/district offices
- Physical files are stored in a secure location
- Other – describe: Grantee contracts include the following section:

SECTION 9. RECORD KEEPING REQUIREMENTS

Subrecipient acknowledges that all information collected, assembled, or maintained by subrecipient pertaining to this Contract, except records made confidential by law, is subject to the Texas Public Information Act (Chapter 552 of Texas Government Code) and must provide citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Contract subject to and in accordance with the Texas Public Information Act.

Texas Administrative Code, Title 10 Chapter 1, Subchapter D §1.409 requires that:

- (a) Client Records including Multifamily Development Owners. The Department requires subrecipient organizations to document client services and assistance. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.
- (b) Records of client eligibility must be retained for five (5) years starting from the date the Household activity is completed, unless otherwise provided in federal regulations governing the program.
- (c) Other records must be maintained as described in the Contract or the LURA, and in accordance with federal or state law for the programs described in the Chapters of this Part.

17.7 Verifying the Authenticity of Energy Vendors

What policies are in place for verifying vendor authenticity?

- All vendors must register with the State/Tribe

- All vendors must supply a valid SSN or TIN/W-9 form
- Vendors are verified through energy bills provided by the household
- Grantee and/or local agencies/district offices perform physical monitoring of vendors
- Other – describe, and note any exceptions to policies above:

17.8 Benefits Policy – Gas and Electric Utilities

What policies are in place to protect against fraud when making benefit payments to gas and electric utilities on behalf of clients? Select all that apply.

- Applicants required to submit proof of physical residency
- Applicants must submit current utility bill
- Data exchange with utilities that verifies:
 - Account ownership
 - Consumption
 - Balances
 - Payment history
 - Account is properly credited with benefit
 - Other – describe:
- Centralized computer system/database tracks payments to all utilities
- Centralized computer system automatically generates benefit level
- Separation of duties between intake and payment approval
- Payments coordinated among other heating assistance programs to avoid duplication of payments
- Payments to utilities and invoices from utilities are reviewed for accuracy
- Computer databases are periodically reviewed to verify accuracy and timeliness of payments made to utilities
- Direct payment to households are made in limited cases only
- Procedures are in place to require prompt refunds from utilities in cases of account closure
- Vendor agreements specify requirements selected above, and provide enforcement mechanism
- Other – describe:

17.9 Benefits Policy — Bulk Fuel Vendors

What procedures are in place for averting fraud and improper payments when dealing with bulk fuel suppliers of heating oil, propane, wood, and other bulk fuel vendors? Select all that apply.

- Vendors are checked against an approved vendors list
- Centralized computer system/database is used to track payments to all vendors
- Clients are relied on for reports of non-delivery or partial delivery
- Two-party checks are issued naming client and vendor
- Direct payment to households are made in limited cases only
- Vendors are only paid once they provide a delivery receipt signed by the client
- Conduct monitoring of bulk fuel vendors
- Bulk fuel vendors are required to submit reports to the Grantee
- Vendor agreements specify requirements selected above, and provide enforcement mechanism
- Other – describe:

17.10 Investigations and Prosecutions

Describe the Grantee's procedures for investigating and prosecuting reports of fraud, and any sanctions placed on clients/staff/vendors found to have committed fraud. Select all that apply.

- Refer to state Inspector General

- Refer to local prosecutor or state Attorney General
- Refer to US DHHS Inspector General (including referral to OIG hotline)
- Local agencies/district offices or Grantee conduct investigation of fraud complaints from public
- Grantee attempts collection of improper payments. If so, describe the recoupment process.
- Clients found to have committed fraud are banned from LIHEAP assistance. For how long is a household banned?
- Contracts with local agencies require that employees found to have committed fraud are reprimanded and/or terminated
- Vendors found to have committed fraud may no longer participate in LIHEAP
- Other — describe: A Subrecipient may be referred to the Department's Enforcement Committee or proposed for debarment.

Section 18: Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and

information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used

in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

By checking this box, the prospective primary participant is providing the certification set out above.

Section 19: Certification Regarding Drug-Free Workforce Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled

Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of Subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about --(1)The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted -

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
 - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).
- (B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

221 East 11th Street

Austin, Travis County, Texas, 78701

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

- (a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

By checking this box, the prospective primary participant is providing the certification set out above.

Section 20: Certification Regarding Lobbying

The submitter of this application certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By checking this box, the prospective primary participant is providing the certification set out above.

REQUIRED ATTACHMENTS

The following documents must be attached to this application:

- Assurances signature page
- Designation letter for signature to Assurances is required if someone other than the Governor or Tribal Chairperson signs the Assurances.
- Heating component benefit matrix. (Attachment 3)
- Cooling component benefit matrix. (Attachment 3)
- Local Agency Monitoring Schedule (Attachment 4)

Attachment 3

Benefit Matrix

Program rules found at 10 Texas Administrative Code, §6.309(e):

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=6&rl=309](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=6&rl=309) and (f).

All benefits are determined based on a sliding scale.:

(e) Benefit determinations for the Utility ~~Payment~~ Assistance Component and the ~~Household~~ Crisis Assistance Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this subsection:

(1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed \$1,~~62~~00 per Component;

(2) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount not to exceed \$1,~~51~~00 per Component; and

(3) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed \$1,~~40~~00 per Component; and

(f) Service and Repair of existing heating and cooling units: Households may receive up to \$~~53~~,000 for service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system based on requirements in §6.310, relating to ~~Household~~ Crisis Assistance Component.

Attachment 4

Monitoring Schedule for FY 2020~~1~~

	SUBRECIPIENT	REVIEW TYPE	Date of Next Monitoring Review	DATE OF LAST FULL ONSITE REVIEW (IF APPLICABLE)
1	Alamo Area Council of Governments	On-Site	2020	February 2019
2	Aspermont Small Business Development Center, Inc.	On-Site	2022	May 2019
3	BakerRipley	On-Site	2021	July 2019
4	Bexar County Community and Development Programs	On-Site	2022	January 2020
5	Big Bend Community Action Committee, Inc.	On-Site	2021	May 2019
6	Brazos Valley Community Action Programs	On-Site	2020	August 2018
7	Central Texas Opportunities, Inc.	On-Site	2021	March 2018
8	City of Fort Worth Neighborhood Services Department	On-Site	2022	February 2020
9	City of Lubbock Community Development Department	On-Site	2021	February 2019
10	Combined Community Action, Inc.	On-Site	2022	November 2019
11	Community Action Committee of Victoria, Texas	On-Site	2022	Septmber 2019
12	Community Action Corporation of South Texas	On-Site	2022	July 2019
13	Community Action Inc. of Central Texas	On-Site	2021	October 2018
14	Community Council of South Central Texas, Inc.	On-Site	2021	November 2018
15	Community Services Northeast Texas, Inc.	On-Site	2021	May 2018
16	Concho Valley Community Action Agency	On-Site	2021	October 2018
17	County of Hidalgo Community Services Agency	On-Site	2021	August 2018
18	Dallas County Health and Human Services	On-Site	2020	February 2018
19	Economic Action Committee of the Gulf Coast	On-Site	2022	July 2019
20	Economic Opportunities Advancement Corporation of Planning Region XI	On-Site	2022	January 2020
21	El Paso Community Action Program-Project BRAVO	On-Site	2022	February 2020
22	Galveston County Community Action Council, Inc.	On-Site	2022	March 2019
23	Greater East Texas Community Action Program	On-Site	2022	February 2019
24	Hill Country Community Action Association, Inc.	On-Site	2021	December 2018
25	Kleberg County Human Services	On-Site	2022	November 2019
26	Nueces County Community Action Agency	On-Site	2022	February 2019
27	Panhandle Community Services	On-Site	2020	November 2017
28	Pecos County Community Action Agency	On-Site	2022	February 2019
29	Rolling Plains Manangement Corporation	On-Site	2021	November 2018
30	South Plains Community Action Association, Inc.	On-Site	2021	April 2018
31	South Texas Development Council	On-Site	2021	May 2018
32	Texas Neighborhood Services	On-Site	2022	May 2019
33	Texoma Council Of Governments	On-Site	2022	August 2019
34	Travis County Health and Human Services	On-Site	2020	April 2018
35	Tri-County Community Action, Inc.	On-Site	2021	November 2018
36	Webb County Community Action Agency	On-Site	2022	December 2019
37	West Texas Opportunities, Inc.	On-Site	2022	March 2019
38	Williamson-Burnet County Opportunities, Inc.	On-Site	2022	April 2019

1h

BOARD ACTION REQUEST

EXECUTIVE DIVISION

APRIL 23, 2020

Presentation, discussion, and possible action on an order adopting amendments to 10 TAC §8.7, Tenant Selection and Screening; an order adopting amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their submission to the Texas Register for adoption

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, oversight of the affirmative marketing requirements and the written policies and procedures (often called tenant selection criteria), and their associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit, and as a result the two sections of the Compliance rule that govern those processes (10 TAC §10.610 and 10 TAC §10.617) are being repealed, while under separate action being adopted as new sections within Chapter 10;

WHEREAS, references to 10 TAC §10.610 were made in two rules, that will now warrant revision to ensure accurate references are reflected in these rules, and this action adopts amendments to 10 TAC §8.7 Tenant Selection and Screening and to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements;

WHEREAS, upon Board approval of the draft, the amendments were submitted to the Texas Register to receive public comment from December 20, 2019, to January 20, 2020, and no comment was received; and

WHEREAS, upon Board approval the amendments will be submitted to the Texas Register for adoption;

NOW, therefore, it is hereby

RESOLVED, that the amendments to 10 TAC §8.7(g) Tenant Selection and Screening, and to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements together with the preambles presented to this meeting, are hereby approved for submission to the Texas Register for adoption; and

FURTHER 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 actions herein in the form presented to this meeting, to be submitted to the Texas Register for adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

BACKGROUND

Oversight of the affirmative marketing requirements and the written policies and procedures (often called tenant selection criteria), and their associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit. As a result the two sections of the Compliance rule that govern those processes (10 TAC §10.610 and 10 TAC §10.617) are being repealed, while under separate action new rules are being adopted within Chapter 10. To ensure accurate referential integrity the Department also must amend two other rules noted above to update references.

Attachment [1]: Preamble, including required analysis, for the adoption of an amendment to 10 TAC §8.7, Tenant Selection and Screening.

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to 10 TAC §8.7(g), Tenant Selection and Screening. The purpose of this amendment is to correct a citation referenced in the rule.

Tex. Gov't Code §2001.0045(b) does apply to the amendment and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendment would be in effect, the amendment does not create or eliminate a government program, but relates to correcting a citation in the rule.
2. The amendment does not require a change in work that would require the creation of new employee positions, nor is the amendment significant enough to reduce workload to a degree that any existing employee positions are eliminated.
3. The amendment does not require additional future legislative appropriations.
4. The amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The amendment is not creating a new regulation.
6. The amendment will not repeal an existing regulation.
7. The amendment will not increase or decrease the number of individuals subject to the rule's applicability.
8. The amendment will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amended section would be clarity in requirements. There will not be economic costs to individuals required to comply with the amended section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between December 20, 2019, and January 20, 2020. No comments were received regarding the proposed rule and the rule is being adopted without changes.

The Board adopted the final order authorizing the adoption of the amendments on April 23, 2020.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

§8.7 Program Regulations and Requirements

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

- (1) H 2012-06, Enterprise Income Verification (EIV) System;
- (2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;
- (3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;

- (4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;
 - (5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; or
 - (6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents.
- (e) Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, before the execution of the RAC and comply with the following:
- (1) Use Agreement should be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to TDHCA within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.
 - (2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.
 - (3) TDHCA will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.
- (f) Tenant Certifications, Reporting and Compliance.
- (1) TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.
 - (2) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by TDHCA, but is still required to satisfy the Program Requirements.
 - (3) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.
- (g) Tenant Selection and Screening.
- (1) Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA's Program. The Target Population may be revised, with HUD approval.
 - (2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.802 (relating to Written Policies and Procedures), to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.
 - (3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:
 - (A) The Owner must accept referrals of an Eligible Tenant from TDHCA and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and TDHCA in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and TDHCA in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by TDHCA, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by TDHCA, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. TDHCA will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. TDHCA will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of TDHCA. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. TDHCA will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to TDHCA 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the TDHCA approved Utility Allowance being used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify TDHCA if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, (as amended), regarding Ownership Transfer requests.

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. TDHCA and its service partners will be responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, TDHCA may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(4) Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.

(k) Rent.

(1) Tenant Rent Payment. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3, and is responsible for collecting the Tenant Rent payment.

(2) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent.

(3) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If the Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum TDHCA enforced rent restriction at the Development.

(B) If there is no existing TDHCA enforced rent restriction on the Unit, or the existing TDHCA enforced rent restriction is higher than FMR, TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with TDHCA, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by TDHCA.

(D) After the signing of the original RAC, upon request from the Owner to TDHCA, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(I) Vacancy; Transfers; Eviction; Household Changes.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify TDHCA of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of newly constructed, acquired or rehabilitated Eligible Multifamily Property must notify TDHCA no later than 180 days before the Eligible Multifamily Property will be available for initial move-in.

(4) Vacancy. Once a RAC is executed, the Owner must notify TDHCA of the vacancy of any Unit, including those that have not previously been occupied by an Eligible Tenant, as soon as possible, not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available. TDHCA will acknowledge receipt of the notice by responding to the Owner in writing within three business days from when the notice is received by the Department stating whether or not TDHCA will be accepting the available Unit, and making a subsequent referral for the Unit. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA will determine if the remaining family members are eligible for continued assistance from the Program.

(5) Vacancy Payment. An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.

(6) Household Changes; Transfers. Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer. Owner will notify TDHCA of any household changes in an Assisted Unit within three business days. If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriately sized Assisted Unit.

(7) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation

Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

(m) Construction Standards, Accessibility, Inspections and Monitoring.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and TDHCA requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is obligated to train all property management staff on the requirements of the Program. The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.

(o) Reporting Requirements. Owner shall submit to TDHCA such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by TDHCA. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community

Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at <http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm>.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State

of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

Attachment [2]: Preamble, including required analysis, for adoption of an amendment to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements. The purpose of this amendment is to correct a citation referenced in the rule.

Tex. Gov't Code §2001.0045(b) does apply to the amendment and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendment would be in effect, the amendment does not create or eliminate a government program, but relates to correcting a citation in the rule.
2. The amendment does not require a change in work that would require the creation of new employee positions, nor is the amendment significant enough to reduce workload to a degree that any existing employee positions are eliminated.
3. The amendment does not require additional future legislative appropriations.
4. The amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The amendment is not creating a new regulation.
6. The amendment will not repeal an existing regulation.
7. The amendment will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The amendment will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amended section would be clarity in requirements. There will not be economic costs to individuals required to comply with the amended section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between December 20, 2019, and January 20, 2020. No comments were received regarding the proposed rule and the rule is being adopted without changes.

The Board adopted the final order authorizing the adoption of the amendments on April 23, 2020.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

§23.61, Tenant-Based Rental Assistance (TBRA) General 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) Activity 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) months cumulatively, except that a maximum of twenty-four (24) additional 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 is determined at the date of assistance. The payment standard utilized by the Administrator must be:

(1) for metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;

(2) for nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) for a HOME assisted unit, the current applicable HOME rent; or

(4) 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 documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in §1.204 of this title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) Administrators must select the method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. Administrators of an existing RSP Agreement may request an amendment to an existing Agreement in accordance with Section 23.1 of this Chapter. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional 1 percent of Direct Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs:

(1) Funds for Administrative costs are limited to 4 percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to \$1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to 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; or

(2) Funds for Administrative costs are limited to 8 percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

(h) 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.

(i) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household,

unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.802 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.802 of this Title)) will govern.

(k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity.

(l) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three (3) calendar days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

1i

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action on the Second Amendment to the 2020-1 Multifamily Direct Loan Notice of Funding Availability

RECOMMENDED ACTION

WHEREAS, the Board previously approved the 2020-1 Multifamily Direct Loan Notice of Funding Availability (2020-1 NOFA), which included \$13,846,168 in HOME funds;

WHEREAS, the Board also previously approved the First Amendment to the 2020-1 NOFA reprogramming \$5,385,999.20 in National Housing Trust Fund (NHTF) into the Soft Repayment set-aside of the 2020-1 NOFA;

WHEREAS, the Department has \$4,123,858 in NHTF available as a result of recently withdrawn applications under the 2020-2B Multifamily Direct Loan Special Purpose Notice of Funding Availability (2020-2B NOFA);

WHEREAS, all available NHTF was subject to the Regional Allocation Formula (RAF) under the 2018-1 and/or 2019-1 NOFA, and is therefore not subject to the RAF under the 2020-1 NOFA;

WHEREAS, staff recommends programming all \$4,123,858 in available NHTF into the Soft Repayment set-aside of the 2020-1 NOFA; and

WHEREAS, staff recommends making minor technical and grammatical corrections through the Second Amendment to the 2020-1 NOFA;

NOW, therefore, it is hereby

RESOLVED, that \$4,123,858 in NHTF be added to the Soft Repayment set-aside as of April 24, 2020, and minor technical and grammatical corrections made to the 2020-1 NOFA, all of which shall be reflected in the proposed amendment; and

FURTHER RESOLVED, the Executive Director and staff as designated by the Executive Director are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

On December 12, 2019, the Board approved the 2020-1 NOFA. On December 27, 2019, the 2020-1 NOFA was published in the *Texas Register* announcing the availability of up to \$13,846,168 in HOME funds for the development of affordable multifamily rental housing. On February 27, 2020, the Board approved the First Amendment to the 2020-1 NOFA reprogramming \$5,385,999 in available NHTF into the 2020-1 Soft Repayment set-aside. The Amended 2020-1 NOFA was published in the *Texas Register* on March 13, 2020.

Last month, three applications under the 2020-2B Special Purpose NOFA that would have received NHTF had they been recommended for Direct Loan awards withdrew their applications. These withdrawals resulted in \$4,123,858 of NHTF becoming available for use in the Soft Repayment set-aside of the 2020-1 NOFA.

Because all available NHTF was previously subject to RAF in its respective 2018-1 and/or 2019-1 NOFA, all NHTF in the 2020-1 NOFA will immediately be available statewide.

Staff also made minor technical and grammatical corrections to the 2020-1 NOFA for clarity purposes. No changes have been made that would impact the Priority considerations under the 2020-1 NOFA. Moving forward, staff will continue to monitor the demand for Direct Loan funds and may recommend further amendments to the NOFA as necessary.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2020-1 NOTICE OF FUNDING AVAILABILITY (NOFA)
ANNUAL NOFA
SECOND AMENDMENT
EFFECTIVE APRIL 24, 2020

THIS AMENDMENT ADDS \$4,123,858 IN NATIONAL HOUSING TRUST FUND (NHTF) TO THE SOFT REPAYMENT SET-ASIDE. ALL NHTF IS AVAILABLE ON A STATEWIDE BASIS. THIS AMENDMENT REPLACES IN ITS ENTIRETY SECTIONS 1, 2B, AND THE TABLE IN SECTION 2. ALL OTHER SECTIONS OF THE 2020-1 NOFA REMAIN AS ORIGINALLY PUBLISHED, OR AS OTHERWISE PUBLISHED IN THE FIRST AMENDMENT TO THE 2020-1 NOFA.

1) Summary. The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to **\$23,356,025.20** in total HOME¹ and NHTF funding for the development of affordable multifamily rental housing for low-income Texans. Applications under the CHDO and General Set-Asides of the 2020-1 NOFA will be accepted from January 13, 2020 through August 31, 2020 (if sufficient funds remain). Applications under the Soft Repayment Set-Aside of the 2020-1 NOFA will be accepted February 28, 2020 through August 31, 2020 (if sufficient funds remain). The availability and use of these funds are subject to the following rules, as applicable:

a. Texas Administrative Code

10 TAC Chapter 1 (Administration)

10 TAC Chapter 2 (Enforcement)

10 TAC Chapter 10 (Uniform Multifamily Rules)

10 TAC Chapter 11 (Qualified Allocation Plan)

10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)

10 TAC Chapter 13 (Multifamily Direct Loan Rule)

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=10&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1)

b. Texas Government Code

Tex. Gov't. Code Chapter 2306

¹ HOME funds under this NOFA may only be awarded to Applications with Development Sites in non-Participating Jurisdictions.

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

- c. U.S. Department of Housing and Urban Development (HUD) Program Regulations
24 CFR Part 92 ([HOME Investment Partnerships Program Final Rule](#))
24 CFR Part 93 ([Housing Trust Fund Interim Rule](#))

- d. Fair Housing
Federal Fair Housing Act, 42 U.S.C. 3601-19
<https://www.tdhca.state.tx.us/fair-housing/index.htm>

- e. Other Federal laws and regulations that may apply depending on funding source:

Environmental Compliance

All federal sources must have some type of environmental review in accordance with 24 CFR Part 93 or 24 CFR Part 58 as applicable.

<https://www.tdhca.state.tx.us/program-services/environmental/index.htm>

Minimizing Resident Displacement

All federal sources must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; HOME and NSP1 PI must follow Section 104(d) of Housing and Community Development Act of 1974; and all federal sources must follow the HUD Handbook 1378.

<https://www.tdhca.state.tx.us/program-services/ura/index.htm>

Labor Standards

HOME and NSP1 PI funds are regulated by Davis-Bacon and Related Labor Acts (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs).

<https://www.tdhca.state.tx.us/program-services/davis-bacon/index.htm>

Employment Opportunities

HOME and NSP1 PI require compliance with 24 CFR Part 135 (Section 3).

<https://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm>

If HOME or NHTF funds are awarded and Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.

- f. An award to a Development that proposes to refinance with minimal rehabilitation, or to obtain supplemental financing, will not be made in amount that exceeds the amount necessary to replace lost funding or maintain the anticipated levels of feasibility in the original Application, as determined by the Board.

2) **b. Soft Repayment Set-Aside.** \$9,509,857.20 in NHTF is available in this Set-Aside. Applicants within this Set-Aside must restrict rent and income for all Direct Loan-assisted units to 30% as defined in 24 CFR Part 93. Applicants in this Set-Aside must meet the Supportive Housing requirements in 10 TAC §11.1(d)(122) including the underwriting considerations for Supportive Housing Developments in 10 TAC §11.302(g)(4) or the requirements in 10 TAC §13.4(a)(1)(A)(ii).

Set-Aside	Eligible Activities	Fund Source and Amount Available		Maximum Request
CHDO	NC, A/R, R	HOME	\$4,733,439	\$3,000,000
Soft Repayment	A/NC, NC	NHTF	\$9,509,857.20 ²	\$2,000,000
General	NC, A/R, R	HOME	\$9,112,729	\$3,000,000

Key:

NC – New Construction (For the Soft Repayment Set-Aside, New Construction includes Reconstruction, as defined in 24 CFR Part 93)

A/R – Acquisition/Rehabilitation

R – Rehabilitation

A/NC – Acquisition/New Construction

² Because the Department has not yet met its federal commitment deadline for the 2018 or 2019 NHTF funds, the Department will condition all NHTF awards under this NOFA, that the award of NHTF funds may be proportionally reduced or terminated if the Department and Applicant are unable to enter into a Contract by a specific date listed in the Board approval, despite any other deadlines existing in the Texas Administrative Code.

1j

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

RECOMMENDED ACTION

WHEREAS, three applications, as further detailed below, were submitted to the Department for consideration of a Determination Notice of 4% Housing Tax Credits;

WHEREAS, the Executive Award and Review Advisory Committee (EARAC) considered the program requirements, underwriting requirements and compliance history associated with each application listed herein; and

WHEREAS, EARAC recommends each of the three applications for an award of 4% Housing Tax Credits, in the specific amounts noted herein, and subject to any underwriting conditions as noted in the Real Estate Analysis Report and any compliance conditions as reflected in Exhibit A, as applicable;

NOW, therefore, it is hereby

RESOLVED, that the issuance of Determination Notices in the respective amounts for each of the applications listed herein, subject to underwriting conditions as found in the Real Estate Analysis report posted to the Department's website, and subject to any EARAC conditions as reflected in Exhibit A, is hereby approved in the form presented at this meeting.

BACKGROUND

The 4% Housing Tax Credit (HTC) program is considered a non-competitive program in that there is not a specific ceiling amount of HTCs that can be issued each year. Rather, the ceiling amount of HTCs to be issued is limited by the amount of Private Activity Bond volume cap available. The Texas Bond Review Board (BRB) administers the Private Activity Bond program for the State of Texas, and for the 2020 calendar year, the state received approximately \$3 billion in Private Activity Bond authority, of which approximately \$800 million is reserved for multifamily housing until August 15th of each year. After such date, there may be more Private Activity Bond volume cap that goes towards multifamily housing.

Individual projects receive a Certification of Reservation (Reservation) from the BRB that allows for a statutory 180-day closing timeline. For those projects seeking 4% HTCs (as the majority of them do), they must complete the Department's review process, the bond issuer's process, and the Attorney

General's process in order to close within the prescribed timeframe. The Department accepts applications on a monthly basis throughout the year. The year from which the Reservation is issued is what determines the QAP to which the application must adhere. Included in this Board presentation as Exhibit B is a list of the 4% HTC applications staff has processed thus far for 2020. The list reflects all applications received and includes a column that denotes the applications' status, specifically, those that have already closed, have been approved by the Board, are active and currently under review and those that are pre-applications that will utilize the Department as the bond issuer and an HTC application will be forthcoming. Worth noting is that the majority of the applications noted as active, including many that have already been approved, are those applications that participated in the 2020 Private Activity Bond Lottery which illustrates the demand for Private Activity Bond volume cap so early in the program year.

The Reservation from the BRB for the developments described herein was issued under the Priority 3 designation unless noted otherwise, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served (beyond the federal requirement). The AMFI levels proposed to be served for each of the projects are indicated in their respective summaries, below.

20420 Pan American

The acquisition and rehabilitation of 100 units is proposed for the Pan American project located at 143 Northwest 36th Street in San Antonio, Bexar County. The San Antonio Housing Trust Finance Corporation is serving as the bond issuer. The development was built in 1968 and will serve the general population. Rehabilitation costs are approximately \$61k per unit for the development. All of the units are proposed to be rent and income restricted at 60% of AMFI. Additionally, the Section 8 HAP contract will continue to cover all of the units. A daycare center, operated by a third party through a lease agreement, is included in one of the development's buildings and in accordance with 10 TAC §1.206(b) the daycare center (as it is part of the Development) will be substantially rehabilitated to meet the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671.

There is a Neighborhood Risk Factor and an Undesirable Site Feature associated with Pan American Apartments relating to school performance and the development site being located within an airport runway hazard area. A further discussion of each issue is provided below.

Schools: Loma Park Elementary (Loma Park) and Gus Garcia Middle School (Garcia) are in the attendance zone of the Pan American Apartments. The TEA awarded Loma Park a Met Standard rating for 2018 but the elementary received an accountability rating of "F" for 2019. Garcia rated Improvement Required for 2018 and received an accountability rating of "D" for 2019.

The Department received two letters from Leticia Rodriguez, Director of School Improvement for the Edgewood Independent School District, which addressed strategies to improve the performance of both Loma Park and Garcia. Ms. Rodriguez outlined strategies from the 2019-2020 Targeted Improvement Plan, which include monitoring the progress of all the students, creating lesson plans that are aligned to the rigor of standards, and ensuring teachers use a corrective instruction action planning process to

analyze data, identify trends in student misconceptions, and creating plans to reteach. Ms. Rodriguez stated that data from local Curriculum Based Assessments indicate that both Loma Park and Garcia should earn the Met Standard rating for 2020.

In addition, property management will partner with nonprofit organizations to provide classes in computer education and tutoring services for students that reside within the Pan American development. SA Youth is one organization contemplated by the applicant for providing educational and afterschool programs. The mission of SA Youth is to empower San Antonio's high-risk youth and young adults to achieve their full potential by providing quality educational programming in a safe environment. The applicant will dedicate an on-site employee to engage with an organization similar to SA Youth in order to facilitate the students in achieving their education goals after school. Thus, the Department believes that the letter from Ms. Rodriguez combined with the property management's partnership with nonprofit organizations is sufficient mitigation for this Neighborhood Risk Factor.

Undesirable Feature – Airport: The applicant disclosed, out of an abundance of caution, that the development could be located within the accident potential zone or the runway clear zone of the Joint Base San Antonio Lackland Kelly Field Annex (JBSA Kelly Annex); the property is a few miles from the JBSA Kelly Annex. A Section 8 HAP contract is expected to continue for the development until July 31, 2037. Pursuant to the rule, applications involving rehabilitation with existing and ongoing federal assistance from HUD may be granted an exemption for this Undesirable Site Feature, and the Department is recommending such.

Recommended HTC Amount: \$674,355

20408 Vi Collina

Vi Collina is proposed to be located at 2401 East Oltorf Street in Austin, Travis County, and involves the new construction of 170 units serving the general population. The application was previously submitted in 2019 under the Competitive HTC program and considered for an award but having reached the \$3M cap on other awards, the application for this development was withdrawn. The applicant has elected to utilize the income averaging minimum set-aside, as eight of the units will be rent and income restricted at 30% of AMFI, 66 units will be rent and income restricted at 50% AMFI, 65 units will be rent and income restricted at 60% AMFI, and the remaining 31 units will be rent and income restricted at 80% AMFI. The Austin Housing Finance Corporation is serving as the bond issuer.

Recommended HTC Amount: \$1,340,220

20449 EMLI at Pecan Creek

EMLI at Pecan Creek is proposed to be located at the northwest corner of Ike Byrom Road and FM 2931 in the extraterritorial jurisdiction of Aubrey, Denton County, and involves the new construction of 254 units serving the general population. The applicant has elected to utilize the income averaging minimum set-aside, as 84 units will be rent and income restricted at 70% of AMFI, 86 units will be rent and income restricted at 60% of AMFI, and the remaining 84 units will be rent and income restricted at 50% of AMFI.

The application was initially submitted to the Department August 24, 2018, but was withdrawn in anticipation that the Reservation would expire prior to the closing. EMLI at Pecan Creek was resubmitted August 23, 2019, however, was again withdrawn on October 21, 2019, because the applicant required additional time to comply with requirements of the HUD application for the FHA Section 221(d) financing. Staff received confirmation that the application was ready to move forward on November 15, 2019. There have been several Reservations issued to date due to the delays; the most recent was issued on February 7, 2020, and will expire on August 5, 2020. The Denton County Housing Finance Corporation is serving as the bond issuer.

Recommended HTC Amount: \$1,484,333

EXHIBIT A
Previous Participation Results

Application Number	Development Name	Category	PPR Conditions
20420	Pan American	2	N/A
20408	Vi Collina	1	N/A
20449	EMLI at Pecan Creek	1	N/A

20420 Pan American Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION
April 15, 2020

PROPERTY IDENTIFICATION	
Application #	20420
Development	Pan American Apartments
City / County	San Antonio / Bexar
Region/Area	9 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1968)

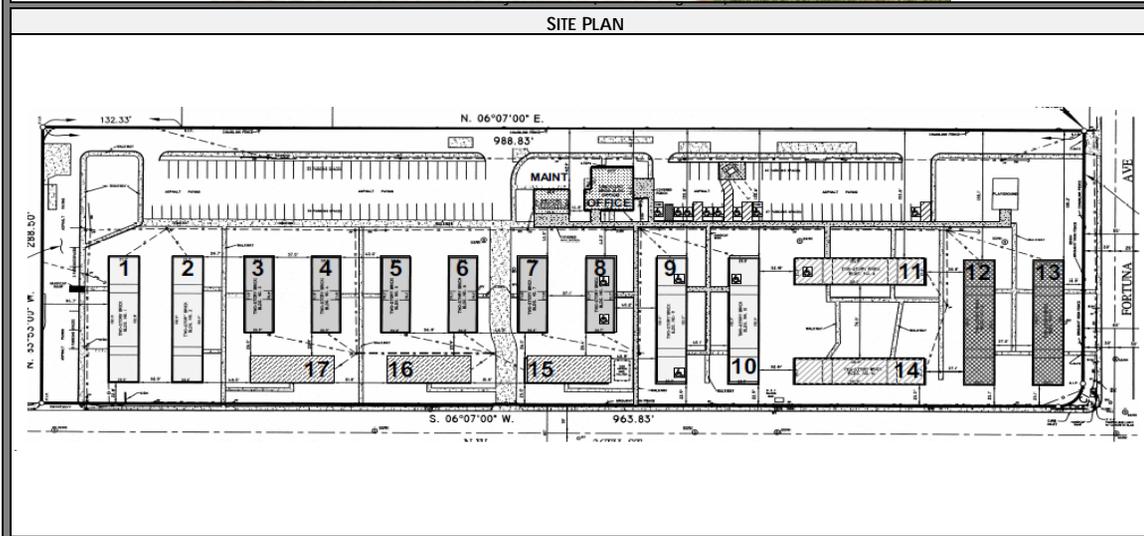
RECOMMENDATION			
TDHCA Program	Request	Recommended	
LIHTC (4% Credit)	\$674,355	\$674,355	\$6,744/Unit \$0.94

KEY PRINCIPAL / SPONSOR		
San Antonio Housing Trust Facility		
Steele Properties		
Paul Moore and Bryce Quigley - Project Manager		
Related Parties	Contractor - No	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	20	20%	40%	-	0%
2	44	44%	50%	-	0%
3	36	36%	60%	100	100%
4	-	0%	MR	-	0%
TOTAL	100	100%	TOTAL	100	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.15	Expense Ratio	52.1%
Breakeven Occ.	88.9%	Breakeven Rent	\$1,136
Average Rent	\$1,217	B/E Rent Margin	\$81
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$7,503/unit	Controllable	\$5,915/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			1.0%
Highest Unit Capture Rate	2%	2 BR/50%	44
Dominant Unit Cap. Rate	2%	2 BR/50%	44
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	100		100% Total Units

DEVELOPMENT COST SUMMARY			
Costs Underwritten		TDHCA's Costs - Based on PCA	
Avg. Unit Size	857 SF	Density	10.4/acre
Acquisition	\$75K/unit		\$7,500K
Building Cost	\$66.14/SF		\$5,668K
Hard Cost	\$67K/unit		\$6,731K
Total Cost		\$202K/unit	\$20,157K
Developer Fee	\$2,340K	(25% Deferred)	Paid Year: 6
Contractor Fee	\$890K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work	\$3K	5%	Finishes/Fixture \$18K 27%
Building Shell	\$27K	40%	Amenities \$1K 2%
HVAC	\$9K	13%	Total Exterior \$31K 51%
Appliances	\$3K	4%	Total Interior \$30K 49%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Key Bank Debt	17/40	3.60%	\$13,060,000	1.12				\$573,759	1.15	Raymond James Tax Credit Funds	\$6,338,306
										Steele Properties III LLC	\$585,333
TOTAL DEBT (Must Pay)			\$12,660,000		CASH FLOW DEBT / GRANTS			\$573,759		TOTAL EQUITY SOURCES	\$6,923,639
										TOTAL DEBT SOURCES	\$13,233,759
										TOTAL CAPITALIZATION	\$20,157,398

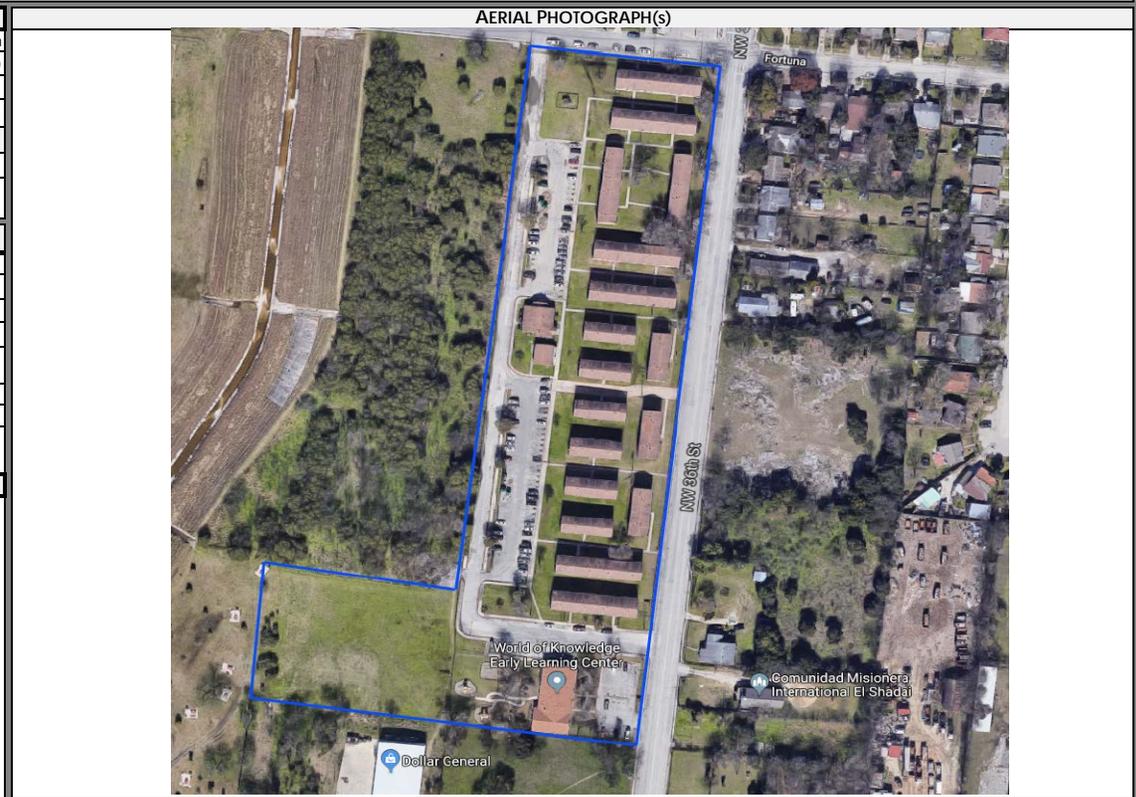
CONDITIONS

- 1 Receipt and acceptance before Determination Notice:
 - a: An attorney letter identifying the statutory basis for the proposed property tax exemption and indicating that the exemption is reasonably achievable; and specifically addressing whether the exemption extends to the commercial childcare operation.
- 2 Receipt and acceptance by Cost Certification:
 - a: Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
 - b: Certification of comprehensive testing for mold, that any appropriate abatement procedures were implemented, and that a Moisture Minimization Plan has been implemented at the Property.
 - c: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
 - d: Architect certification that in accordance with 10 TAC §1.206(b) the daycare center (as it is part of the Development) has been substantially rehabilitated to meet the requirements of the 2010 ADA Standards with the exception listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671.
 - e: A CPA analysis allocating the Purchase Price between the multi-family residential operation and the childcare operation.
 - f: A CPA analysis allocating all Development Costs between the multifamily operation and the childcare operation, and specifying which costs are includable in eligible basis and which should be excluded.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	San Antonio Housing Trust Finance Corporation
Expiration Date	7/11/2020
Bond Amount	\$15,000,000
BRB Priority	Priority 3
Bond Structure	Private Placement with Key Bank
% Financed with Tax-Exempt Bonds	80.0%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
o	100% Section 8 HAP assisted
o	High Occupancy Area
o	Gross Capture Rate
o	On-site Childcare Facility
WEAKNESSES/RISKS	
o	3 bedroom, 1 bath units
o	Business risk associated with on-site childcare operation as a risk

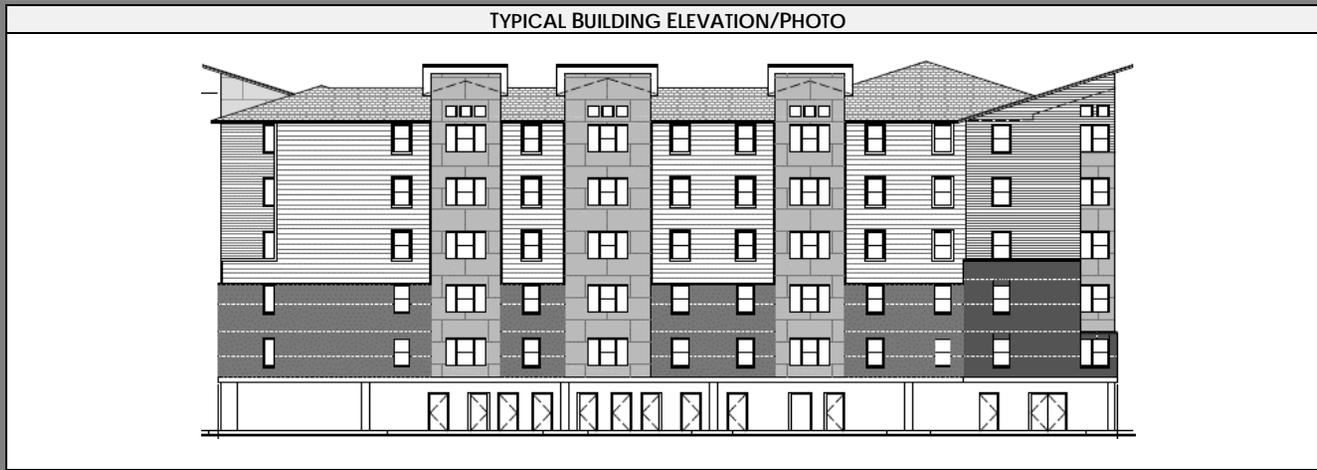


20408 Vi Collina - Application Summary

PROPERTY IDENTIFICATION	
Application #	20408
Development	Vi Collina
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	Income Averaging
Activity	New Construction

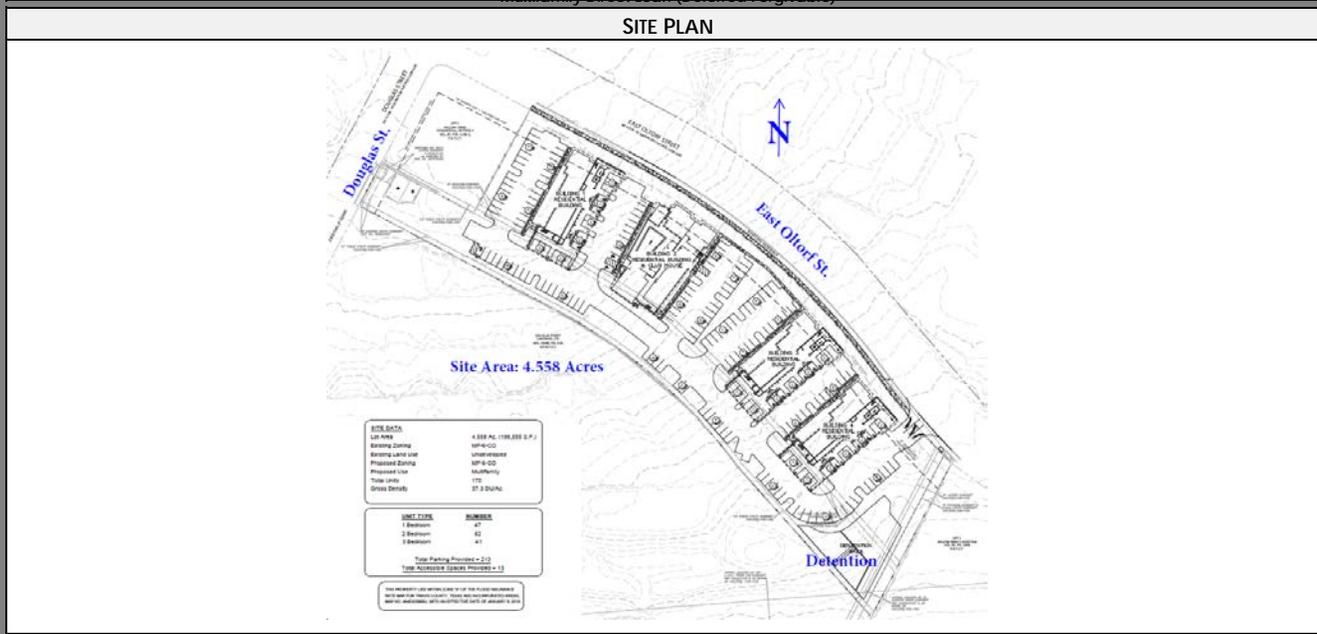
RECOMMENDATION			
TDHCA Program	Request	Recommended	
LHIC (4% Credit)	\$1,340,220	\$1,340,220	\$7,884/Unit \$0.91

KEY PRINCIPAL / SPONSOR		
<ul style="list-style-type: none"> • Lisa Stephens / Saigebrook Development, LLC (54%) • Megan Lasch / O-SDA Industries, LLC (36%) • AHFC Vi Collina Non-profit Corporation (10%) 		
Related Parties	Contractor - TBD	Seller - No



UNIT DISTRIBUTION			INCOME AVERAGING		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	8	5%
1	48	28%	40%	-	0%
2	81	48%	50%	66	39%
3	41	24%	60%	65	38%
4	-	0%	80%	31	18%
5	-	0%	MR	-	0%
TOTAL	170	100%	TOTAL	170	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	✓ 1.22	Expense Ratio	✓ 37.1%
Breakeven Occ.	✓ 81.9%	Breakeven Rent	\$985
Average Rent	\$1,115	B/E Rent Margin	✓ \$130
Property Taxes	Exempt	Exemption/PILOT	0%
Total Expense	\$4,649/unit	Controllable	\$3,210/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			✓ 2.0%
Highest Unit Capture Rate	✓ 10%	3 BR/60%	17
Dominant Unit Cap. Rate	✓ 7%	2 BR/50%	31
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	888 SF	Density	37.3/acre
Acquisition		\$20K/unit	\$3,440K
Building Cost	\$109.20/SF	\$97K/unit	\$16,489K
Hard Cost		\$121K/unit	\$20,531K
Total Cost		\$220K/unit	\$37,475K
Developer Fee	\$4,074K	(33% Deferred)	Paid Year: 7
Contractor Fee	\$2,874K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Citibank	15/35	4.00%	\$20,450,000	1.22	Austin Housing Finance Corp	40/40	0.00%	\$3,500,000	1.13	Boston Capital	\$12,194,783
										Saigebrook/O-SDA	\$1,329,936
TOTAL DEBT (Must Pay)			\$20,450,000		CASH FLOW DEBT / GRANTS			\$3,500,000		TOTAL EQUITY SOURCES	\$13,524,719
										TOTAL DEBT SOURCES	\$23,950,000
										TOTAL CAPITALIZATION	\$37,474,719

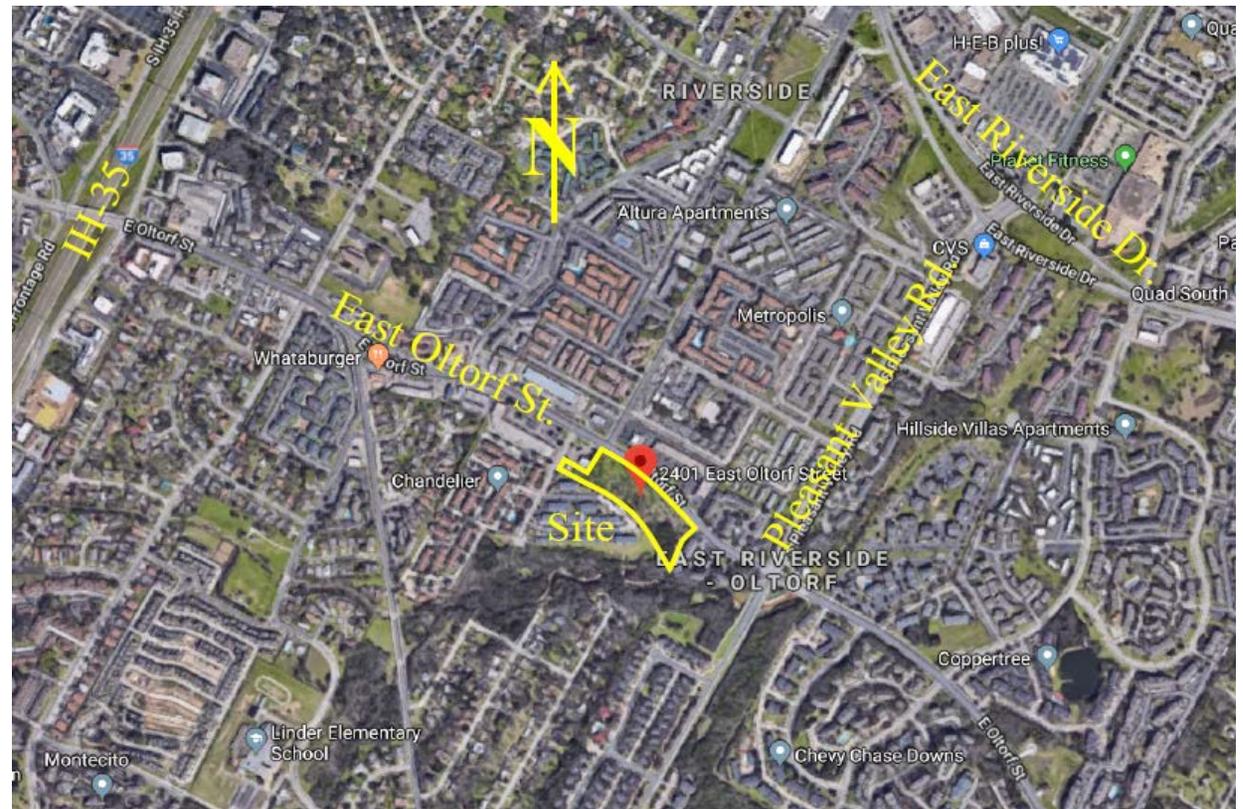
CONDITIONS

- 1 Receipt and acceptance before Determination Notice:
 - a: A revised term sheet from permanent lender that acknowledges Supportive Services pursuant to §11.302(d)(2)(K)(ii).
 - b: Formal term sheet from Austin Housing Finance Corp specifying all terms and conditions for the \$3,500,000 loan.
- 2 Receipt and acceptance by Cost Certification:
 - Certification from Appraisal District that the property qualifies for property tax exemption.
- 3 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
 - a: Architect certification that a noise assessment was completed and that all recommendations were implemented such that the Development is compliant with HUD noise guidelines.
 - b: Certification that additional environmental investigation was performed to determine any adverse impact from the American Dry Cleaners located at 2400 E Oltorf, and that all recommendations were fully implemented.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Austin Housing Finance Corporation ("AHFC")
Expiration Date	6/30/2020
Bond Amount	\$24,000,000
BRB Priority	Priority 3
Bond Structure	Private Placement - Tax-Exempt Loan
% Financed with Tax-Exempt Bonds	66.2%

AERIAL PHOTOGRAPH(S)



RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
Overall feasibility indicators	
Gross capture rate of 2% with unit capture rates ranging from only 1% to 10%	
Affordable properties still monitored in PMA average 97% occupancy	
Attractive design, high visibility in-fill location should enhance marketability	
Developer/Owner's construction and management experience	

WEAKNESSES/RISKS	
Feasibility relies on a 100% property tax exemption as well as obtaining a \$3.5M soft loan from Austin Housing Finance Corporation	
Sloping topography could add unforeseen site work costs	
Parking limited to 1.3 spaces/unit	
Single point of ingress/egress	



20449 EMLI At Pecan Creek - Application Summary

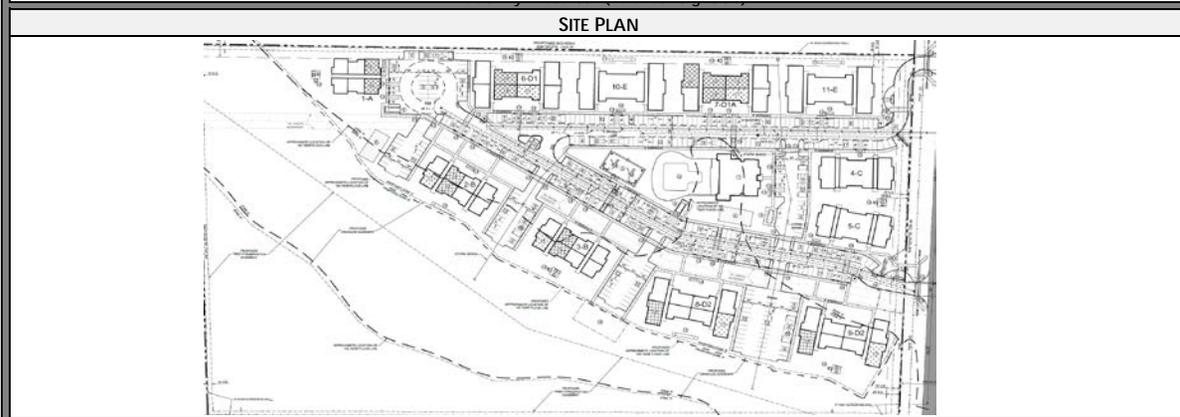
REAL ESTATE ANALYSIS DIVISION
April 15, 2020

PROPERTY IDENTIFICATION		RECOMMENDATION				KEY PRINCIPAL / SPONSOR		
Application #	20449	TDHCA Program	Request	Recommended		Liberty Multifamily Richard Ashton Tyler Weir		
Development	EMLI At Pecan Creek	LIHTC (4% Credit)	\$1,484,333	\$1,484,333	\$5,844/Unit			\$0.91
City / County	Aubrey / Denton							
Region/Area	3 / Urban							
Population	General							
Set-Aside	General							
Activity	New Construction					Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	110	43%	40%	-	0%
2	96	38%	50%	84	33%
3	48	19%	60%	86	34%
4	-	0%	70%	84	33%
TOTAL	254	100%	TOTAL	254	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.16	Expense Ratio	45.4%
Breakeven Occ.	85.4%	Breakeven Rent	\$926
Average Rent	\$1,004	B/E Rent Margin	\$78
Property Taxes	\$1,113/unit	Exemption/PILOT	0%
Total Expense	\$5,165/unit	Controllable	\$3,083/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (15% Maximum)			10.1%
Highest Unit Capture Rate	56%	2 BR/60%	32
Dominant Unit Cap. Rate	28%	1 BR/60%	38
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	936 SF	Density	12.4/acre
Acquisition		\$04K/unit	\$1,005K
Building Cost	\$81.12/SF	\$76K/unit	\$19,295K
Hard Cost		\$94K/unit	\$23,889K
Total Cost		\$157K/unit	\$39,952K
Developer Fee	\$4,539K	(15% Deferred)	Paid Year: 3
Contractor Fee	\$3,126K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
HHC Finance	40/40	3.85%	\$25,785,900	1.16						42 Equity Partners	\$13,507,430	
										Liberty Multifamily, LLC	\$658,916	
										TOTAL EQUITY SOURCES	\$14,166,346	
										TOTAL DEBT SOURCES	\$25,785,900	
TOTAL DEBT (Must Pay)			\$25,785,900		CASH FLOW DEBT / GRANTS				\$0		TOTAL CAPITALIZATION	
\$39,952,246												

CONDITIONS

1 Receipt and acceptance before Determination Notice:

- Certification that if the site is in the 100-year floodplain when it places in service, the finished ground floor elevation of the buildings will be at least one foot above the floodplain and that all drives, parking and amenities will be no more than 6 inches below the floodplain; and that the Owner will provide flood insurance coverage for the buildings and for the residents' personal property until such time that the site is officially designated to be no longer in the floodplain.

2 Receipt and acceptance by Cost Certification:

a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

b: Architect or engineer certification that the finished ground floor elevation for each building is at least one foot above the floodplain and that all drives, parking and amenities are not more than 6 inches below the floodplain; or certification (including a Letter of Map Amendment or Revision ("LOMA / LOMR-F") if applicable, documenting that the development is not within the 100 year floodplain.

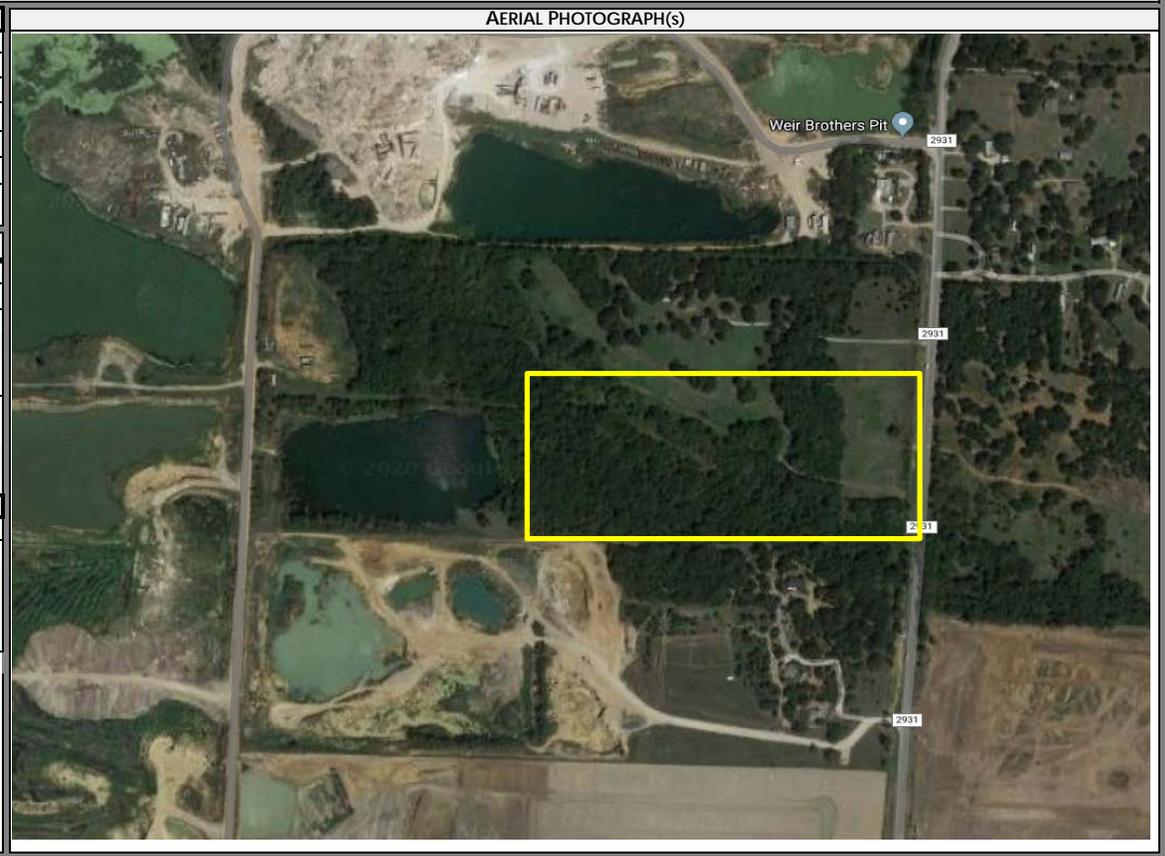
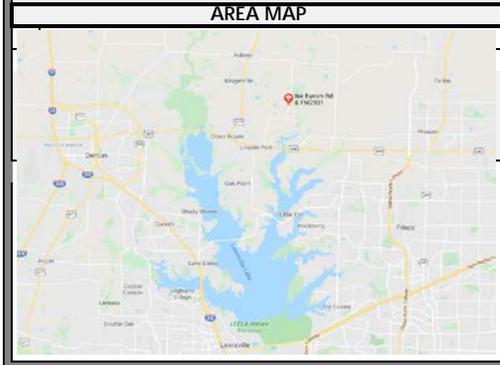
For any buildings remaining in the floodplain, documentation that flood insurance is in place at the property owner's expense covering both the buildings and the residents' personal property; and certification from the owner that flood insurance for the buildings and for the residents' personal property will remain in force as long as the site remains a designated floodplain.

c: Evidence that the units and buildings have met the requirements for use of a Green Discount Utility Allowance.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Denton County HFC
Expiration Date	8/5/2020
Bond Amount	\$20,000,000
BRB Priority	Priority 3
Bond Structure	Short Term- Cash Collateralized
% Financed with Tax-Exempt Bonds	83.6%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Developer experience
▫	Overall feasibility indicators
WEAKNESSES/RISKS	
▫	1.16 debt coverage





4% (Non-Competitive) Housing Tax Credit Program 2020 Application Status Log

TDHCA #	Previous TDHCA #	Development Name	Development City	Board Meeting Date (MM/DD/YYYY)	Application Status	Total Units	Total Low-Income Units	Bond Reservation Amount	Requested HTC Amount	Recommend HTC Amount
20451	19440	Ventura at Parmer Lane	Austin ETJ	10/10/2019	Closed	216	216	\$ 34,000,000	\$ 2,189,841	\$ 2,189,841
20460	18423; 19400	Villas del San Xavier	San Marcos	12/12/2019	Approved	156	156	\$ 25,000,000	\$ 1,059,750	\$ 1,059,750
TBD	19428	Riverstone	San Marcos	11/7/2019	Approved	336	336	\$ 50,000,000	\$ 2,349,942	\$ 2,349,942
TBD	19438	Legacy Senior	Round Rock	11/7/2019	Approved	157	157	\$ 20,000,000	\$ 732,029	\$ 732,029
TBD	18456; 19470	Jackie Robinson Apartments	El Paso	12/12/2019	Approved	186	186	\$ 30,000,000	\$ 1,290,195	\$ 1,290,195
20429	19452	Las Palmas	La Feria	1/16/2020	Approved	36	35	\$39,120,000 (portfolio)	\$ 87,983	\$ 87,983
20422	19445	Brush Country Cottages	Dilley	1/16/2020	Approved	28	28	-	\$ 89,069	\$ 89,069
20423	19446	Chula Vista	San Diego	1/16/2020	Approved	44	44	-	\$ 149,982	\$ 149,982
20424	19447	Cielo Lindo	Edcouch	1/16/2020	Approved	34	34	-	\$ 101,022	\$ 101,022
20425	19448	La Estancia	Sebastian	1/16/2020	Approved	32	32	-	\$ 101,210	\$ 101,210
20426	19449	La Posada I & II	Ela	1/16/2020	Approved	74	74	-	\$ 208,076	\$ 208,076
20427	19450	La Reina	La Villa	1/16/2020	Approved	30	30	-	\$ 65,586	\$ 65,586
20428	19451	La Sombra	Donna	1/16/2020	Approved	50	50	-	\$ 118,354	\$ 118,354
20430	19453	Leuty Avenue	Justin	1/16/2020	Approved	24	24	-	\$ 80,261	\$ 80,261
20431	19454	Los Laureles	Edcouch	1/16/2020	Approved	23	23	-	\$ 88,153	\$ 88,153
20432	19455	Los Naranjos	Alton	1/16/2020	Approved	30	30	-	\$ 67,810	\$ 67,810
20433	19456	Oak Haven	Donna	1/16/2020	Approved	24	24	-	\$ 63,090	\$ 63,090
20434	19457	Raintree	Alamo	1/16/2020	Approved	32	32	-	\$ 82,925	\$ 82,925
20435	19458	Seagraves Gardens	Seagraves	1/16/2020	Approved	32	32	-	\$ 91,709	\$ 91,709
20436	19459	Silver Trail	Menard	1/16/2020	Approved	24	24	-	\$ 67,091	\$ 67,091
20437	19460	The Village	Tomball	1/16/2020	Approved	64	64	-	\$ 172,768	\$ 172,768
20438	19461	Valley View	Valley View	1/16/2020	Approved	24	24	-	\$ 78,834	\$ 78,834
20439	19462	Villa Vallarta	Rio Grande City	1/16/2020	Approved	40	40	-	\$ 122,529	\$ 122,529
20440	19463	Vista Verde	Cotulla	1/16/2020	Approved	24	24	-	\$ 82,514	\$ 82,514
20441	19464	Willowick	Gainesville	1/16/2020	Approved	60	60	-	\$ 171,018	\$ 171,018
20442	19465	Windmill	Giddings	1/16/2020	Approved	28	28	-	\$ 77,926	\$ 77,926
20443	19466	Windwood I & II	Kingsland	1/16/2020	Approved	68	68	-	\$ 151,618	\$ 151,618
20407		New Hope Housing Avenue J	Houston	2/20/2020	Approved	100	100	\$ 23,000,000	\$ 1,290,647	\$ 1,290,467
20448	18458; 19431	Scharbauer Flats	Midland	2/20/2020	Approved	300	300	\$ 40,000,000	\$ 2,895,615	\$ 2,895,615
20421	19442	Richcrest Apartments	Houston	3/26/2020	Approved	288	286	\$ 30,000,000	\$ 1,974,441	\$ 1,974,441
20414		The Arbor at Wayforest	Houston	3/26/2020	Approved	192	192	\$ 20,000,000	\$ 1,262,807	\$ 1,262,807
20404		Tampico Apartments	San Antonio	3/26/2020	Approved	200	136	\$ 23,000,000	\$ 739,670	\$ 739,670
20409		McKinney Flats	McKinney	3/26/2020	Approved	205	205	\$ 32,000,000	\$ 1,393,849	\$ 1,393,849
20418		Park at 38 Thirty	San Antonio	3/26/2020	Approved	196	196	\$ 25,000,000	\$ 1,027,837	\$ 1,027,837
20605	19608	Reserve at San Marcos	San Marcos	3/26/2020	Approved	376	320	\$ 41,000,000	\$ 1,857,733	\$ 1,857,733
20446	19432	St. Johns Square	San Antonio	3/26/2020	Approved	252	54	\$ 50,000,000	\$ 473,449	\$ 449,524
20401		Palladium Port Aransas	Port Aransas	4/23/2020	Approved	183	165	\$ 19,000,000	\$ 1,155,074	\$ 1,155,074
20600		Oaks on Clark	San Antonio	4/23/2020	Approved	80	80	\$ 12,000,000	\$ 607,290	\$ 597,284
20601	19611	Granada Terrace Apartments	Houston	4/23/2020	Approved	156	156	\$ 12,000,000	\$ 882,061	\$ 882,061
20449	19469	EMLI at Pecan Creek	Aubrey	4/23/2020	Approved	254	254	\$ 20,000,000	\$ 1,484,333	\$ 1,484,333
20408		Vi Collina	Austin	4/23/2020	Approved	170	170	\$ 24,000,000	\$ 1,340,220	\$ 1,340,220
20420		Pan American	San Antonio	4/23/2020	Approved	100	100	\$ 15,000,000	\$ 674,355	\$ 674,355
						4,928	4,589	\$ 545,000,000	\$ 29,000,666	\$ 28,966,555
20447	19472	Franklin Park	Austin	5/21/2020	Active	163	163	\$ 15,000,000	\$ 749,966	\$ -
20611	20402	333 Holly	The Woodlands	5/21/2020	Active	332	332	\$ 36,800,000	\$ 2,513,320	\$ -
20612	20403	The Pines	The Woodlands	5/21/2020	Active	152	152	\$ 22,000,000	\$ 1,465,042	\$ -
20415		Avenue on 34th Apartments	Houston	5/21/2020	Active	70	56	\$ 8,000,000	\$ 324,609	\$ -
20413		Residences at Merritt Hill	Rowlett	5/21/2020	Active	260	260	\$ 33,000,000	\$ 1,888,671	\$ -
20603	19612	Scott Street Lofts	Houston	5/21/2020	Active	123	98	\$ 18,000,000	\$ 678,924	\$ -
20410		Traders Flats	San Antonio	5/21/2020	Active	324	324	\$ 38,000,000	\$ 1,846,377	\$ -
20400		Palladium West Francis	Midland	5/21/2020	Active	240	188	\$ 25,000,000	\$ 1,499,588	\$ -
20412		1604 Lofts Apartments	San Antonio	5/21/2020	Active	324	324	\$ 38,000,000	\$ 1,899,524	\$ -
20406		Gala at Central Park Apartments	Hurst	5/21/2020	Active	94	94	\$ 15,000,000	\$ 486,783	\$ -
20416		The Estates at Owen Tech	Austin	5/21/2020	Active	174	174	\$ 20,000,000	\$ 1,239,589	\$ -
20606	19610	Fish Pond at Corpus Christi	Corpus Christi	5/21/2020	Active	112	111	\$ 10,000,000	\$ 675,744	\$ -
20405		Gala at Fate	Fate	5/21/2020	Active	185	185	\$ 25,000,000	\$ 1,173,150	\$ -
20444		Plano Kathryn Senior Living	Plano	5/21/2020	Active	252	252	\$ 30,000,000	\$ 1,835,157	\$ -
20604	19468	The Walzem	San Antonio	5/21/2020	Active	200	200	\$ 20,000,000	\$ 1,326,147	\$ -
20450		Mira Vista	San Antonio	5/21/2020	Active	312	312	\$ 28,000,000	\$ 1,783,385	\$ -
20452		Enclave at Lake Pointe	Houston	6/25/2020	Active	132	132	\$ 14,200,000	\$ 723,460	\$ -
20419		Woodway Village	Austin	6/25/2020	Active	160	160	\$ 30,000,000	\$ 1,196,513	\$ -
20454		South Terrace	Waco	6/25/2020	Active	250	250	\$ 25,000,000	\$ 1,452,219	\$ -
20455		Redwood	San Marcos	6/25/2020	Active	296	296	\$ 50,000,000	\$ 2,107,712	\$ -
20457		Pinewood Apartments	Houston	6/25/2020	Active	240	240	\$ 30,000,000	\$ 1,174,359	\$ -
20458		Kinwood Apartments	McKinney	6/25/2020	Active	200	200	\$ 30,000,000	\$ 1,245,289	\$ -
20459		Spring Villas	Austin	6/25/2020	Active	304	302	\$ 45,000,000	\$ 2,295,642	\$ -
20461		Cascade at Onion Creek	Austin	6/25/2020	Active	264	264	\$ 35,000,000	\$ 1,427,509	\$ -
20602	03438	The Vermillion	Houston	7/23/2020	Active	260	260	\$ 29,000,000	\$ 1,372,549	\$ -
20463		Trinity Oaks	Sulphur Springs	7/23/2020	Active	48	48	\$ 2,129,000	\$ 497,000	\$ -
20464		Pine Terrace	Mount Pleasant	7/23/2020	Active	76	76	\$ 3,371,000	\$ 210,127	\$ -
20609		Pecan Grove	Seguin	7/23/2020	Active	198	198	\$ 26,000,000	\$ 1,353,160	\$ -

20466	Blue Water Gardens	Hereford	7/23/2020	Active	132	132	\$	16,750,000	\$	730,914	\$	-
20467	Greenline North	San Antonio	7/23/2020	Active	292	292	\$	50,000,000	\$	1,946,883	\$	-
20456	The Hollows	Channelview CDP	7/23/2020	Active	192	192	\$	20,000,000	\$	1,043,287	\$	-
20468	Preserve at the Port	San Antonio	7/23/2020	Active	384	384	\$	37,000,000	\$	1,654,968	\$	-
20471	Northwood	Houston ETJ	7/23/2020	Active	288	288	\$	30,000,000	\$	2,378,498	\$	-
					7,033	6,939	\$	855,250,000	\$	44,196,065	\$	-
20417	St. Joe Apartments	Houston	3/19/2020	Withdrawn	307	307	\$	51,757,648	\$	4,596,000	\$	-
20411	Kitty Hawk Flats Apartments	San Antonio	5/21/2020	Withdrawn	239	239	\$	28,000,000	\$	1,482,838	\$	-
					546	546	\$	79,757,648	\$	6,078,838	\$	-
				TOTAL*	11,961	11,528	\$	1,400,250,000	\$	73,196,731	\$	28,966,555

*Totals include Approved, Active and Pre-Application Status

1k

BOARD ACTION REQUEST
BOND FINANCE DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action on Resolution No. 20-013 regarding the annual approval of the Department's Investment Policy

RECOMMENDED ACTION

Adopt attached resolution.

BACKGROUND

The provisions of Tex. Gov't Code, Chapter 2256 (also known as the Public Funds Investment Act) require state agency boards to develop, adopt annually, and maintain a written investment policy (the Investment Policy) that, among other things, details investment priorities and strategies, describes permissible investments, addresses ethics and conflicts of interest, establishes training requirements, and designates Investment Officers. The Investment Policy also establishes requirements for financial advisors and service providers, and requires that investment professionals acknowledge receipt of the Investment Policy in order to do business with the Department. David Cervantes, Director of Administration, and Monica Galuski, Director of Bond Finance and Chief Investment Officer, are the Investment Officers for the Department.

The Investment Officers, in conjunction with the Department's Financial Advisor and Bond Counsel, have reviewed the proposed Investment Policy and recommend approval and adoption of Resolution 20-013.

The proposed Investment Policy, blacklined against the prior policy, is attached for your reference.

RESOLUTION NO. 20-013

RESOLUTION OF THE GOVERNING BOARD APPROVING THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS INVESTMENT POLICY

WHEREAS, the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the "Department"), was created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (together with other laws of the State applicable to the Department, collectively, the "Act"); and

WHEREAS, the Governing Board of the Department (the "Governing Board") desires to approve the Department's Investment Policy in the form presented to the Governing Board;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval of the Department's Investment Policy. The Investment Policy in the form presented to the Governing Board is hereby authorized and approved.

Section 1.2 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 or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, and the Secretary or 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, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act, 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.

PASSED AND APPROVED this 23rd day of April, 2020.

Vice Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

As presented to the Board for adoption on April 23, 2020

2020

April 23, 2020

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

I. POLICY

It is the policy of the Texas Department of Housing and Community Affairs (the "Department") to invest public funds in a manner that will provide, by priority, the following objectives:

1. Safety of principal;
2. Sufficient liquidity to meet Department cash flow needs;
3. Market rate of return for the risk assumed; and
4. Conformance to all applicable state statutes governing the investment of public funds including the Department's enabling legislation, Texas Government Code, Chapter 2306, Texas Government Code, Chapter 2263, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and specifically Texas Government Code, Chapter 2256, the Public Funds Investment Act (the "Act").

It is further the intent of the Department to set forth in this document how all investments will be administered, providing for an all-inclusive document that will ensure consistency and thoroughness in the presentation of such investments, as they affect the Department's presentation of its financial statements.

II. SCOPE

This investment policy applies to all investments, including both direct investments and investments that are subject to trust indentures created and supplemented in connection with bonds issued by the Department. All of these investments are accounted for in the Department's Comprehensive Annual Financial Report and include the General Fund, Special Revenue Fund, Trust and Agency Fund, and Enterprise Fund.

This investment policy does not apply to investments in instruments that constitute hedges, which include but are not limited to, interest rate swaps, caps, floors, futures contracts, forward contracts, etc., that satisfy the eligibility requirements of a "qualified hedge" as defined by Section 1.148-4(h)(2) of the Internal Revenue Code.

The Department has created and adopted a separate Interest Rate Swap Policy for guidance regarding the use and management of such hedges.

III. PRUDENCE

Investments shall be made with judgment and care under prevailing circumstances which persons of prudence, discretion and intelligence would exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety and liquidity of capital as well as the probable income to be derived.

The standard of prudence to be used by the investment officers named herein shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. An investment officer acting in accordance with the investment policy and written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

IV. INVESTMENT PRIORITIES

Investment by the Department will be in accordance with the following priorities in order of importance:

1. Understanding the suitability of the investment to the financial requirements of the Department. Suitability is the first priority in the Department's investment strategy, and will be evaluated on an overall basis and as a specific component of each of the remaining priorities;
2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment should the need arise to liquidate before maturity;
5. Diversification of the investment portfolio; and
6. Yield (after taking into account the previous five priorities).

Such investment will be in accordance with all federal and state statutes, rules, and regulations.

V. STRATEGIES

The following are the primary strategies for investment activities in order of priority after taking into account the suitability of any investment:

1. Suitability. In accordance with Section 2256.005(d) of the Act, the first priority is the suitability of investment.

2. Preservation and Safety of Principal. Investments of the Department shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk. To achieve this objective, diversification is required so that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.
 - A. Credit risk is the risk of loss due to the failure of the security issuer or backer, and may be mitigated by:
 - limiting investments to the safest types of securities;
 - pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with whom the Department will do business; and
 - diversifying the investment portfolio to minimize potential losses on individual securities.
 - B. Interest rate risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, and may be mitigated by:
 - structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities in the open market prior to maturity, and
 - investing operating funds primarily in shorter-term securities.
3. Liquidity. The Department's investment portfolio shall remain sufficiently liquid to meet all reasonably anticipated cash flow needs. This is accomplished by structuring the portfolio so that securities mature concurrent with estimated or projected cash needs to meet anticipated demands. Since not all cash demands can be fully anticipated or projected with total accuracy, the portfolio should consist largely of securities with active secondary or resale markets, providing a reasonable level of flexibility to deal with unforeseen cash needs.
4. Marketability. The Department will evaluate investment opportunities based on the marketability of each investment to reduce risk in the event the Department needs to liquidate the investment before maturity. Specifically, the Department will take into consideration the activity level of the secondary market for the investment.
5. Diversification. The Department will maintain a diversified investment portfolio. Maturities will be staggered to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.
6. Yield. The Department's investment portfolio shall be designed with the objective of attaining a market rate of return through budgetary and economic cycles, taking into

account the investment risk constraints and cash flow needs of the Department. Return on investment for short-term operating funds is of less importance than the safety and liquidity objectives described above. The core of investments is limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall not be sold prior to maturity with the following exceptions:

- A. A security experiencing or reasonably seen as being at risk of material decline in credit quality could be sold early to minimize the risk of loss of principal;
- B. A security swap would improve the quality, yield, or target duration of the overall portfolio without creating other material risks or adverse features; or
- C. Liquidity needs of the portfolio require that the security be sold and there are no preferable alternatives.

VI. DELEGATION OF AUTHORITY

The Board establishes the investment policy and objectives, obtains expert advice and assistance with respect to its actions as is necessary to exercise its responsibilities prudently, and monitors the actions of staff and advisors to ensure compliance with its policy. It is the Board's intention that this policy be carried out by those persons who are qualified and competent in their area of expertise.

Authority to manage the Department's investment program is granted under the provisions of Texas Government Code, Section 2306.052(b) (4) and (5) to the Director of the Department, ("Executive Director"). Responsibility for the operation of the investment program is hereby delegated by the Executive Director to the Director of Bond Finance and Chief Investment Officer and the Director of Administration acting in those capacities (collectively the "Investment Officer") who shall carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. Procedures should include reference to safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, collateral/depository agreements and banking service contracts. Such procedures may include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer.

VII. ETHICS AND CONFLICTS OF INTEREST

1. Department employees and Board members must comply with all applicable laws, and should specifically be aware of the following statutes:

- A. Texas Government Code, Section 825.211, Certain Interests in Loans, Investments or Contracts Prohibited;
- B. Texas Government Code, Section 572.051, Standards of Conduct for Public Servants;
- C. Texas Government Code, Sections 553.001-003, Disclosure by Public Servants of Interest in Property Being Acquired by Government;
- D. Texas Government Code, Section 552.352, Distribution of Confidential Information;
- E. Texas Government Code, Section 572.054, Representation by Former Officer or Employee of Regulatory Agency Restricted;
- F. Texas Penal Code, Chapter 36, Bribery, Corrupt Influence and Gifts to Public Servants; and
- G. Texas Penal Code, Chapter 39, Abuse of Office, Official Misconduct.

The omission of any applicable statute from this list does not excuse violation of its provisions.

- 2. Department employees and Board members must be honest in the exercise of their duties and must not take actions which will discredit the Department.
- 3. Department employees and Board members should be loyal to the interest of the Department to the extent that such loyalty is not in conflict with other duties which legally have priority, and should avoid personal, employment or business relationships that create conflicts of interest.
 - A. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions.
 - B. Officers and employees shall disclose to the Executive Director any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the Department's investment portfolio.
 - C. Officers and employees shall refrain from undertaking personal investment transactions with the same individuals with whom business is conducted on behalf of the Department.
 - D. Department employees and Board members may not use their relationship with the Department to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of the Department as a reference or the communication to others of

the fact that a relationship with the Department exists, provided that no misrepresentation is involved.

- E. Department employees and Board members who have a personal business relationship with a business organization offering to engage in an investment transaction with the Department shall file a statement disclosing that personal business interest. An individual who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the Department shall file a statement disclosing that relationship. A statement required under this section must be filed with the Texas Ethics Commission and the Department's Board. For purposes of this policy, an individual has a personal business relationship with a business organization if:
- the individual owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
 - funds received by the Investment Officer from the business organization exceed 10 percent of the individual's gross income from the previous year; or
 - the individual has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the individual.

VIII. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The Department (in conjunction with the State Comptroller) will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness; these may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by state law.

The Department will use as its authorized list of broker/dealers and financial institutions any broker/dealer or financial institution that is authorized to do business with the State Comptroller. With respect to investments provided in connection with the issuance of bonds, the above requirements will be deemed met if the investment provider has the minimum credit ratings required by rating agencies and is acceptable to the bond insurer/credit enhancer, if applicable, and if the investment meets the requirements of the applicable bond trust indenture. A broker, engaged solely to secure a qualified investment referred to in this paragraph on behalf of the Department, and who will not be providing an investment instrument, shall not be subject to the above requirements and may only be engaged if approved by the Board.

IX. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS

During the 78th Legislature, Regular Session, the Texas Legislature passed Chapter 2263, Ethics And Disclosure Requirements For Outside Financial Advisors And Service Providers ("Chapter 2263"). Chapter 2263, under Senate Bill 1059, requires certain actions by governing boards of state entities involved in the management and investment of state funds and adds disclosure requirements for outside financial advisors and service providers. Chapter 2263 became effective September 1, 2003. Each state governmental entity required to adopt rules under Chapter 2263, Government Code, as added by this Act, must have adopted its initial rules in time for the rules to take effect not later than January 1, 2004.

Applicability. Chapter 2263 applies in connection with the management or investment of any state funds managed or invested:

1. under the Texas Constitution or other law, including Chapter 404, State Treasury Operations of Comptroller, and Chapter 2256, Public Funds Investment; and
2. by or for:
 - A. a public retirement system as defined by Section 802.001 that provides service retirement, disability retirement, or death benefits for officers or employees of the state;
 - B. an institution of higher education as defined by Section 61.003, Education Code; or
 - C. another entity that is part of state government and that manages or invests state funds or for which state funds are managed or invested.

Chapter 2263 applies in connection with the management or investment of state funds without regard to whether the funds are held in the state treasury.

Chapter 2263 does not apply to or in connection with a state governmental entity that does not manage or invest state funds and for which state funds are managed or invested only by the comptroller.

Definition. With respect to this Chapter 2263, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

Construction With Other Law. To the extent of a conflict between Chapter 2263 and another law, the law that imposes a stricter ethics or disclosure requirement controls.

Ethics Requirements For Outside Financial Advisors Or Service Providers. The governing body of a state governmental entity by rule shall adopt standards of conduct applicable to financial

advisors or service providers who are not employees of the state governmental entity, who provide financial services to the state governmental entity or advise the state governmental entity or a member of the governing body of the state governmental entity in connection with the management or investment of state funds, and who:

1. may reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from the entity during a fiscal year; or
2. render important investment or funds management advice to the entity or a member of the governing body of the entity, as determined by the governing body.

A contract under which a financial advisor or service provider renders financial services or advice to a state governmental entity or other person as described immediately above, in regard to compensation or duties, is voidable by the state governmental entity if the financial advisor or service provider violates a standard of conduct adopted under this section.

In addition to the disclosures required by Chapter 2263 and described below, the Department will rely upon financial advisors and service providers' submission of an Acknowledgement of Receipt of Investment Policy and Certificate of Compliance with the Public Funds Investment Act forms to evidence compliance with the Department's code of conduct and procedures as related to investments.

Disclosure Requirements For Outside Financial Advisor Or Service Provider. A financial advisor or service provider described by Section 2263.004 shall disclose in writing to the administrative head of the applicable state governmental entity and to the state auditor:

1. any relationship the financial advisor or service provider has with any party to a transaction with the state governmental entity, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the state governmental entity, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the state governmental entity; and
2. all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the state governmental entity, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds.

The financial advisor or service provider shall disclose a relationship described by the immediately preceding subsections (1) or (2) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

A financial advisor or service provider described by Section 2263.004 shall file annually a statement with the administrative head of the applicable state governmental entity and with the state auditor. The statement must disclose each relationship and pecuniary interest described by Subsection (a) or, if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

The annual statement must be filed not later than April 15 on a form prescribed by the governmental entity, other than the state auditor, receiving the form. The statement must cover the reporting period of the previous calendar year. The state auditor shall develop and recommend a uniform form that other governmental entities receiving the form may prescribe. The Department's disclosure form is provided as Attachment "D".

The financial advisor or service provider shall promptly file a new or amended statement with the administrative head of the applicable state governmental entity and with the state auditor whenever there is new information to report related to the immediately preceding subsections (1) or (2).

Public Information. Chapter 552, Government Code, controls the extent to which information contained in a statement filed under this chapter is subject to required public disclosure or is exempted from required public disclosure.

Anti-Boycott Verification. Financial advisors and service providers are required to comply with the requirements of Chapter 2270 of the Texas Government Code. Compliance includes a representation by each financial advisor or service provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) (i) does not boycott Israel and (ii) will not boycott Israel during the term for which they provide services to the Department.

Iran, Sudan and Foreign Terrorist Organizations. Financial advisors and service providers are required to comply with the requirements of Chapter 2252 of the Texas Government Code. Compliance includes a representation by each financial advisor or service provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is not an entity listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code.

Exemption from Disclosure of Interested Parties. Financial advisors and service providers are required to comply with the requirements of Chapter 2252 of the Texas Government Code. Financial advisors and service providers that make a representation that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is a publicly traded business entity are exempt from Section 2252.908 of the Texas Government Code.

Prohibition on Certain Bids and Contracts Related to Persons Involved in Human Trafficking. Financial advisors and service providers are required to comply with the requirements of Chapter 2155 of the Texas Government Code. Financial advisors and service providers must certify their firm is not ineligible under Section 2155.0061 of the Texas Government Code.

X. AUTHORIZED AND SUITABLE INVESTMENTS

Trust Indenture Funds for which the Department has control of the investment decisions, all of which are held by Treasury Safekeeping for the benefit of bondholders, will be subject to the authorized investments set-forth in the applicable Indenture of Trust and any applicable supplemental indenture(s).

General, Special Revenue and Trust and Agency Funds, all of which are on deposit with the State Treasury (specifically excluding Enterprise Funds), are invested by the Treasury pursuant to Texas Government Code, Section 404.024 and Article 5221(f), Subsection 13A(d) as amended relating to Manufactured Housing.

Enterprise Fund

1. Subject to a resolution authorizing issuance of its bonds, the Department is empowered by Texas Government Code, Section 2306.173 to invest its money in bonds, obligations or other securities: or place its money in demand or time deposits, whether or not evidenced by certificates of deposit. A guaranteed investment contract is an authorized investment for bond proceeds. All bond proceeds and revenues subject to the pledge of an Indenture shall be invested in accordance with the applicable law and the provisions of the applicable indenture including "Investment Securities" as listed in such Indenture and so defined.
2. All other enterprise funds shall be invested pursuant to state law. The following are permitted investments for those funds pursuant to the Act:
 - A. Obligations of, or guaranteed by governmental entities:
 - Obligations, including letters of credit, of the United States or its agencies and instrumentalities, including Federal Home Loan Banks.
 - Direct obligations of this state or its agencies and instrumentalities.
 - Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States; provided collateralized mortgage obligations (i) that have a stated final maturity date of greater than 10 years; or (ii) the interest rate of which is determined by an index that adjusts opposite to the changes in a market index are not permitted investments.

- Other obligations the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities.
 - Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent.
- B. A Certificate of Deposit is an authorized investment under this policy if the certificate of deposit is issued by a depository institution that has its main office or a branch office in this state and is:
- guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor;
 - secured by obligations that are described in subsection 2A above, including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates and secured by collateral as described in Section XII of this policy, but excluding those mortgage backed securities of the nature described by Section 3 below; and
 - secured in any other manner and amount provided by law for deposits of the Department.

In addition to the authority to invest funds in certificates of deposit noted above, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under this policy:

- the funds are invested by an investing entity through a depository institution that has its main office or a branch office in this state and that is selected by the investing entity, or a broker that has its main office or branch in this state and is selected from the list attached hereto as Attachment E;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;
- the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity acts as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity; and

- at the same time that the funds are deposited and the certificates of deposit are issued for the account of the investing entity, the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity receives an amount of deposits from customers of other federally insured depository institutions, wherever located, that is equal to or greater than the amount of the funds invested by the investing entity through the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor.
- C. A “repurchase agreement” is a simultaneous agreement to buy, hold for a specified time, and sell back at a future date, obligations of the United States or its agencies and instrumentalities at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement. The Department will comply with the Policy Statements and Recommended Practices for Repurchase Agreements as outlined in Attachment B. A fully collateralized repurchase agreement is an authorized investment under this policy if the repurchase agreement:
- has a defined termination date;
 - is secured by collateral described in Section XV(1) and Section X(2)D [if desired] of this policy;
 - requires the securities being purchased by the Department to be pledged to the Department, held in the Department’s name, and deposited at the time the investment is made with the Department or with a third party selected and approved by the Department;
 - is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state; and
 - in the case of a reverse repurchase agreement, notwithstanding any other law other than the Act, the term of any such reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. In addition, money received by the Department under the terms of a reverse security repurchase agreement may be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.
- D. Commercial Paper is an authorized investment under this policy if the commercial paper:
- has a stated maturity of 365 days or fewer from the date of its issuance; and
 - is rated not less than A-1 or P-1 or an equivalent rating by at least two nationally-recognized credit rating agencies, or one nationally-recognized credit rating

agency and is fully secured, and by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

3. The following are not authorized investments pursuant to the Act:
 - A. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
 - B. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
 - C. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
 - D. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

XI. DIVERSIFICATION

The Department will diversify its investments by security type and institution. The amount of required diversification will be determined based upon:

1. The maturity date of the investment – longer maturity dates will require more diversification; and
2. The rating of the underlying investment – lower rated investments will require a greater degree of diversification.

XII. PERFORMANCE STANDARDS

The investment portfolio shall be designed and managed with the objective of preserving principal and obtaining a rate of return throughout budgetary and economic cycles commensurate with the investment risk constraints and the cash flow needs. The basis used to determine whether market yields are being achieved shall be the three-month U.S. Treasury bill.

XIII. EFFECT OF LOSS OF REQUIRED RATING

An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not meet or exceed the minimum rating. The Department shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not meet or exceed the minimum rating. Still further, the Investment Officer is required to review monthly all investments subject to this policy to ensure that there have been no rating changes which would render such investment in violation of this policy.

XIV. MAXIMUM MATURITIES

To the extent possible, the Department will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the Department will not directly invest in securities maturing more than five years from the date of purchase. The Department will periodically determine what the appropriate average weighted maturity of the portfolio should be based on anticipated cash flow requirements.

General funds dedicated to the support of single family programs may be invested in securities exceeding five years if the maturities of such investments are made to coincide as nearly as practicable with the expected use of funds.

In addition, funds may be invested in any investments that are being sold from a bond indenture or are the result of the operation of the Department's single family program so long as:

1. such investment furthers the goals of that program;
2. the Investment Officer receives Board approval prior to undertaking such investment.

XV. COLLATERALIZATION

Collateralization will be required on certificates of deposit, repurchase and reverse repurchase agreements, and savings and demand deposits if not insured by FDIC. In order to anticipate market changes and provide a level of security for all funds, the collateralization level should be at least 101% of the market value of principal and accrued interest for repurchase and reverse repurchase agreements. Collateralization of 100% will be required for overnight repurchase agreements and bank deposits in excess of FDIC insurance.

The following obligations may be used as collateral under this policy:

1. obligations of the United States or its agencies and instrumentalities;
2. direct obligations of this state or its agencies and instrumentalities;
3. collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. other obligations, the principal and interest of which are unconditionally guaranteed or insured by or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities; and
5. obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally-recognized investment rating firm not less than A or its equivalent.

Collateral will always be held by an independent third party with whom the Department has a current custodial agreement. A clearly marked evidence of ownership or a safekeeping receipt must be supplied to the Department and retained. The right of collateral substitution is granted subject to prior approval by the Investment Officer.

XVI. SAFEKEEPING AND CUSTODY

All security transactions, including collateral for repurchase agreements, entered into by the Department will be executed by Delivery vs. Payment (DVP). This ensures that securities are deposited in the eligible financial institution prior to the release of funds. Securities will be held by a third-party custodian as evidenced by safekeeping receipts.

XVII. INTERNAL CONTROL

The Investment Officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the entity are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that:

1. the cost of a control should not exceed the benefits likely to be derived; and
2. the valuation of costs and benefits requires estimates and judgments by management.

Once every two years, the Department, in conjunction with its annual financial audit, shall have external/internal auditors perform a compliance audit of management controls on investments and adherence to the Department's established investment policies. The internal controls shall address the following points:

1. Control of collusion. Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
2. Separation of transaction authority from accounting and record keeping. By separating the person who authorizes or performs the transaction from the person who records or otherwise accounts for the transaction, a separation of duties is achieved.
3. Custodial safekeeping. Securities purchased from any bank or dealer including appropriate collateral as defined by state law shall be placed with an independent third party for custodial safekeeping.
4. Avoidance of physical delivery securities. Book entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.

5. Clear delegation of authority to subordinate staff members. Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
6. Written confirmation or telephone transactions for investments and wire transfers. Due to the potential for error and improprieties arising from telephone transactions, all telephone transactions must be supported by written communications and approved by the appropriate person, as defined by investment internal control procedures. Written communications may be via fax if on letterhead and the safekeeping institution has a list of authorized signatures.
7. Development of a wire transfer agreement with the lead bank or third party custodian. This agreement should outline the various controls, security provisions, and delineate responsibilities of each party making and receiving wire transfers.

The Department's external/internal auditors shall report the results of the audit performed under this section to the Office of the State Auditor not later than January 1 of each even-numbered year. The Office of the State Auditor compiles the results of reports received under this subsection and reports those results to the legislative audit committee once every two years.

XVIII. REPORTING

1. **Methods.** Not less than quarterly, the Investment Officer shall prepare and submit to the Executive Director and the Board of the Department a written report of investment transactions for all funds covered by this policy for the preceding reporting period; including a summary that provides a clear picture of the status of the current investment portfolio and transactions made over the previous reporting period. This report will be prepared in a manner which will allow the Department and the Board to ascertain whether investment activities during the reporting period have conformed to the investment policy. While not required under the Act, this report will provide information regarding investments held under bond trust indentures as well as investments covered under the Act. The report must:
 - A. describe in detail the investment position of the Department on the date of the report;
 - B. be prepared jointly by each Investment Officer of the Department;
 - C. be signed by each Investment Officer of the Department;

- D. contain a summary statement, prepared in compliance with generally accepted accounting principles for each fund that states the:
 - book value and market value of each separately invested asset at the beginning and end of the reporting period; and
 - fully accrued interest for the reporting period;
- E. state the maturity date of each separately invested asset that has a maturity date;
- F. state the fund in the Department for which each individual investment was acquired; and
- G. state the compliance of the investment portfolio of the Department as it relates to the investment strategy expressed in the Department's investment policy and relevant provisions of the policy.

The reports prepared by the Investment Officer under this policy shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Board by that auditor.

- 2. Performance Standards. The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a market average rate of return during a market/economic environment of stable interest rates. Portfolio performance will be compared to appropriate benchmarks on a regular basis.
- 3. Marking to Market. A statement of the market value of the portfolio shall be issued at least quarterly. The Investment Officer will obtain market values from recognized published sources or from other qualified professionals as necessary. This will ensure that a review has been performed on the investment portfolio in terms of value and subsequent price volatility.

XIX. AUTHORIZED LIST OF BROKER/DEALERS AND FINANCIAL INSTITUTIONS

Not less than annually, the Investment Officer shall prepare and submit to the Executive Director and the Board of the Department a written report outlining the list of authorized broker/dealers and financial institutions maintained by the State Comptroller. The current list is provided in Attachment E.

XX. INVESTMENT POLICY ADOPTION

The Department's investment policy shall be adopted by resolution of the Board.

- 1. Exemptions. Except as provided by Texas Government Code, Chapter 2270, any investment currently held that does not meet the guidelines of this policy shall be

exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.

2. Amendment. The policy shall be reviewed at least annually by the Board and any amendments made thereto must be approved by the Board. The Board shall adopt by written resolution a statement that it has reviewed the investment policies and strategies.

XXI. ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction related to Department funds. The qualified representative of the business organization shall execute a written instrument in a form acceptable to the Department and the business organization, substantially to the effect that the offering business organization has:

1. received and reviewed the investment policy of the Department; and
2. acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Department and the business organization that are not authorized by the Department's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the Department's entire portfolio or requires an interpretation of subjective investment standards.

The Investment Officer of the Department may not buy any securities from a person who has not delivered to the Department an instrument complying with this investment policy. (See sample documents in Attachment "C".)

XXII. TRAINING

Each member of the Department's Board and the Investment Officer who are in office on September 1, 1996 or who assume such duties after September 1, 1996, shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties. Training under this section is provided by the Texas Higher Education Coordinating Board and must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this policy. The Investment Officer shall attend a training session not less than once in a two-year period and may receive training from any independent source approved by the Department's Board. The Investment Officer shall prepare a report on the training and deliver the report to the Board not later than the 180th day after the last day of each regular session of the legislature.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment A

STRATEGY

SECTION 1

All of the Department's funds as listed below are program / operational in nature, excluding the bond funds which are listed separately in Section 2 below. The following funds are held in the State Treasury and the Department earns interest on those balances at the then applicable rate.

- General Fund
- Trust Funds
- Agency Funds
- Proprietary Funds (excluding Revenue Bond Funds)

SECTION 2

The Department's Revenue Bond Funds, including bond proceeds, are invested in various investments as stipulated by the controlling bond indenture. Certain investments, controlled by indentures prior to the latest revised Public Funds Investment Act, are properly grandfathered from its provisions. Typical investments include: guaranteed investment contracts; agency mortgage-backed securities resulting from the program's loan origination; in some cases, long-term Treasury notes; and bonds used as reserves with maturities that coincide with certain long-term bond maturities.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment B

POLICY STATEMENTS AND RECOMMENDED PRACTICE

Repurchase Agreements

1. Repurchase agreements (“repos”) are the sale by a bank or dealer of government securities with the simultaneous agreement to repurchase the securities on a later date. Repos are commonly used by public entities to secure money market rates of interest.
2. The Department affirms that repurchase agreements are an integral part of its investment program.
3. The Department and its designated Investment Officer should exercise special caution in selecting parties with whom they will conduct repurchase transactions, and be able to identify the parties acting as principals to the transaction.
4. Proper collateralization practices are necessary to protect the public funds invested in repurchase agreements. Risk is significantly reduced by delivery of underlying securities through physical delivery or safekeeping with the purchaser’s custodian. Over-collateralization, commonly called haircut, or marking-to-market practices should be mandatory procedures.
5. To protect public funds the Department should work with securities dealers, banks, and their respective associations to promote improved repurchase agreement procedures through master repurchase agreements that protect purchasers’ interests, universal standards for delivery procedures, and written risk disclosures.
6. Master repurchase agreements should generally be used subject to appropriate legal and technical review. If the prototype agreement developed by the Public Securities Association is used, appropriate supplemental provisions regarding delivery, substitution, margin maintenance, margin amounts, seller representations and governing law should be included.
7. Despite contractual agreements to the contrary, receivers, bankruptcy courts and federal agencies have interfered with the liquidation of repurchase agreement collateral. Therefore, the Department should encourage Congress to eliminate statutory and regulatory obstacles to perfected security interests and liquidation of repurchase collateral in the event of default.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment C

ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

1. I am a qualified representative of _____ (the "Business Organization").
2. The Business Organization proposes to engage in an investment transaction (the "Investments") with the Texas Department of Housing and Community Affairs (the "Department").
3. I acknowledge that I have received and reviewed the Department's investment policy.
4. I acknowledge that the Business Organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the business organization and the Department that are not authorized by the Department's investment policy.
5. The Business Organization makes no representation regarding authorization of the Investments to the extent such authorization is dependent on an analysis of the Department's entire portfolio and which requires an interpretation of subjective investment standards.

Dated this _____ day of _____, _____.

Name: _____

Title: _____

Business Organization: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment D

Annual Disclosure Statement for Financial Advisors and Service Providers

2) Do you or does your business entity have any direct or indirect pecuniary interests in any party to a transaction with the state governmental entity if the transaction is connected with any financial advice or service that you or your business entity provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds?

Yes_____ No_____

If yes, please explain in detail. (Attach additional sheets as needed.)

PART 3: SIGNATURE AND DATE

I hereby attest that all information provided above is complete and accurate. I acknowledge my or my firm's responsibility to submit promptly a new or amended disclosure statement to the parties listed in step 4 of the instructions if any of the above information changes.

Signature_____ Date_____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment E



COMPTROLLER OF PUBLIC ACCOUNTS
FY 2020 Broker Dealer List
September 2019

Amherst Pierpont Securities LLC	Morgan Stanley Smith B
Barclays Capital Inc.	MUFG Securities USA Inc
BMO Capital Markets Corp.	Mitsubishi UFJ Securit
BNP Paribas Securities Corp.	Multi-Bank Securities, In
BNY Mellon Capital Markets, LLC	Mutual Securities, Inc.
B of A Securities, Inc. (formerly Merrill Lynch)	NatWest Securities (forn
BOK Financial Services	Nomura Securities Inter
Brean Capital	Oppenheimer & Co. Inc.
Cantor Fitzgerald & Co.	Piper Jaffray & Co.
Capital Institutional Services, Inc.	Raymond James & Assoc
CIBC World Markets Corp.	RBC Capital Markets, LL
Citigroup Global Markets Inc.	Rice Securities, LLC
Coastal Equities, Inc.*	Robert W. Baird & Co., Ir
Credit Agricole Securities (USA)	Samuel Ramirez & Comp
Daiwa Capital Markets America, Inc.	Scotia Capital (USA) Inc.
FTN Financial Securities Corp.	Signature Securities Gro
Goldman Sachs & Co.	SMBC Nikko Securities A
Guggenheim Partners	Stifel, Nicolaus & Compa
Hilltop Securities*	SunTrust Robinson Hum
HSBC Securities (USA), Inc.	T.D. Securities (USA) LL
Jefferies, LLC	UBS Securities LLC
J.P. Morgan Securities LLC	Vining Sparks IGB, LP
Loop Capital Markets, LLC	Virtu Americas LLC
Mesirow Financial Inc.	Wells Fargo Securities, L
Mischler Financial Group, Inc.	Williams Capital Group, I
Mizuho Securities USA Inc.	ZB, NA, Investment Divis

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

As presented to the Board for adoption on April ~~25~~23, ~~2019~~2020

~~2019~~2020

April ~~25~~23, ~~2019~~2020

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

I. POLICY

It is the policy of the Texas Department of Housing and Community Affairs (the "Department") to invest public funds in a manner that will provide, by priority, the following objectives:

1. Safety of principal;
2. Sufficient liquidity to meet Department cash flow needs;
3. Market rate of return for the risk assumed; and
4. Conformance to all applicable state statutes governing the investment of public funds including the Department's enabling legislation, Texas Government Code, Chapter 2306, Texas Government Code, Chapter 2263, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and specifically Texas Government Code, Chapter 2256, the Public Funds Investment Act (the "Act").

It is further the intent of the Department to set forth in this document how all investments will be administered, providing for an all-inclusive document that will ensure consistency and thoroughness in the presentation of such investments, as they affect the Department's presentation of its financial statements.

II. SCOPE

This investment policy applies to all investments, including both direct investments and investments that are subject to trust indentures created and supplemented in connection with bonds issued by the Department. All of these investments are accounted for in the Department's Comprehensive Annual Financial Report and include the General Fund, Special Revenue Fund, Trust and Agency Fund, and Enterprise Fund.

This investment policy does not apply to investments in instruments that constitute hedges, which include but are not limited to, interest rate swaps, caps, floors, futures contracts, forward contracts, etc., that satisfy the eligibility requirements of a "qualified hedge" as defined by Section 1.148-4(h)(2) of the Internal Revenue Code.

The Department has created and adopted a separate Interest Rate Swap Policy for guidance regarding the use and management of such hedges.

III. PRUDENCE

Investments shall be made with judgment and care under prevailing circumstances which persons of prudence, discretion and intelligence would exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety and liquidity of capital as well as the probable income to be derived.

The standard of prudence to be used by the investment officers named herein shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. An investment officer acting in accordance with the investment policy and written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

IV. INVESTMENT PRIORITIES

Investment by the Department will be in accordance with the following priorities in order of importance:

1. Understanding the suitability of the investment to the financial requirements of the Department. Suitability is the first priority in the Department's investment strategy, and will be evaluated on an overall basis and as a specific component of each of the remaining priorities;
2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment should the need arise to liquidate before maturity;
5. Diversification of the investment portfolio; and
6. Yield (after taking into account the previous five priorities).

Such investment will be in accordance with all federal and state statutes, rules, and regulations.

V. STRATEGIES

The following are the primary strategies for investment activities in order of priority after taking into account the suitability of any investment:

1. Suitability. In accordance with Section 2256.005(d) of the Act, the first priority is the suitability of investment.

2. Preservation and Safety of Principal. Investments of the Department shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk. To achieve this objective, diversification is required so that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.
 - A. Credit risk is the risk of loss due to the failure of the security issuer or backer, and may be mitigated by:
 - limiting investments to the safest types of securities;
 - pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with whom the Department will do business; and
 - diversifying the investment portfolio to minimize potential losses on individual securities.
 - B. Interest rate risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, and may be mitigated by:
 - structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities in the open market prior to maturity, and
 - investing operating funds primarily in shorter-term securities.
3. Liquidity. The Department's investment portfolio shall remain sufficiently liquid to meet all reasonably anticipated cash flow needs. This is accomplished by structuring the portfolio so that securities mature concurrent with estimated or projected cash needs to meet anticipated demands. Since not all cash demands can be fully anticipated or projected with total accuracy, the portfolio should consist largely of securities with active secondary or resale markets, providing a reasonable level of flexibility to deal with unforeseen cash needs.
4. Marketability. The Department will evaluate investment opportunities based on the marketability of each investment to reduce risk in the event the Department needs to liquidate the investment before maturity. Specifically, the Department will take into consideration the activity level of the secondary market for the investment.
5. Diversification. The Department will maintain a diversified investment portfolio. Maturities will be staggered to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.
6. Yield. The Department's investment portfolio shall be designed with the objective of attaining a market rate of return through budgetary and economic cycles, taking into

account the investment risk constraints and cash flow needs of the Department. Return on investment for short-term operating funds is of less importance than the safety and liquidity objectives described above. The core of investments is limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall not be sold prior to maturity with the following exceptions:

- A. A security experiencing or reasonably seen as being at risk of material decline in credit quality could be sold early to minimize the risk of loss of principal;
- B. A security swap would improve the quality, yield, or target duration of the overall portfolio without creating other material risks or adverse features; or
- C. Liquidity needs of the portfolio require that the security be sold and there are no preferable alternatives.

VI. DELEGATION OF AUTHORITY

The Board establishes the investment policy and objectives, obtains expert advice and assistance with respect to its actions as is necessary to exercise its responsibilities prudently, and monitors the actions of staff and advisors to ensure compliance with its policy. It is the Board's intention that this policy be carried out by those persons who are qualified and competent in their area of expertise.

Authority to manage the Department's investment program is granted under the provisions of Texas Government Code, Section 2306.052(b) (4) and (5) to the Director of the Department, ("Executive Director"). Responsibility for the operation of the investment program is hereby delegated ~~to by~~ the Acting-Executive Director ~~and to~~ the Director of Bond Finance and Chief Investment Officer and the Director of Administration acting in those capacities (collectively the "Investment Officer") who shall carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. Procedures should include reference to safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, collateral/depository agreements and banking service contracts. Such procedures may include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer.

VII. ETHICS AND CONFLICTS OF INTEREST

1. Department employees and Board members must comply with all applicable laws, and should specifically be aware of the following statutes:

- A. Texas Government Code, Section 825.211, Certain Interests in Loans, Investments or Contracts Prohibited;
- B. Texas Government Code, Section 572.051, Standards of Conduct for Public Servants;
- C. Texas Government Code, Sections 553.001-003, Disclosure by Public Servants of Interest in Property Being Acquired by Government;
- D. Texas Government Code, Section 552.352, Distribution of Confidential Information;
- E. Texas Government Code, Section 572.054, Representation by Former Officer or Employee of Regulatory Agency Restricted;
- F. Texas Penal Code, Chapter 36, Bribery, Corrupt Influence and Gifts to Public Servants; and
- G. Texas Penal Code, Chapter 39, Abuse of Office, Official Misconduct.

The omission of any applicable statute from this list does not excuse violation of its provisions.

- 2. Department employees and Board members must be honest in the exercise of their duties and must not take actions which will discredit the Department.
- 3. Department employees and Board members should be loyal to the interest of the Department to the extent that such loyalty is not in conflict with other duties which legally have priority, and should avoid personal, employment or business relationships that create conflicts of interest.
 - A. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions.
 - B. Officers and employees shall disclose to the Executive Director any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the Department's investment portfolio.
 - C. Officers and employees shall refrain from undertaking personal investment transactions with the same individuals with whom business is conducted on behalf of the Department.
 - D. Department employees and Board members may not use their relationship with the Department to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of the Department as a reference or the communication to others of

the fact that a relationship with the Department exists, provided that no misrepresentation is involved.

- E. Department employees and Board members who have a personal business relationship with a business organization offering to engage in an investment transaction with the Department shall file a statement disclosing that personal business interest. An individual who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the Department shall file a statement disclosing that relationship. A statement required under this section must be filed with the Texas Ethics Commission and the Department's Board. For purposes of this policy, an individual has a personal business relationship with a business organization if:
- the individual owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
 - funds received by the Investment Officer from the business organization exceed 10 percent of the individual's gross income from the previous year; or
 - the individual has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the individual.

VIII. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The Department (in conjunction with the State Comptroller) will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness; these may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by state law.

The Department will use as its authorized list of broker/dealers and financial institutions any broker/dealer or financial institution that is authorized to do business with the State Comptroller. With respect to investments provided in connection with the issuance of bonds, the above requirements will be deemed met if the investment provider has the minimum credit ratings required by rating agencies and is acceptable to the bond insurer/credit enhancer, if applicable, and if the investment meets the requirements of the applicable bond trust indenture. A broker, engaged solely to secure a qualified investment referred to in this paragraph on behalf of the Department, and who will not be providing an investment instrument, shall not be subject to the above requirements and may only be engaged if approved by the Board.

IX. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS

During the 78th Legislature, Regular Session, the Texas Legislature passed Chapter 2263, Ethics And Disclosure Requirements For Outside Financial Advisors And Service Providers ("Chapter 2263"). Chapter 2263, under Senate Bill 1059, requires certain actions by governing boards of state entities involved in the management and investment of state funds and adds disclosure requirements for outside financial advisors and service providers. Chapter 2263 became effective September 1, 2003. Each state governmental entity required to adopt rules under Chapter 2263, Government Code, as added by this Act, must have adopted its initial rules in time for the rules to take effect not later than January 1, 2004.

Applicability. Chapter 2263 applies in connection with the management or investment of any state funds managed or invested:

1. under the Texas Constitution or other law, including Chapter 404, State Treasury Operations of Comptroller, and Chapter 2256, Public Funds Investment; and
2. by or for:
 - A. a public retirement system as defined by Section 802.001 that provides service retirement, disability retirement, or death benefits for officers or employees of the state;
 - B. an institution of higher education as defined by Section 61.003, Education Code; or
 - C. another entity that is part of state government and that manages or invests state funds or for which state funds are managed or invested.

Chapter 2263 applies in connection with the management or investment of state funds without regard to whether the funds are held in the state treasury.

Chapter 2263 does not apply to or in connection with a state governmental entity that does not manage or invest state funds and for which state funds are managed or invested only by the comptroller.

Definition. With respect to this Chapter 2263, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

Construction With Other Law. To the extent of a conflict between Chapter 2263 and another law, the law that imposes a stricter ethics or disclosure requirement controls.

Ethics Requirements For Outside Financial Advisors Or Service Providers. The governing body of a state governmental entity by rule shall adopt standards of conduct applicable to financial

advisors or service providers who are not employees of the state governmental entity, who provide financial services to the state governmental entity or advise the state governmental entity or a member of the governing body of the state governmental entity in connection with the management or investment of state funds, and who:

1. may reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from the entity during a fiscal year; or
2. render important investment or funds management advice to the entity or a member of the governing body of the entity, as determined by the governing body.

A contract under which a financial advisor or service provider renders financial services or advice to a state governmental entity or other person as described immediately above, in regard to compensation or duties, is voidable by the state governmental entity if the financial advisor or service provider violates a standard of conduct adopted under this section.

In addition to the disclosures required by Chapter 2263 and described below, the Department will rely upon financial advisors and service providers' submission of an Acknowledgement of Receipt of Investment Policy and Certificate of Compliance with the Public Funds Investment Act forms to evidence compliance with the Department's code of conduct and procedures as related to investments.

Disclosure Requirements For Outside Financial Advisor Or Service Provider. A financial advisor or service provider described by Section 2263.004 shall disclose in writing to the administrative head of the applicable state governmental entity and to the state auditor:

1. any relationship the financial advisor or service provider has with any party to a transaction with the state governmental entity, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the state governmental entity, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the state governmental entity; and
2. all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the state governmental entity, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds.

The financial advisor or service provider shall disclose a relationship described by the immediately preceding subsections (1) or (2) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

A financial advisor or service provider described by Section 2263.004 shall file annually a statement with the administrative head of the applicable state governmental entity and with the state auditor. The statement must disclose each relationship and pecuniary interest described by Subsection (a) or, if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

The annual statement must be filed not later than April 15 on a form prescribed by the governmental entity, other than the state auditor, receiving the form. The statement must cover the reporting period of the previous calendar year. The state auditor shall develop and recommend a uniform form that other governmental entities receiving the form may prescribe. The Department's disclosure form is provided as Attachment "D".

The financial advisor or service provider shall promptly file a new or amended statement with the administrative head of the applicable state governmental entity and with the state auditor whenever there is new information to report related to the immediately preceding subsections (1) or (2).

Public Information. Chapter 552, Government Code, controls the extent to which information contained in a statement filed under this chapter is subject to required public disclosure or is exempted from required public disclosure.

Anti-Boycott Verification. Financial advisors and service providers are required to comply with the requirements of Chapter 2270 of the Texas Government Code. Compliance includes a representation by each financial advisor or service provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) (i) does not boycott Israel and (ii) will not boycott Israel during the term for which they provide services to the Department.

Iran, Sudan and Foreign Terrorist Organizations. Financial advisors and service providers are required to comply with the requirements of Chapter 2252 of the Texas Government Code. Compliance includes a representation by each financial advisor or service provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is not an entity listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code.

Exemption from Disclosure of Interested Parties. Financial advisors and service providers are required to comply with the requirements of Chapter 2252 of the Texas Government Code. Financial advisors and service providers that make a representation that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is a publicly traded business entity are exempt from Section 2252.908 of the Texas Government Code.

Prohibition on Certain Bids and Contracts Related to Persons Involved in Human Trafficking. Financial advisors and service providers are required to comply with the requirements of Chapter 2155 of the Texas Government Code. Financial advisors and service providers must certify their firm is not ineligible under Section 2155.0061 of the Texas Government Code.

X. AUTHORIZED AND SUITABLE INVESTMENTS

Trust Indenture Funds for which the Department has control of the investment decisions, all of which are held by Treasury Safekeeping for the benefit of bondholders, will be subject to the authorized investments set-forth in the applicable Indenture of Trust and any applicable supplemental indenture(s).

General, Special Revenue and Trust and Agency Funds, all of which are on deposit with the State Treasury (specifically excluding Enterprise Funds), are invested by the Treasury pursuant to Texas Government Code, Section 404.024 and Article 5221(f), Subsection 13A(d) as amended relating to Manufactured Housing.

Enterprise Fund

1. Subject to a resolution authorizing issuance of its bonds, the Department is empowered by Texas Government Code, Section 2306.173 to invest its money in bonds, obligations or other securities: or place its money in demand or time deposits, whether or not evidenced by certificates of deposit. A guaranteed investment contract is an authorized investment for bond proceeds. All bond proceeds and revenues subject to the pledge of an Indenture shall be invested in accordance with the applicable law and the provisions of the applicable indenture including "Investment Securities" as listed in such Indenture and so defined.
2. All other enterprise funds shall be invested pursuant to state law. The following are permitted investments for those funds pursuant to the Act:
 - A. Obligations of, or guaranteed by governmental entities:
 - Obligations, including letters of credit, of the United States or its agencies and instrumentalities, including Federal Home Loan Banks.
 - Direct obligations of this state or its agencies and instrumentalities.
 - Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States; that have a market value of not less than the principal amount of the certificates and which has a maturity that does not exceed 10 years provided collateralized mortgage obligations (i) that have a stated final maturity date of greater than 10 years; or

(ii) the interest rate of which is determined by an index that adjusts opposite to the changes in a market index are not permitted investments.

- Other obligations the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities.
- Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent.

B. A Certificate of Deposit is an authorized investment under this policy if the certificate of deposit is issued by a depository institution that has its main office or a branch office in this state and is:

- guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor;
- secured by obligations that are described in subsection 2A above, including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates and secured by collateral as described in Section XII of this policy, but excluding those mortgage backed securities of the nature described by Section 3 below; and
- secured in any other manner and amount provided by law for deposits of the Department.

In addition to the authority to invest funds in certificates of deposit noted above, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under this policy:

- the funds are invested by an investing entity through a depository institution that has its main office or a branch office in this state and that is selected by the investing entity, or a broker that has its main office or branch in this state and is selected from the list attached hereto as Attachment E;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;
- the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity

acts as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity; and

- at the same time that the funds are deposited and the certificates of deposit are issued for the account of the investing entity, the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity receives an amount of deposits from customers of other federally insured depository institutions, wherever located, that is equal to or greater than the amount of the funds invested by the investing entity through the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor.

C. A “repurchase agreement” is a simultaneous agreement to buy, hold for a specified time, and sell back at a future date, obligations of the United States or its agencies and instrumentalities at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement. The Department will comply with the Policy Statements and Recommended Practices for Repurchase Agreements as outlined in Attachment B. A fully collateralized repurchase agreement is an authorized investment under this policy if the repurchase agreement:

- has a defined termination date;
- is secured by collateral described in Section XV(1) and Section X(2)D [if desired] of this policy;
- requires the securities being purchased by the Department to be pledged to the Department, held in the Department’s name, and deposited at the time the investment is made with the Department or with a third party selected and approved by the Department;
- is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state; and
- in the case of a reverse repurchase agreement, notwithstanding any other law other than the Act, the term of any such reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. In addition, money received by the Department under the terms of a reverse security repurchase agreement may be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

D. Commercial Paper is an authorized investment under this policy if the commercial paper:

- has a stated maturity of 270-365 days or fewer from the date of its issuance; and

- is rated not less than A-1 or P-1 or an equivalent rating by at least two nationally-recognized credit rating agencies, or one nationally-recognized credit rating agency and is fully secured, and by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

3. The following are not authorized investments pursuant to the Act:

- A. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- B. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- C. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
- D. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

XI. DIVERSIFICATION

The Department will diversify its investments by security type and institution. The amount of required diversification will be determined based upon:

1. The maturity date of the investment – longer maturity dates will require more diversification; and
2. The rating of the underlying investment – lower rated investments will require a greater degree of diversification.

XII. PERFORMANCE STANDARDS

The investment portfolio shall be designed and managed with the objective of preserving principal and obtaining a rate of return throughout budgetary and economic cycles commensurate with the investment risk constraints and the cash flow needs. The basis used to determine whether market yields are being achieved shall be the three-month U.S. Treasury bill.

XIII. EFFECT OF LOSS OF REQUIRED RATING

An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not meet or exceed the minimum rating. The Department shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not meet or exceed the minimum rating. Still further, the Investment Officer is required to review monthly all investments subject to this

policy to ensure that there have been no rating changes which would render such investment in violation of this policy.

XIV. MAXIMUM MATURITIES

To the extent possible, the Department will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the Department will not directly invest in securities maturing more than five years from the date of purchase. The Department will periodically determine what the appropriate average weighted maturity of the portfolio should be based on anticipated cash flow requirements.

General funds dedicated to the support of single family programs may be invested in securities exceeding five years if the maturities of such investments are made to coincide as nearly as practicable with the expected use of funds.

In addition, funds may be invested in any investments that are being sold from a bond indenture or are the result of the operation of the Department's single family program so long as:

1. such investment furthers the goals of that program;
2. the Investment Officer receives Board approval prior to undertaking such investment.

XV. COLLATERALIZATION

Collateralization will be required on certificates of deposit, repurchase and reverse repurchase agreements, and savings and demand deposits if not insured by FDIC. In order to anticipate market changes and provide a level of security for all funds, the collateralization level should be at least 101% of the market value of principal and accrued interest for repurchase and reverse repurchase agreements. Collateralization of 100% will be required for overnight repurchase agreements and bank deposits in excess of FDIC insurance.

The following obligations may be used as collateral under this policy:

1. obligations of the United States or its agencies and instrumentalities;
2. direct obligations of this state or its agencies and instrumentalities;
3. collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. other obligations, the principal and interest of which are unconditionally guaranteed or insured by or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities; and

5. obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally-recognized investment rating firm not less than A or its equivalent.

Collateral will always be held by an independent third party with whom the Department has a current custodial agreement. A clearly marked evidence of ownership or a safekeeping receipt must be supplied to the Department and retained. The right of collateral substitution is granted subject to prior approval by the Investment Officer.

XVI. SAFEKEEPING AND CUSTODY

All security transactions, including collateral for repurchase agreements, entered into by the Department will be executed by Delivery vs. Payment (DVP). This ensures that securities are deposited in the eligible financial institution prior to the release of funds. Securities will be held by a third-party custodian as evidenced by safekeeping receipts.

XVII. INTERNAL CONTROL

The Investment Officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the entity are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that:

1. the cost of a control should not exceed the benefits likely to be derived; and
2. the valuation of costs and benefits requires estimates and judgments by management.

Once every two years, the Department, in conjunction with its annual financial audit, shall have external/internal auditors perform a compliance audit of management controls on investments and adherence to the Department's established investment policies. The internal controls shall address the following points:

1. Control of collusion. Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
2. Separation of transaction authority from accounting and record keeping. By separating the person who authorizes or performs the transaction from the person who records or otherwise accounts for the transaction, a separation of duties is achieved.
3. Custodial safekeeping. Securities purchased from any bank or dealer including appropriate collateral as defined by state law shall be placed with an independent third party for custodial safekeeping.

4. Avoidance of physical delivery securities. Book entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
5. Clear delegation of authority to subordinate staff members. Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
6. Written confirmation or telephone transactions for investments and wire transfers. Due to the potential for error and improprieties arising from telephone transactions, all telephone transactions must be supported by written communications and approved by the appropriate person, as defined by investment internal control procedures. Written communications may be via fax if on letterhead and the safekeeping institution has a list of authorized signatures.
7. Development of a wire transfer agreement with the lead bank or third party custodian. This agreement should outline the various controls, security provisions, and delineate responsibilities of each party making and receiving wire transfers.

The Department's external/internal auditors shall report the results of the audit performed under this section to the Office of the State Auditor not later than January 1 of each even-numbered year. The Office of the State Auditor compiles the results of reports received under this subsection and reports those results to the legislative audit committee once every two years.

XVIII. REPORTING

1. **Methods.** Not less than quarterly, the Investment Officer shall prepare and submit to the Executive Director and the Board of the Department a written report of investment transactions for all funds covered by this policy for the preceding reporting period; including a summary that provides a clear picture of the status of the current investment portfolio and transactions made over the previous reporting period. This report will be prepared in a manner which will allow the Department and the Board to ascertain whether investment activities during the reporting period have conformed to the investment policy. While not required under the Act, this report will provide information regarding investments held under bond trust indentures as well as investments covered under the Act. The report must:
 - A. describe in detail the investment position of the Department on the date of the report;

- B. be prepared jointly by each Investment Officer of the Department;
- C. be signed by each Investment Officer of the Department;
- D. contain a summary statement, prepared in compliance with generally accepted accounting principles for each fund that states the:
 - book value and market value of each separately invested asset at the beginning and end of the reporting period; and
 - fully accrued interest for the reporting period;
- E. state the maturity date of each separately invested asset that has a maturity date;
- F. state the fund in the Department for which each individual investment was acquired; and
- G. state the compliance of the investment portfolio of the Department as it relates to the investment strategy expressed in the Department's investment policy and relevant provisions of the policy.

The reports prepared by the Investment Officer under this policy shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Board by that auditor.

- 2. Performance Standards. The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a market average rate of return during a market/economic environment of stable interest rates. Portfolio performance will be compared to appropriate benchmarks on a regular basis.
- 3. Marking to Market. A statement of the market value of the portfolio shall be issued at least quarterly. The Investment Officer will obtain market values from recognized published sources or from other qualified professionals as necessary. This will ensure that a review has been performed on the investment portfolio in terms of value and subsequent price volatility.

XIX. AUTHORIZED LIST OF BROKER/DEALERS AND FINANCIAL INSTITUTIONS

Not less than annually, the Investment Officer shall prepare and submit to the Executive Director and the Board of the Department a written report outlining the list of authorized broker/dealers and financial institutions maintained by the State Comptroller. The current list is provided in Attachment E.

XX. INVESTMENT POLICY ADOPTION

The Department's investment policy shall be adopted by resolution of the Board.

1. Exemptions. Except as provided by Texas Government Code, Chapter 2270, anyAny investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.
2. Amendment. The policy shall be reviewed at least annually by the Board and any amendments made thereto must be approved by the Board. The Board shall adopt by written resolution a statement that it has reviewed the investment policies and strategies.

XXI. ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction related to Department funds. The qualified representative of the business organization shall execute a written instrument in a form acceptable to the Department and the business organization, substantially to the effect that the offering business organization has:

1. received and reviewed the investment policy of the Department; and
2. acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Department and the business organization that are not authorized by the Department's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the Department's entire portfolio or requires an interpretation of subjective investment standards.

The Investment Officer of the Department may not buy any securities from a person who has not delivered to the Department an instrument complying with this investment policy. (See sample documents in Attachment "C".)

XXII. TRAINING

Each member of the Department's Board and the Investment Officer who are in office on September 1, 1996 or who assume such duties after September 1, 1996, shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties. Training under this section is provided by the Texas Higher Education Coordinating Board and must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this policy. The Investment Officer shall attend a training session not less than once in a two-year period and may receive training from any independent source approved by the Department's Board. The Investment Officer shall prepare a report on the training and

deliver the report to the Board not later than the 180th day after the last day of each regular session of the legislature.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment A

STRATEGY

SECTION 1

All of the Department's funds as listed below are program / operational in nature, excluding the bond funds which are listed separately in Section 2 below. The following funds are held in the State Treasury and the Department earns interest on those balances at the then applicable rate.

- General Fund
- Trust Funds
- Agency Funds
- Proprietary Funds (excluding Revenue Bond Funds)

SECTION 2

The Department's Revenue Bond Funds, including bond proceeds, are invested in various investments as stipulated by the controlling bond indenture. Certain investments, controlled by indentures prior to the latest revised Public Funds Investment Act, are properly grandfathered from its provisions. Typical investments include: guaranteed investment contracts; agency mortgage-backed securities resulting from the program's loan origination; in some cases, long-term Treasury notes; and bonds used as reserves with maturities that coincide with certain long-term bond maturities.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment B

POLICY STATEMENTS AND RECOMMENDED PRACTICE

Repurchase Agreements

1. Repurchase agreements (“repos”) are the sale by a bank or dealer of government securities with the simultaneous agreement to repurchase the securities on a later date. Repos are commonly used by public entities to secure money market rates of interest.
2. The Department affirms that repurchase agreements are an integral part of its investment program.
3. The Department and its designated Investment Officer should exercise special caution in selecting parties with whom they will conduct repurchase transactions, and be able to identify the parties acting as principals to the transaction.
4. Proper collateralization practices are necessary to protect the public funds invested in repurchase agreements. Risk is significantly reduced by delivery of underlying securities through physical delivery or safekeeping with the purchaser’s custodian. Over-collateralization, commonly called haircut, or marking-to-market practices should be mandatory procedures.
5. To protect public funds the Department should work with securities dealers, banks, and their respective associations to promote improved repurchase agreement procedures through master repurchase agreements that protect purchasers’ interests, universal standards for delivery procedures, and written risk disclosures.
6. Master repurchase agreements should generally be used subject to appropriate legal and technical review. If the prototype agreement developed by the Public Securities Association is used, appropriate supplemental provisions regarding delivery, substitution, margin maintenance, margin amounts, seller representations and governing law should be included.
7. Despite contractual agreements to the contrary, receivers, bankruptcy courts and federal agencies have interfered with the liquidation of repurchase agreement collateral. Therefore, the Department should encourage Congress to eliminate statutory and regulatory obstacles to perfected security interests and liquidation of repurchase collateral in the event of default.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment C

ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

1. I am a qualified representative of _____ (the "Business Organization").
2. The Business Organization proposes to engage in an investment transaction (the "Investments") with the Texas Department of Housing and Community Affairs (the "Department").
3. I acknowledge that I have received and reviewed the Department's investment policy.
4. I acknowledge that the Business Organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the business organization and the Department that are not authorized by the Department's investment policy.
5. The Business Organization makes no representation regarding authorization of the Investments to the extent such authorization is dependent on an analysis of the Department's entire portfolio and which requires an interpretation of subjective investment standards.

Dated this _____ day of _____, _____.

Name: _____

Title: _____

Business Organization: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment D

Annual Disclosure Statement for Financial Advisors and Service Providers

2) Do you or does your business entity have any direct or indirect pecuniary interests in any party to a transaction with the state governmental entity if the transaction is connected with any financial advice or service that you or your business entity provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds?

Yes_____ No_____

If yes, please explain in detail. (Attach additional sheets as needed.)

PART 3: SIGNATURE AND DATE

I hereby attest that all information provided above is complete and accurate. I acknowledge my or my firm's responsibility to submit promptly a new or amended disclosure statement to the parties listed in step 4 of the instructions if any of the above information changes.

Signature_____ Date_____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment E



COMPTROLLER OF PUBLIC ACCOUNTS
FY 2020 Broker Dealer List
September 2019

Amherst Pierpont Securities LLC	Morgan Stanley Smith B
Barclays Capital Inc.	MUFG Securities USA Inc
BMO Capital Markets Corp.	Mitsubishi UFJ Securit
BNP Paribas Securities Corp.	Multi-Bank Securities, In
BNY Mellon Capital Markets, LLC	Mutual Securities, Inc.
B of A Securities, Inc. (formerly Merrill Lynch)	NatWest Securities (forn
BOK Financial Services	Nomura Securities Inter
Brean Capital	Oppenheimer & Co. Inc.
Cantor Fitzgerald & Co.	Piper Jaffray & Co.
Capital Institutional Services, Inc.	Raymond James & Assoc
CIBC World Markets Corp.	RBC Capital Markets, LL
Citigroup Global Markets Inc.	Rice Securities, LLC
Coastal Equities, Inc.*	Robert W. Baird & Co., Ir
Credit Agricole Securities (USA)	Samuel Ramirez & Comp
Daiwa Capital Markets America, Inc.	Scotia Capital (USA) Inc.
FTN Financial Securities Corp.	Signature Securities Gro
Goldman Sachs & Co.	SMBC Nikko Securities A
Guggenheim Partners	Stifel, Nicolaus & Compa
Hilltop Securities*	SunTrust Robinson Hum
HSBC Securities (USA), Inc.	T.D. Securities (USA) LL
Jefferies, LLC	UBS Securities LLC
J.P. Morgan Securities LLC	Vining Sparks IGB, LP
Loop Capital Markets, LLC	Virtu Americas LLC
Mesirow Financial Inc.	Wells Fargo Securities, L
Mischler Financial Group, Inc.	Williams Capital Group, I
Mizuho Securities USA Inc.	ZB, NA, Investment Divis

11

BOARD ACTION REQUEST
BOND FINANCE DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action on Resolution No. 20-014 regarding the annual approval of the Department's Interest Rate Swap Policy

RECOMMENDED ACTION

Adopt attached resolution.

BACKGROUND

The Department adopted an Interest Rate Swap Policy (the Swap Policy) on September 9, 2004, to establish guidelines for the use and administration of interest rate management agreements, including but not limited to, interest rate swaps, caps, collars, and floors acquired in connection with the issuance of debt obligations. The Swap Policy is reviewed and approved annually. It underwent substantial changes in 2009, and has had minor edits since.

Staff, in conjunction with the Department's Swap Advisor and Bond Counsel, has reviewed the proposed Swap Policy and recommends approval and adoption of Resolution 20-014.

The proposed Swap Policy, blacklined against the prior policy, is attached for your reference.

RESOLUTION NO. 20-014

RESOLUTION OF THE GOVERNING BOARD APPROVING THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS INTEREST RATE SWAP POLICY

WHEREAS, the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the "Department"), was created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (together with other laws of the State applicable to the Department, collectively, the "Act"); and

WHEREAS, the Governing Board of the Department (the "Governing Board") desires to approve the Department's Interest Rate Swap Policy in the form presented to the Governing Board;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval of the Department's Interest Rate Swap Policy. The Interest Rate Swap Policy in the form presented to the Governing Board is hereby authorized and approved.

Section 1.2 ISDA Dodd-Frank Protocols. Each Authorized Representative is hereby severally authorized to take such actions as are necessary or desirable to enable the Board to adhere to any protocols promulgated by the International Swaps and Derivatives Association, Inc. ("ISDA") in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act, which adherence may (i) include the use of documents intended to address the subject matter of any such protocol but not using forms promulgated by ISDA, and (ii) be with respect to such counterparties as an Authorized Representative determines in his judgment are appropriate.

Section 1.3 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 or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, and the Secretary or 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, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act, 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 23rd day of April, 2020.

Vice Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INTEREST RATE SWAP POLICY

As presented to the Board on April 23, 2020

2020

April 23, 2020

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INTEREST RATE SWAP POLICY

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 (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford.

The Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds, for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, 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 mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds.

I. Introduction

The purpose of this Interest Rate Swap Policy ("Policy") of the Texas Department of Housing and Community Affairs (the "Department") is to establish guidelines for the use and management of all interest rate management agreements, including, but not limited to, interest rate swaps, swaptions, caps, collars and floors (collectively "Swaps" or "Agreements") incurred in connection with the issuance of debt obligations. This Policy sets forth the manner of execution of Swaps and provides for security and payment provisions, risk considerations, and certain other relevant provisions.

II. Authority

The Department is authorized by Sections 1371.056 and 2306.351 of the Texas Government Code to enter into Swaps from time to time to better manage assets and liabilities and take advantage of market conditions to lower overall costs and reduce interest rate risk.

This Policy shall govern the Department's use and management of all Swaps. While adherence to this Policy is required in applicable circumstances, the Department recognizes that changes in the capital markets, agency programs, and other unforeseen circumstances may from time to time produce situations that are not covered by this Policy and will require modifications or exceptions approved or authorized by the Governing Board to achieve policy goals.

The Chief Financial Officer and the Director of Bond Finance and Chief Investment Officer are the designated administrators of the Department's Policy. The Bond Finance Division shall have the day-to-day responsibility for structuring, implementing, and managing Swaps, which includes, with the approval of the Executive Director, the execution of the Department's right to optional

termination of Swaps to avoid being overswapped (having a higher notional amount of swap outstanding than par amount of related bonds), for economic benefit to the Department, or to achieve other goals of the Department.

The Department shall be authorized to enter into Swaps only with qualified Swap counterparties as defined herein. The Director of Bond Finance and Chief Investment Officer, in consultation with the Chief Financial Officer, or a Department designee, shall have the authority to recommend counterparties, so long as the criteria set forth in this Policy are met.

The Chief Financial Officer and the Director of Bond Finance and Chief Investment Officer shall review this Policy on an annual basis and recommend any necessary changes to the Governing Board.

III. Purpose

The incurring of obligations by the Department involves a variety of interest rate payments and other risks for which a variety of financial instruments are available to offset, hedge, or reduce. It is the policy of the Department to utilize Swaps to better manage its assets and liabilities. The Department may execute Swaps if the transaction can be expected to result in one of, but not limited to, the following:

- Reduce exposure to changes in interest rates on a particular financial transaction or in the context of the management of interest rate risk derived from the Department's overall asset/liability balance.
- Result in a lower net cost of borrowing with respect to the Department's debt, a higher return on assets, and/or a stronger balance sheet.
- Manage variable interest rate exposure consistent with prudent debt practices.
- Achieve flexibility in meeting overall financial and programmatic objectives that cannot be achieved in conventional markets.
- Lock in fixed rates in current markets for use at a later date.
- Manage the Department's exposure to the risk of changes in the legal or regulatory treatment of tax-exempt bonds.
- Manage the Department's credit exposure to financial institutions.

The Department will not use Agreements that:

- Are purely speculative or incorporate extraordinary leverage;
- Lack adequate liquidity to terminate without incurring a significant bid/ask spread;
- Are characterized by insufficient pricing transparency and therefore make reasonable valuation difficult.

IV. Evaluation of Risks Associated with Swaps

Before entering into a Swap, the Department shall evaluate the risks inherent in the transaction. The risks to be evaluated will include basis risk, tax risk, counterparty risk, credit risk, termination risk, rollover risk, liquidity risk, remarketing risk, amortization mismatch risk, mortgage yield risk, non-origination risk, and PAC band risk. The following table outlines these various risks and the Department's evaluation methodology for those risks.

Risk	Description	Evaluation Methodology
Basis Risk	The mismatch between actual variable rate debt service and variable rate indices used to determine Swap payments.	The Department will review historical trading differentials between the variable rate bonds and the index.
Tax Risk	The risk created by potential tax events that could affect Swap payments or their relationship to future bond payments.	The Department will review the tax events in proposed Swap agreements. The Department will evaluate the impact of potential changes in tax law on LIBOR indexed Swaps.
Counterparty Risk	The failure of the counterparty to make required payments or the occurrence of an event modifying the credit rating of the counterparty.	The Department will monitor exposure levels, ratings thresholds, and collateralization requirements.
Termination Risk	The need to terminate the transaction in a market that dictates a termination payment by the Department.	The Department will compute its termination exposure for all existing and proposed Swaps at market value and under a worst-case scenario.
Rollover Risk	The mismatch of the maturity of the Swap and the maturity of the underlying bonds.	The Department will determine its capacity to service variable rate bonds that may be outstanding after the maturity of the Swap.
Liquidity Risk	The inability to continue or renew a liquidity facility, and the risk that the cost of a facility will increase beyond expectations.	The Department will evaluate the expected availability of liquidity support for swapped and unhedged variable rate debt, if any.
Remarketing Risk	The risk that a remarketing agent may be unable to remarket VRDBs.	The Department will obtain a standby bond purchase facility to provide the funds necessary to purchase the VRDBs.
Amortization Mismatch Risk	The mismatch of outstanding Swap notional amount versus the outstanding bond principal subject to the hedge.	The Department may incorporate one or a combination of the following features: par termination options, PAC or lockout bonds.
Mortgage Yield Risk	The bond issue may not comply with yield restrictions if the Swap is terminated.	The Department will obtain legal opinions and or certificates as appropriate.

Non-origination Risk	The bond proceeds may not originate within the prescribed timeframe and require an unused proceeds call and possible termination payment.	The Department will evaluate bond and mortgage market conditions and quantify the potential termination payment due upon non-origination.
PAC Band Break Risk	The targeted PAC bonds may amortize faster than anticipated based on the PAC amortization schedule.	The Department will rely upon credit rating agency cashflows to ensure adequate PAC/companion bond structural integrity.
Collateral Posting Risk	The risk that the Department may be required to post liquid collateral to the Counterparty. Inability to post such liquid collateral upon short notice may result in the early termination of a Swap transaction.	The Department will seek to structure Swap Agreements so that the need to post collateral is highly unlikely. This can be accomplished by using high posting thresholds or low rating triggers.
Accounting Risk	The risk that the Department may be required to record changes in fair value of a derivative transaction as a gain or loss in its annual financial statements.	The Department, when feasible, should aim to structure Transactions that would expect to qualify as effective hedges under GASB 53.

The Department will diversify its exposure to counterparties. To that end, before entering into a transaction, the Department will determine its exposure to the relevant counterparty or counterparties and determine how the proposed transaction would affect that exposure. The exposure will not be measured solely in terms of notional amount, but rather how changes in interest rates would affect the Department's exposure ("Maximum Net Termination Exposure"). For purposes of these limits, "Maximum Net Termination Exposure" shall equal the aggregate termination payment for all existing and projected Swaps that would be paid by an individual counterparty. For purposes of this calculation, the aggregate termination payment is equal to the reasonably expected worse case termination payment of all existing Swaps plus the proposed transaction.

The Department will base the Maximum Net Termination Exposure on all outstanding derivative transactions. Limits will be established for each counterparty as well as the relative level of risk associated with each existing and projected Swap. In order to lessen counterparty risk, the Department will diversify exposure among multiple counterparties and avoid excessive concentration to any one counterparty. In situations where the Department may execute a swap transaction that would result in offsetting counterparty risk with an existing counterparty, the Department should seek to utilize that counterparty.

The Director of Bond Finance and Chief Investment Officer shall determine the appropriate term for a Swap on a case-by-case basis. The slope of the Swap curve, the marginal change in Swap rates from year to year along the Swap curve, and the impact that the term of the Swap has on the overall exposure of the Department shall be considered in determining the appropriate term of any Swap. The term of a Swap between the Department and a qualified Swap counterparty shall

not extend beyond the final maturity date of the associated debt, or in the case of a refunding transaction, beyond the final maturity date of the refunding bonds.

The Department will review the use of forward-starting swaps and determine the duration based on market condition and the risk associated with using a forward-starting swap. The Department does not have any swaps with a knock-out option which could expose the Department to higher interest rates. The Department will advise the Board prior to entering into either a forward-starting swap or knock-out option.

The Department will inform the Board if the swap is a fixed notional value swap or a declining notional value swap. The Director of Bond Finance and Chief Investment Officer will review proposed swaps to ensure that the use of fixed notional value swaps does not place the Department at risk of incurring an incrementally higher expense if the related bond principal is paid off early.

The total “net notional amount” of all Swaps related to a bond issue should not exceed the amount of outstanding bonds, or bonds anticipated to be issued. For purposes of calculating the net notional amount, credit shall be given to any Swaps that offset another Swap for a specific bond transaction.

V. Long Term Financial Implications

In evaluating a particular transaction involving the use of derivatives, the Department shall review long-term implications associated with entering into derivatives, including costs of borrowing, historical interest rate trends, variable rate capacity, credit enhancement capacity, liquidity capacity, opportunities to refund related debt obligations and other similar considerations.

Impact of Use of Liquidity

The Department shall consider the impact of any variable rate demand bonds issued in combination with a Swap on the availability and cost of liquidity support for other Department variable rate programs.

Call Option Value considerations

When considering the relative advantage of a Swap versus fixed rate bonds, the Department will take into consideration the value of any call option on fixed rate bonds.

Qualified Hedges

The Department understands that, (1) if payments on and receipts from the Agreement are to be taken into account in computing the yield on the related bonds, the Agreement must meet the requirements for a “qualified hedge” under federal tax law (sometimes referred to as an “integrated Swap”); and (2) if one of the goals of entering into the Agreement is to convert variable yield bonds into fixed yield bonds (sometimes referred to as a “super integrated Swap”), then certain additional requirements must be met. In both of these situations, the terms of the Agreement and the process for entering into the Agreement must be reviewed and approved in advance by tax counsel.

VI. Form of Swap Agreements

Each Swap executed by the Department shall contain terms and conditions as set forth in the International Swap and Derivatives Association, Inc. ("ISDA") Master Agreement, including any schedules and confirmations. The Swaps between the Department and each qualified Swap counterparty shall include payment, term, security, collateral, default, remedy, termination, and other terms, conditions and provisions as the Director of Bond Finance and Chief Investment Officer deems necessary, desirable, or consistent with industry best practices.

VII. Qualified Swap Counterparties

The Department will make its best efforts to work with qualified Swap counterparties that (i) have, or has a credit support counterparty that has, a general credit rating of at least "A2" with respect to ratings by Moody's Investors Service or "A" with respect to ratings by Standard and Poor's Rating Services or Fitch Ratings.

In addition to the rating criteria specified herein, the Department may seek additional credit enhancement and safeguards in the form of:

- i. Contingent credit support or enhancement;
- ii. Collateral consistent with the policies contained herein; and/or
- iii. Ratings downgrade triggers.

In addition, the Department will take into consideration a Swap counterparty's track record of successfully executing Swap transactions. The Department will only execute Swap transactions with qualified Swap counterparties.

In addition to credit-related requirements, swap counterparties and other providers of derivative products must comply with the following requirements to be eligible to enter into a contract with the Department:

Anti-Boycott Verification. Swap counterparties and other providers of derivative products are required to comply with the requirements of Chapter 2270 of the Texas Government Code. Compliance includes a representation by each counterparty or provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) (i) does not boycott Israel and (ii) will not boycott Israel during the term for which they provide services to the Department.

Iran, Sudan and Foreign Terrorist Organizations. Swap counterparties and other providers of derivative products are required to comply with the requirements of Chapter 2252 of the Texas Government Code. Compliance includes a representation by each counterparty or provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is not an entity listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code.

Exemption from Disclosure of Interested Parties. Swap counterparties and other providers of derivative products are required to comply with the requirements of Chapter 2252 of the Texas

Government Code. Counterparties or providers that make a representation that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is a publicly traded business entity are exempt from Section 2252.908 of the Texas Government Code.

Prohibition on Certain Bids and Contracts Related to Persons Involved in Human Trafficking. Swap counterparties and providers of derivative products are required to comply with the requirements of Chapter 2155 of the Texas Government Code. Swap counterparties and providers of derivative products must certify their firm is not ineligible under Section 2155.0061 of the Texas Government Code.

VIII. Termination Provisions

The Department shall include in all Swaps provisions granting the Department the right to optionally terminate a Swap at any time at market over the term of the Agreement. The Director of Bond Finance and Chief Investment Officer, in consultation with the Chief Financial Officer, shall determine if it is financially advantageous for the Department to terminate a Swap.

A ratings-based additional termination event shall be included in all of the Department's Swaps if the provider (or its credit support provider) fails to maintain either:

1. A credit rating of at least Baa2 from Moody's; or
2. A credit rating of at least BBB from S&P; or,
3. An equivalent rating determined above by a nationally recognized ratings service acceptable to both parties.

A termination payment to or from the Department may be required in the event of termination of a Swap due to a default or a decrease in credit rating of either the Department or the counterparty. If the cause of the termination is a counterparty downgrade, termination payments will be calculated on the side of the bid-offer spread that favors the Department. Additionally, the termination amount of the Swap should seek to compensate the Department, as allowed under the ISDA Agreement, all other costs for creating a replacement transaction of like terms and conditions.

It is the intent of the Department not to make a termination payment to a counterparty that does not meet its contractual obligations. Prior to making any such termination payment, the Director of Bond Finance and Chief Investment Officer, in consultation with the Chief Financial Officer, shall evaluate whether it is financially advantageous for the Department to obtain a replacement counterparty to avoid making such termination payment or finance the termination payment through a long-term financing product.

For payments on early termination and optional termination, Market Quotation and the Second Method will apply, allowing for two way mark-to-market breakage (assuming the Swaps are documented under the 1992 form of the ISDA Master Agreements).

IX. Security and Source of Repayment

The Department may use the same security and source of repayment (pledged revenues) for Swaps as is used for the bonds that are hedged or carried by the Swap, if any, but shall consider the economic costs and benefits of subordinating the Department's payments and/or termination payment under the Swap. The use of the same security and source of repayment (pledged revenues) is subject to the respective bond indenture's covenants and the prior approval of the Department's bond counsel.

X. Specified Indebtedness

The specified indebtedness related to credit events in any Swap should be narrowly defined and refer only to indebtedness of the Department that could have a materially adverse effect on the Department's ability to perform its obligations under the Swap. Debt should typically only include obligations within the same lien as the Swap obligation.

XI. Governing Law

Governing law for Swaps will be the State of Texas. Issues relating to jurisdiction, venue, waiver of jury trial and sovereign immunity will be subject to prevailing law and approval of the Texas Attorney General Office. Preference will be given to language providing that the counterparty will consent to jurisdiction in the Texas courts with respect to enforcement of the Agreement.

XII. Events of Default

Events of default of a Swap counterparty shall include, but are not limited to the counterparty's:

1. Failure to make payments when due;
2. Breach of representations and warranties;
3. Illegality;
4. Failure to comply with downgrade provisions; and
5. Failure to comply with any other provisions of the Agreement after a specified notice period.

XIII. Collateral Requirements

As part of any Swap, the Department may require the counterparty or the counterparty may require the Department to post collateral or other credit enhancement to secure any or all Swap payment obligations. As appropriate, the Chief Financial Officer and Director of Bond Finance and Chief Investment Officer may require collateral or other credit enhancement to be posted by each Swap counterparty under the following circumstances:

- Each counterparty to the Department may be required to post collateral if the credit rating of the counterparty or parent falls below a certain rating threshold, which varies by counterparty. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the credit support annex to each Swap with the Department. At the

current time, collateral posting rating triggers by the counterparties would range from A2/A to Baa1/BBB+.

- Collateral shall consist of cash, U.S. Treasury securities, or other mutually acceptable highly liquid securities.
- Collateral shall be deposited with an eligible third party custodian, or as mutually agreed upon between the Department and each counterparty.
- The market value of the collateral shall be determined on at least a weekly basis.
- The Department will determine reasonable threshold limits for increments of collateral posting based on a sliding scale reflective of credit ratings.
- The Director of Bond Finance and Chief Investment Officer, in consultation with the Chief Financial Officer, shall determine on a case-by-case basis whether a form of credit enhancement in lieu of, or in addition to, collateral is more beneficial to the Department.
- The Department shall seek to not post collateral to the counterparty unless the Department's ratings fall below "A2" or "A".

XIV. Other Criteria

The Department may use a competitive or a negotiated process to select a Swap counterparty and price a Swap as it believes business, market or competitive conditions justify such a process. The conditions under which a negotiated selection is best used are provided below.

- Marketing of the Swap will require complex explanations about the security for payment or credit quality.
- Demand is weak among Swap counterparties.
- Market timing is important, such as for refundings.
- Coordination of multiple components of the financing is required.
- The Swap has non-standard features.
- The par amount is large enough to move the market in a manner adverse to the Department's interests.
- Counterparties are likely to demand individual changes in bid documents.

If a transaction is awarded through a negotiated process, the counterparty will provide the Department with:

- A statement that, in the counterparty's judgment, the difference in basis points between the rate of the transaction and the mid-market rate for a comparable transaction falls within the commonly occurring range for comparable transactions.
- A statement of the amount of the difference as determined by the counterparty.
- If the counterparty does not know of a comparable transaction or mid-market rate, a statement of another suitable measure of pricing acceptable to the counterparty.

The Department will use a swap advisory firm to assist in the price negotiation. Such swap advisory firm shall act as the "qualified independent representative" ("QIR") of the Department for purposes of CFTC Rule 23.450 (b) (1) to advise the Department on swaps, provided that such firm provide certification to the Department addressing why such firm meets the requirements to act as a QIR pursuant to CFTC Regulation 23.450(b)(1). Also, the Department may obtain an opinion

from an independent party that the terms and conditions of any derivative entered into reflect a fair market value of such derivatives as of the execution date.

The counterparty must provide to the Department disclosure of any payments the counterparty made to another person to procure the transaction.

Prior to or at execution of any new swap transaction, the swap dealer and/or swap advisor, as the case may be, shall provide information to the Department consistent with the rules and regulations in effect at the time. Such rules would include the Business Conduct Standards for Swap Dealers and Major Swap Participants as published and enacted by the Commodity Futures Trading Commission. In addition the swap dealer should represent to the Department that it is in compliance with such rules including pay-to-play restrictions.

The Department will determine that the swap transaction will conform to this Interest Rate Swap Policy after reviewing a report of the Director of Bond Finance and Chief Investment Officer that identifies with respect to the transaction:

- its purpose;
- the anticipated economic benefit and the method used to determine the anticipated benefit;
- the use of the receipts of the transaction;
- the notional amount, amortization, and average life compared to the related obligation;
- any floating indices;
- its effective date and duration;
- the identity and credit rating of the counterparties;
- the cost and anticipated benefit of transaction insurance;
- the financial advisors and the legal advisors and their fees;
- any security for scheduled and early termination payments;
- any associated risks and risk mitigation features; and
- early termination provisions.

XV. Ongoing Monitoring and Reporting Requirements

Written records noting the status of all Swaps will be maintained by the Bond Finance Division and shall include the following information:

- Highlights of all material changes to Swaps or new Swaps entered into by the Department since the last report.
- Market value of each of the Swaps.
- The net impact of a 50 or 100 basis point parallel shift or other relevant shift in the appropriate Swap index or curve.
- For each counterparty, the total notional amount, the average life of each Swap and the remaining term of each Swap.
- The credit rating of each Swap counterparty and credit enhancer insuring Swap payments.
- Actual collateral posting by Swap counterparty, if any, in total by Swap counterparty.

- A summary of each Swap, including but not limited to the type of Swap, the rates paid by the Department and received by the Department, indices, and other key terms.
- Information concerning any default by a Swap counterparty to the Department, and the results of the default, including but not limited to the financial impact to the Department, if any.
- A summary of any Swaps that were terminated.

The Department will monitor its Swaps exposure on a periodic basis, as necessary, and will look for ways to reduce the cost of a Swap(s) or the overall Swap exposure.

The Bond Finance Division will monitor the performance of the QIR on an on-going basis.

The Department shall report its Swaps exposure in its annual financial statements and will reflect the use of derivatives in accordance with GASB requirements. With the adoption of GASB 53, the Department will be required to test hedge effectiveness on an annual basis. Any hedge deemed to be ineffective will result in the change in fair value being recorded as a gain or loss. While the long term economic value of the transaction should be more important when structuring a derivative, the Department should seek to structure transactions that are expected to be effective and would not result in changes in fair value affecting net income. For example, while a transaction structured to meet the Consistent Critical Terms method of GASB 53 would ensure hedge effectiveness, the Department should consider the tradeoffs of utilizing a transaction structure that may provide greater expected economic benefits at the expense of potentially not meeting hedge effectiveness. The disclosure requirements include:

1. Objective of the Derivative
2. Significant Terms
3. Fair Value
4. Associated Debt
5. Risks including but not limited to Credit Risk, Termination Risk, Interest Rate Risk, Basis Risk, Rollover Risk, Market Access Risk, and Foreign Currency Risk.

With the adoption of GASB 72, the Department will be required to report the fair value of its Swaps in its annual financial statements, as more fully described in GASB 72. The Department will follow these guidelines and may engage a third party to assist in the required calculations.

The Chief Financial Officer and the Director of Bond Finance and Chief Investment Officer will review this Policy on an annual basis.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INTEREST RATE SWAP POLICY

As presented to the Board on April ~~2523~~, 20192020

~~2019~~2020

April ~~2523~~, 20192020

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INTEREST RATE SWAP POLICY

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 (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford.

The Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds, for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, 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 mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds.

I. Introduction

The purpose of this Interest Rate Swap Policy ("Policy") of the Texas Department of Housing and Community Affairs (the "Department") is to establish guidelines for the use and management of all interest rate management agreements, including, but not limited to, interest rate swaps, swaptions, caps, collars and floors (collectively "Swaps" or "Agreements") incurred in connection with the issuance of debt obligations. This Policy sets forth the manner of execution of Swaps and provides for security and payment provisions, risk considerations, and certain other relevant provisions.

II. Authority

The Department is authorized by Sections 1371.056 and 2306.351 of the Texas Government Code to enter into Swaps from time to time to better manage assets and liabilities and take advantage of market conditions to lower overall costs and reduce interest rate risk.

This Policy shall govern the Department's use and management of all Swaps. While adherence to this Policy is required in applicable circumstances, the Department recognizes that changes in the capital markets, agency programs, and other unforeseen circumstances may from time to time produce situations that are not covered by this Policy and will require modifications or exceptions approved or authorized by the Governing Board to achieve policy goals.

The Chief Financial Officer and the Director of Bond Finance and Chief Investment Officer are the designated administrators of the Department's Policy. The Bond Finance Division shall have the day-to-day responsibility for structuring, implementing, and managing Swaps, which includes, with the approval of the Executive Director, the execution of the Department's right to optional

termination of Swaps to avoid being overswapped (having a higher notional amount of swap outstanding than par amount of related bonds), for economic benefit to the Department, or to achieve other goals of the Department.

The Department shall be authorized to enter into Swaps only with qualified Swap counterparties as defined herein. The Director of Bond Finance and Chief Investment Officer, in consultation with the Chief Financial Officer, or a Department designee, shall have the authority to recommend counterparties, so long as the criteria set forth in this Policy are met.

The Chief Financial Officer and the Director of Bond Finance and Chief Investment Officer shall review this Policy on an annual basis and recommend any necessary changes to the Governing Board.

III. Purpose

The incurring of obligations by the Department involves a variety of interest rate payments and other risks for which a variety of financial instruments are available to offset, hedge, or reduce. It is the policy of the Department to utilize Swaps to better manage its assets and liabilities. The Department may execute Swaps if the transaction can be expected to result in one of, but not limited to, the following:

- Reduce exposure to changes in interest rates on a particular financial transaction or in the context of the management of interest rate risk derived from the Department's overall asset/liability balance.
- Result in a lower net cost of borrowing with respect to the Department's debt, a higher return on assets, and/or a stronger balance sheet.
- Manage variable interest rate exposure consistent with prudent debt practices.
- Achieve flexibility in meeting overall financial and programmatic objectives that cannot be achieved in conventional markets.
- Lock in fixed rates in current markets for use at a later date.
- Manage the Department's exposure to the risk of changes in the legal or regulatory treatment of tax-exempt bonds.
- Manage the Department's credit exposure to financial institutions.

The Department will not use Agreements that:

- Are purely speculative or incorporate extraordinary leverage;
- Lack adequate liquidity to terminate without incurring a significant bid/ask spread;
- Are characterized by insufficient pricing transparency and therefore make reasonable valuation difficult.

IV. Evaluation of Risks Associated with Swaps

Before entering into a Swap, the Department shall evaluate the risks inherent in the transaction. The risks to be evaluated will include basis risk, tax risk, counterparty risk, credit risk, termination risk, rollover risk, liquidity risk, remarketing risk, amortization mismatch risk, mortgage yield risk, non-origination risk, and PAC band risk. The following table outlines these various risks and the Department's evaluation methodology for those risks.

Risk	Description	Evaluation Methodology
Basis Risk	The mismatch between actual variable rate debt service and variable rate indices used to determine Swap payments.	The Department will review historical trading differentials between the variable rate bonds and the index.
Tax Risk	The risk created by potential tax events that could affect Swap payments or their relationship to future bond payments.	The Department will review the tax events in proposed Swap agreements. The Department will evaluate the impact of potential changes in tax law on LIBOR indexed Swaps.
Counterparty Risk	The failure of the counterparty to make required payments or the occurrence of an event modifying the credit rating of the counterparty.	The Department will monitor exposure levels, ratings thresholds, and collateralization requirements.
Termination Risk	The need to terminate the transaction in a market that dictates a termination payment by the Department.	The Department will compute its termination exposure for all existing and proposed Swaps at market value and under a worst-case scenario.
Rollover Risk	The mismatch of the maturity of the Swap and the maturity of the underlying bonds.	The Department will determine its capacity to service variable rate bonds that may be outstanding after the maturity of the Swap.
Liquidity Risk	The inability to continue or renew a liquidity facility, and the risk that the cost of a facility will increase beyond expectations.	The Department will evaluate the expected availability of liquidity support for swapped and unhedged variable rate debt, if any.
Remarketing Risk	The risk that a remarketing agent may be unable to remarket VRDBs.	The Department will obtain a standby bond purchase facility to provide the funds necessary to purchase the VRDBs.
Amortization Mismatch Risk	The mismatch of outstanding Swap notional amount versus the outstanding bond principal subject to the hedge.	The Department may incorporate one or a combination of the following features: par termination options, PAC or lockout bonds.
Mortgage Yield Risk	The bond issue may not comply with yield restrictions if the Swap is terminated.	The Department will obtain legal opinions and or certificates as appropriate.

Non-origination Risk	The bond proceeds may not originate within the prescribed timeframe and require an unused proceeds call and possible termination payment.	The Department will evaluate bond and mortgage market conditions and quantify the potential termination payment due upon non-origination.
PAC Band Break Risk	The targeted PAC bonds may amortize faster than anticipated based on the PAC amortization schedule.	The Department will rely upon credit rating agency cashflows to ensure adequate PAC/companion bond structural integrity.
Collateral Posting Risk	The risk that the Department may be required to post liquid collateral to the Counterparty. Inability to post such liquid collateral upon short notice may result in the early termination of a Swap transaction.	The Department will seek to structure Swap Agreements so that the need to post collateral is highly unlikely. This can be accomplished by using high posting thresholds or low rating triggers.
Accounting Risk	The risk that the Department may be required to record changes in fair value of a derivative transaction as a gain or loss in its annual financial statements.	The Department, when feasible, should aim to structure Transactions that would expect to qualify as effective hedges under GASB 53.

The Department will diversify its exposure to counterparties. To that end, before entering into a transaction, the Department will determine its exposure to the relevant counterparty or counterparties and determine how the proposed transaction would affect that exposure. The exposure will not be measured solely in terms of notional amount, but rather how changes in interest rates would affect the Department's exposure ("Maximum Net Termination Exposure"). For purposes of these limits, "Maximum Net Termination Exposure" shall equal the aggregate termination payment for all existing and projected Swaps that would be paid by an individual counterparty. For purposes of this calculation, the aggregate termination payment is equal to the reasonably expected worse case termination payment of all existing Swaps plus the proposed transaction.

The Department will base the Maximum Net Termination Exposure on all outstanding derivative transactions. Limits will be established for each counterparty as well as the relative level of risk associated with each existing and projected Swap. In order to lessen counterparty risk, the Department will diversify exposure among multiple counterparties and avoid excessive concentration to any one counterparty. In situations where the Department may execute a swap transaction that would result in offsetting counterparty risk with an existing counterparty, the Department should seek to utilize that counterparty.

The Director of Bond Finance and Chief Investment Officer shall determine the appropriate term for a Swap on a case-by-case basis. The slope of the Swap curve, the marginal change in Swap rates from year to year along the Swap curve, and the impact that the term of the Swap has on the overall exposure of the Department shall be considered in determining the appropriate term of any Swap. The term of a Swap between the Department and a qualified Swap counterparty shall

not extend beyond the final maturity date of the associated debt, or in the case of a refunding transaction, beyond the final maturity date of the refunding bonds.

The Department will review the use of forward-starting swaps and determine the duration based on market condition and the risk associated with using a forward-starting swap. The Department does not have any swaps with a knock-out option which could expose the Department to higher interest rates. The Department will advise the Board prior to entering into either a forward-starting swap or knock-out option.

The Department will inform the Board if the swap is a fixed notional value swap or a declining notional value swap. The Director of Bond Finance and Chief Investment Officer will review proposed swaps to ensure that the use of fixed notional value swaps does not place the Department at risk of incurring an incrementally higher expense if the related bond principal is paid off early.

The total "net notional amount" of all Swaps related to a bond issue should not exceed the amount of outstanding bonds, or bonds anticipated to be issued. For purposes of calculating the net notional amount, credit shall be given to any Swaps that offset another Swap for a specific bond transaction.

V. Long Term Financial Implications

In evaluating a particular transaction involving the use of derivatives, the Department shall review long-term implications associated with entering into derivatives, including costs of borrowing, historical interest rate trends, variable rate capacity, credit enhancement capacity, liquidity capacity, opportunities to refund related debt obligations and other similar considerations.

Impact of Use of Liquidity

The Department shall consider the impact of any variable rate demand bonds issued in combination with a Swap on the availability and cost of liquidity support for other Department variable rate programs.

Call Option Value considerations

When considering the relative advantage of a Swap versus fixed rate bonds, the Department will take into consideration the value of any call option on fixed rate bonds.

Qualified Hedges

The Department understands that, (1) if payments on and receipts from the Agreement are to be taken into account in computing the yield on the related bonds, the Agreement must meet the requirements for a "qualified hedge" under federal tax law (sometimes referred to as an "integrated Swap"); and (2) if one of the goals of entering into the Agreement is to convert variable yield bonds into fixed yield bonds (sometimes referred to as a "super integrated Swap"), then certain additional requirements must be met. In both of these situations, the terms of the Agreement and the process for entering into the Agreement must be reviewed and approved in advance by tax counsel.

VI. Form of Swap Agreements

Each Swap executed by the Department shall contain terms and conditions as set forth in the International Swap and Derivatives Association, Inc. ("ISDA") Master Agreement, including any schedules and confirmations. The Swaps between the Department and each qualified Swap counterparty shall include payment, term, security, collateral, default, remedy, termination, and other terms, conditions and provisions as the Director of Bond Finance and Chief Investment Officer deems necessary, desirable, or consistent with industry best practices.

VII. Qualified Swap Counterparties

The Department will make its best efforts to work with qualified Swap counterparties that (i) have, or has a credit support counterparty that has, a general credit rating of at least "A2" with respect to ratings by Moody's Investors Service or "A" with respect to ratings by Standard and Poor's Rating Services or Fitch Ratings.

In addition to the rating criteria specified herein, the Department may seek additional credit enhancement and safeguards in the form of:

- i. Contingent credit support or enhancement;
- ii. Collateral consistent with the policies contained herein; and/or
- iii. Ratings downgrade triggers.

In addition, the Department will take into consideration a Swap counterparty's track record of successfully executing Swap transactions. The Department will only execute Swap transactions with qualified Swap counterparties.

In addition to credit-related requirements, swap counterparties and other providers of derivative products must comply with the following requirements to be eligible to enter into a contract with the Department:

Anti-Boycott Verification. Swap counterparties and other providers of derivative products are required to comply with the requirements of Chapter 2270 of the Texas Government Code. Compliance includes a representation by each counterparty or provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) (i) does not boycott Israel and (ii) will not boycott Israel during the term for which they provide services to the Department.

Iran, Sudan and Foreign Terrorist Organizations. Swap counterparties and other providers of derivative products are required to comply with the requirements of Chapter 2252 of the Texas Government Code. Compliance includes a representation by each counterparty or provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is not an entity listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code.

Exemption from Disclosure of Interested Parties. Swap counterparties and other providers of derivative products are required to comply with the requirements of Chapter 2252 of the Texas

Government Code. Counterparties or providers that make a representation that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is a publicly traded business entity are exempt from Section 2252.908 of the Texas Government Code.

Prohibition on Certain Bids and Contracts Related to Persons Involved in Human Trafficking. Swap counterparties and providers of derivative products are required to comply with the requirements of Chapter 2155 of the Texas Government Code. Swap counterparties and providers of derivative products must certify their firm is not ineligible under Section 2155.0061 of the Texas Government Code.

VIII. Termination Provisions

The Department shall include in all Swaps provisions granting the Department the right to optionally terminate a Swap at any time at market over the term of the Agreement. The Director of Bond Finance and Chief Investment Officer, in consultation with the Chief Financial Officer, shall determine if it is financially advantageous for the Department to terminate a Swap.

A ratings-based additional termination event shall be included in all of the Department's Swaps if the provider (or its credit support provider) fails to maintain either:

1. A credit rating of at least Baa2 from Moody's; or
2. A credit rating of at least BBB from S&P; or,
3. An equivalent rating determined above by a nationally recognized ratings service acceptable to both parties.

A termination payment to or from the Department may be required in the event of termination of a Swap due to a default or a decrease in credit rating of either the Department or the counterparty. If the cause of the termination is a counterparty downgrade, termination payments will be calculated on the side of the bid-offer spread that favors the Department. Additionally, the termination amount of the Swap should seek to compensate the Department, as allowed under the ISDA Agreement, all other costs for creating a replacement transaction of like terms and conditions.

It is the intent of the Department not to make a termination payment to a counterparty that does not meet its contractual obligations. Prior to making any such termination payment, the Director of Bond Finance and Chief Investment Officer, in consultation with the Chief Financial Officer, shall evaluate whether it is financially advantageous for the Department to obtain a replacement counterparty to avoid making such termination payment or finance the termination payment through a long-term financing product.

For payments on early termination and optional termination, Market Quotation and the Second Method will apply, allowing for two way mark-to-market breakage (assuming the Swaps are documented under the 1992 form of the ISDA Master Agreements).

IX. Security and Source of Repayment

The Department may use the same security and source of repayment (pledged revenues) for Swaps as is used for the bonds that are hedged or carried by the Swap, if any, but shall consider the economic costs and benefits of subordinating the Department's payments and/or termination payment under the Swap. The use of the same security and source of repayment (pledged revenues) is subject to the respective bond indenture's covenants and the prior approval of the Department's bond counsel.

X. Specified Indebtedness

The specified indebtedness related to credit events in any Swap should be narrowly defined and refer only to indebtedness of the Department that could have a materially adverse effect on the Department's ability to perform its obligations under the Swap. Debt should typically only include obligations within the same lien as the Swap obligation.

XI. Governing Law

Governing law for Swaps will be the State of Texas. Issues relating to jurisdiction, venue, waiver of jury trial and sovereign immunity will be subject to prevailing law and approval of the Texas Attorney General Office. Preference will be given to language providing that the counterparty will consent to jurisdiction in the Texas courts with respect to enforcement of the Agreement.

XII. Events of Default

Events of default of a Swap counterparty shall include, but are not limited to the counterparty's:

1. Failure to make payments when due;
2. Breach of representations and warranties;
3. Illegality;
4. Failure to comply with downgrade provisions; and
5. Failure to comply with any other provisions of the Agreement after a specified notice period.

XIII. Collateral Requirements

As part of any Swap, the Department may require the counterparty or the counterparty may require the Department to post collateral or other credit enhancement to secure any or all Swap payment obligations. As appropriate, the Chief Financial Officer and Director of Bond Finance and Chief Investment Officer may require collateral or other credit enhancement to be posted by each Swap counterparty under the following circumstances:

- Each counterparty to the Department may be required to post collateral if the credit rating of the counterparty or parent falls below a certain rating threshold, which varies by counterparty. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the credit support annex to each Swap with the Department. At the

current time, collateral posting rating triggers by the counterparties would range from A2/A to Baa1/BBB+.

- Collateral shall consist of cash, U.S. Treasury securities, or other mutually acceptable highly liquid securities.
- Collateral shall be deposited with an eligible third party custodian, or as mutually agreed upon between the Department and each counterparty.
- The market value of the collateral shall be determined on at least a weekly basis.
- The Department will determine reasonable threshold limits for increments of collateral posting based on a sliding scale reflective of credit ratings.
- The Director of Bond Finance and Chief Investment Officer, in consultation with the Chief Financial Officer, shall determine on a case-by-case basis whether a form of credit enhancement in lieu of, or in addition to, collateral is more beneficial to the Department.
- The Department shall seek to not post collateral to the counterparty unless the Department's ratings fall below "A2" or "A".

XIV. Other Criteria

The Department may use a competitive or a negotiated process to select a Swap counterparty and price a Swap as it believes business, market or competitive conditions justify such a process. The conditions under which a negotiated selection is best used are provided below.

- Marketing of the Swap will require complex explanations about the security for payment or credit quality.
- Demand is weak among Swap counterparties.
- Market timing is important, such as for refundings.
- Coordination of multiple components of the financing is required.
- The Swap has non-standard features.
- The par amount is large enough to move the market in a manner adverse to the Department's interests.
- Counterparties are likely to demand individual changes in bid documents.

If a transaction is awarded through a negotiated process, the counterparty will provide the Department with:

- A statement that, in the counterparty's judgment, the difference in basis points between the rate of the transaction and the mid-market rate for a comparable transaction falls within the commonly occurring range for comparable transactions.
- A statement of the amount of the difference as determined by the counterparty.
- If the counterparty does not know of a comparable transaction or mid-market rate, a statement of another suitable measure of pricing acceptable to the counterparty.

The Department will use a swap advisory firm to assist in the price negotiation. Such swap advisory firm shall act as the "qualified independent representative" ("QIR") of the Department for purposes of CFTC Rule 23.450 (b) (1) to advise the Department on swaps, provided that such firm provide certification to the Department addressing why such firm meets the requirements to act as a QIR pursuant to CFTC Regulation 23.450(b)(1). Also, the Department may obtain an opinion

from an independent party that the terms and conditions of any derivative entered into reflect a fair market value of such derivatives as of the execution date.

The counterparty must provide to the Department disclosure of any payments the counterparty made to another person to procure the transaction.

Prior to or at execution of any new swap transaction, the swap dealer and/or swap advisor, as the case may be, shall provide information to the Department consistent with the rules and regulations in effect at the time. Such rules would include the Business Conduct Standards for Swap Dealers and Major Swap Participants as published and enacted by the Commodity Futures Trading Commission. In addition the swap dealer should represent to the Department that it is in compliance with such rules including pay-to-play restrictions.

The Department will determine that the swap transaction will conform to this Interest Rate Swap Policy after reviewing a report of the Director of Bond Finance and Chief Investment Officer that identifies with respect to the transaction:

- its purpose;
- the anticipated economic benefit and the method used to determine the anticipated benefit;
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- the notional amount, amortization, and average life compared to the related obligation;
- any floating indices;
- its effective date and duration;
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- Market value of each of the Swaps.
- The net impact of a 50 or 100 basis point parallel shift or other relevant shift in the appropriate Swap index or curve.
- For each counterparty, the total notional amount, the average life of each Swap and the remaining term of each Swap.
- The credit rating of each Swap counterparty and credit enhancer insuring Swap payments.
- Actual collateral posting by Swap counterparty, if any, in total by Swap counterparty.

- A summary of each Swap, including but not limited to the type of Swap, the rates paid by the Department and received by the Department, indices, and other key terms.
- Information concerning any default by a Swap counterparty to the Department, and the results of the default, including but not limited to the financial impact to the Department, if any.
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The Department will monitor its Swaps exposure on a periodic basis, as necessary, and will look for ways to reduce the cost of a Swap(s) or the overall Swap exposure.

The Bond Finance Division will monitor the performance of the QIR on an on-going basis.

The Department shall report its Swaps exposure in its annual financial statements and will reflect the use of derivatives in accordance with GASB requirements. With the adoption of GASB 53, the Department will be required to test hedge effectiveness on an annual basis. Any hedge deemed to be ineffective will result in the change in fair value being recorded as a gain or loss. While the long term economic value of the transaction should be more important when structuring a derivative, the Department should seek to structure transactions that are expected to be effective and would not result in changes in fair value affecting net income. For example, while a transaction structured to meet the Consistent Critical Terms method of GASB 53 would ensure hedge effectiveness, the Department should consider the tradeoffs of utilizing a transaction structure that may provide greater expected economic benefits at the expense of potentially not meeting hedge effectiveness. The disclosure requirements include:

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TDHCA Outreach Activities, March-April

A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.

Activity	Event	Date	Location	Division
Webinar	Fair Housing Month: Fair Housing Overview	April 2	N/A	Fair Housing
Webinar	Fair Housing Month: Reasonable Accommodations	April 8	N/A	Fair Housing
Virtual Panel/Webinar	COVID-19 and Affordable Housing in Texas webinar	April 9	N/A	Executive
Virtual Meeting	ESG Outreach for CARES Act Funding (Amarillo, Dallas, El Paso, Fort Worth/Arlington, Houston, San Antonio)	April 13	N/A	Homelessness Programs
Webinar	Fair Housing Month: Service Animals	April 14	N/A	Fair Housing
Virtual Meeting	ESG Outreach for CARES Act Funding (Austin, Bryan, Waco, Wichita Falls, Balance of State Continuum of Care)	April 14	N/A	Homelessness Programs
Conference Call	Texas Migrant Labor Housing Facility Workgroup	April 15	N/A	Migrant Labor Housing Facilities
Virtual Meeting	Virtual Public Hearing: 2020-2024 State of Texas Consolidated Plan	April 16	N/A	Housing Resource Center

Internet Postings of Note

A list of new or noteworthy postings to the Department's website.

Amy Young Barrier Removal Program

- Posted updated Soft Cost Invoice

Asset Management

- Updated Post Award Activities Manual page: legal document request cover sheet, Right of First Refusal form, Amendment Request cover sheet, Cost Certification application, 10% Test, Ownership Transfer form, Rent Approval Tool, Post Award Activities Manual (as of March 2020)

- Posted Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement (#96182, Crestview Apartments; #00179, Highland Oaks Apartments)
- Posted Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application (#17081, Palladium Denton; #19234, The Residences at Alsbury)
- Posted Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit and Land Use Restriction Agreement (#97167, Columbia Luxar Townhomes)
- Posted sample Special Reserve Application for Assistance for development owners

Colonia Self-Help Center

- Posted updated information related to county contacts in Self Help areas
- Added CSHC Loan Closings Checklist under Program Forms
- Posted updated rules (Single Family Programs Umbrella Rules, Energy Efficiency Rules, Colonia Self-Help Center Rules)

Communications:

- Created COVID-19 Resources page with information on medical, housing, TDHCA-related processes and rules, and federal and state guidelines (updated routinely with program information; in response to COVID-19)
- Added National Fair Housing Month information (homepage article, web banner, Board resolution and Governor Proclamation)

Community Affairs

- Added CEAP Frequently Asked Questions (March 2020)
- Created CA subrecipient webpage for guidance on TDHCA programs (household status verification form, declaration of income form, client signature waiver form (due to COVID-19))
- Posted revised Income Guidelines FAQs for CEAP, WAP and CSBG (as of March 2020)
- Posted revised US Citizenship Documentation Matrix (as of March 2020)
- Revised announcement of Public Hearing on Draft 2020 US Department of Energy Weatherization Assistance Program State Plan; changed to webinar format (in response to COVID-19)
- Added 2020 Rider 14 Report to Annual Weatherization Report to Texas Legislature
- Added COVID-19 Disaster Tracking Form to CA Subrecipient Guidance page (to track CSBG discretionary funds)
- Added COVID-19 CEAP Citizenship Waiver webinar with related PowerPoint slides and Q&A document
- Posted Subrecipient Guidance COVID-19 Frequently Asked Questions document
- Posted CEAP Citizenship Self Certification form

Compliance

- Added Multifamily Compliance Guidance related to COVID-19 (in response to COVID-19)
- Added EIV Discrepancy Report Cover Sheet for Tenant File under Section 811 PRA Program
- Posted updated 2020 Project Income and Rent Tool (as of April 1)

Fair Housing

- Posted Fair Housing Overview webinar and related materials

HOME and Homeless:

- Posted ESG and HHSP Program Guidance: COVID-19 State and Federal Resources and Guidance
- Posted updated HOME Single Family Program Reservation System Participation application

Homeownership

- Added information related to homeowners with government-backed loans and repayment options (due to COVID-19)

Housing Resource Center

- Posted Second Minor Amendment to the 2019 One-Year Action Plan (updates to HOME special needs population)
- Added meeting notice to Public Hearing page (postponement due to COVID-19)
- Removed public hearing notices for Draft 2020-2024 State of Texas Consolidated Plan (in response to COVID-19)
- Posted public hearing locations for Draft 2020-2024 State of Texas Consolidated Plan
- Posted information and links to the TDHCA Customer Service Survey

Multifamily:

- Removed public hearings from Calendar listings (due to COVID-19)
- Updated 2020 4% HTC Bond Status Log (as of March 26)
- Updated 2019 4% HTC Bond Status Log (as of March 20, 2020)
- Added 2020 4% 3rd Party Reports (appraisals, environmental site assessments, market studies, property condition assessments, site design feasibility reports)
- Moved 2019 4% HTC Bond Status information to the archive page
- Posted updated 202-1 Multifamily Direct Loan NOFA Application Log (as of April 1)
- Posted updated 2020 Multifamily Uniform Application forms (as of April 1)
- Posted updated 2020-2B Multifamily Direct Loan NOFA Application Log (as of March 23)
- Posted 2020 Multifamily Predevelopment Application materials (application, procedures manual, certification and applicant eligibility certification)
- Removed notification of 2021-2011 QAP Roundtable Meeting for March 25 (in response to COVID-19)
- Posted updated 2020 9% Housing Tax Credit Full Application Log (as of March 13)
- Posted Post-Issuance Compliance Procedures document for Multifamily Bonds
- Updated HTC Property Inventory (as of March 26)
- Added 2020 4% Individually Imaged Bond Applications

Program Services

- Added Davis-Bacon Labor Standards and Environmental Review Guidelines language (due to COVID-19)
- Posted updated Liquidated Damages Remittance Form and Final Wage Compliance Report

Public Comment

- Public comment period open for 2020-2024 State of Texas Consolidated Plan
- Public comment period open for Proposed and repeal and new 10 Texas Administrative Code (TAC), Chapter 7, Subchapter A, General Policies and Procedures
- Public comment period open for Proposed repeal and new 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program (HHSP)
- Public comment period open for Proposed repeal and new 10 Texas Administrative Code (TAC) §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36,

General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmarks, and Return of Funds; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files

- Public comment period open for Proposed repeal and new 10 Texas Administrative Code (TAC) Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, 10 TAC §7.62, EH Fund Subrecipient Application and Selection, and 10 TAC §7.65, Contract Term and Limitations
- Public comment period open for 2020 9% Housing Tax Credit Full Applications

Section 811 PRA Program

- Announced counties in which wait list has been suspended (Dallas, Nueces, Bexar, Harris, Travis)
- Updated income limits chart, and Participating Properties and Referral Agents list

Frequently Used Acronyms

AMFI	Area Median Family Income	LURA	Land Use Restriction Agreement
AYBR	Amy Young Barrier Removal Program	MF	Multifamily
CEAP	Comprehensive Energy Assistance Program	MFTH	My First Texas Home Program
CFD	Contract for Deed Program	MRB	Mortgage Revenue Bond Program
CFDC	Contract for Deed Conversion Assistance Grants	NHTF	National Housing Trust Fund
CHDO	Community Housing Development Organization	NOFA	Notice of Funding Availability
CMTS	Compliance Monitoring and Tracking System	NSP	Neighborhood Stabilization Program
CSBG	Community Services Block Grant Program	OIG	Office of Inspector General
ESG	Emergency Solutions Grants Program	QAP	Qualified Allocation Plan
EHF	Ending Homelessness Fund	QCP	Quantifiable Community Participation
FAQ	Frequently Asked Questions	REA	Real Estate Analysis
HBA	Homebuyer Assistance Program	RFA	Request for Applications
HHSCC	Housing and Health Services Coordination Council	RFO	Request for Offer
HHSP	Homeless Housing and Services Program	RFP	Request for Proposals
HRA	Homeowner Rehabilitation Assistance Program	RFQ	Request for Qualifications
HRC	Housing Resource Center	ROFR	Right of First Refusal
HTC	Housing Tax Credit	SLIHP	State of Texas Low Income Housing Plan
HTF	Housing Trust Fund	TA	Technical Assistance
HUD	U.S. Department of Housing and Urban Development	TBRA	Tenant Based Rental Assistance Program
IFB	Invitation for Bid	TICH	Texas Interagency Council for the Homeless
		TSHEP	Texas Statewide Homebuyer Education Program
		TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act
		WAP	Weatherization Assistance Program

2b

BOARD REPORT ITEM
FINANCIAL ADMINISTRATION DIVISION
APRIL 23, 2020

Report on the Department's 2nd Quarter Investment Report in accordance with the Public Funds Investment Act

BACKGROUND

The Department's investment portfolio consists of two distinct parts. One part is related to bond funds under trust indentures that are not subject to the Public Funds Investment Act (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 \$1,241,851,996 of which \$1,203,353,636 is not subject to the PFIA. This report addresses the remaining \$38,498,360 (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. These investments are fully collateralized and secured by U.S. Government Securities. A repurchase agreement is the daily purchase of a security with an agreement to repurchase that security at a specific price and date, which in this case was March 2, 2020, with an effective interest rate of 1.50%. These investments safeguard principal while maintaining liquidity. The overnight repurchase agreements, subject to the PFIA, earned \$162,300 in interest during the quarter.

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 State 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 monitoring 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.
- The Ending Homelessness Trust Fund account maintains funds from donations collected from individuals through the Texas Department of Motor Vehicles in connection with the Department's Ending Homelessness Program. The authority for the collection of these donations is outlined in House Bill 4102, 85th Texas Legislature Session, Regular Session. These donations are collected for the purpose of providing grants to counties and municipalities to combat homelessness.

This report is in the format 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 2nd Quarter, as it relates to the investments covered by the PFIA, the carrying value increased by \$333,543 (see page 1) for an ending balance of \$38,498,360. The change is described below by fund groups.

General Fund: The General Fund decreased by \$651,856. This consists primarily of \$332,323 received in multifamily bond fees and \$109,725 in MCC Fees, offset by disbursements including \$1,038,314 to fund the operating budget.

The State Housing Trust Fund: The Housing Trust Fund decreased by \$227,930. This consists primarily of \$962,681 received in loan repayments offset by disbursements including \$1,298,971 for loans, grants, and escrow payments.

Compliance: Compliance funds increased by \$1,018,009. This consists primarily of \$2,721,882 received in compliance fees offset by disbursements of \$1,893,023 transferred to fund the operating budget.

Housing Initiative: Housing Initiative funds increased by \$151,217. This consists primarily of \$1,466,532 received in fees related to tax credit activities, offset by disbursements of \$1,311,821 transferred to fund the operating budget.

Ending Homelessness Fund: Ending Homelessness funds increased by \$44,103. This consists primarily of donations and interest earnings on current investment balances.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION

PUBLIC FUNDS INVESTMENT ACT
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)
QUARTER ENDING February 29, 2020

Texas Department of Housing and Community Affairs
Non-Indenture Related Investment Summary
For Period Ending February 29, 2020

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 11/30/19	Beginning Market Value 11/30/19	Accretions/Purchases	Amortizations/Sales	Maturities	Transfers	Ending Carrying Value 02/29/20	Ending Market Value 02/29/20	Change In Market Value	Recognized Gain
Repo Agmt	General Fund	1.53	02/28/20	03/02/20	755,043.07	755,043.07	10,713.21				765,756.28	765,756.28	-	0.00
Repo Agmt	General Fund	1.53	02/28/20	03/02/20	33,058.91	33,058.91		(1,924.80)			31,134.11	31,134.11	-	0.00
Repo Agmt	General Fund	1.53	02/28/20	03/02/20	376,079.54	376,079.54	32,616.48				408,696.02	408,696.02	-	0.00
Repo Agmt	General Fund	1.53	02/28/20	03/02/20	1,882,398.08	1,882,398.08		(550,626.95)			1,331,771.13	1,331,771.13	-	0.00
Repo Agmt	General Fund	1.53	02/28/20	03/02/20	424,958.36	424,958.36		(146,964.55)			277,993.81	277,993.81	-	0.00
Repo Agmt	General Fund	1.53	02/28/20	03/02/20	651,389.10	651,389.10	437.40				651,826.50	651,826.50	-	0.00
Repo Agmt	General Fund	1.53	02/28/20	03/02/20	252,499.54	252,499.54	891.93				253,391.47	253,391.47	-	0.00
Repo Agmt	General Fund	1.53	02/28/20	03/02/20	798,499.75	798,499.75	3,001.27				801,501.02	801,501.02	-	0.00
Repo Agmt	General Fund	1.53	02/28/20	03/02/20	0.02	0.02	0.00				0.02	0.02	-	0.00
General Fund Total					5,173,926.37	5,173,926.37	47,660.29	(699,516.30)	0.00	0.00	4,522,070.36	4,522,070.36	0.00	0.00
Repo Agmt	Housing Trust Fund	1.53	02/28/20	03/02/20	37,725.23	37,725.23	36,347.45				74,072.68	74,072.68	-	0.00
Repo Agmt	Housing Trust Fund	1.53	02/28/20	03/02/20	1,994.33	1,994.33	1,572.91				3,567.24	3,567.24	-	0.00
Repo Agmt	Housing Trust Fund	1.53	02/28/20	03/02/20	401,939.79	401,939.79	56,024.83				457,964.62	457,964.62	-	0.00
Repo Agmt	General Revenue Appn	1.53	02/28/20	03/02/20	470,568.50	470,568.50		(417,548.83)			53,019.67	53,019.67	-	0.00
Repo Agmt	General Revenue Appn	1.53	02/28/20	03/02/20	358,705.11	358,705.11	197,311.27				556,016.38	556,016.38	-	0.00
Repo Agmt	General Revenue Appn	1.53	02/28/20	03/02/20	522,952.33	522,952.33	563,734.17				1,086,686.50	1,086,686.50	-	0.00
Repo Agmt	General Revenue Appn	1.53	02/28/20	03/02/20	1,751,707.32	1,751,707.32		(1,684,375.28)			67,332.04	67,332.04	-	0.00
Repo Agmt	General Revenue Appn	1.53	02/28/20	03/02/20	245,537.30	245,537.30		(17,039.40)			228,497.90	228,497.90	-	0.00
Repo Agmt	Housing Trust Fund-GR	1.53	02/28/20	03/02/20	547,369.54	547,369.54		(175,750.39)			371,619.15	371,619.15	-	0.00
Repo Agmt	Housing Trust Fund-GR	1.53	02/28/20	03/02/20	1,299,031.93	1,299,031.93		(124,275.57)			1,174,756.36	1,174,756.36	-	0.00
Repo Agmt	Housing Trust Fund-GR	1.53	02/28/20	03/02/20			1,202,686.54				1,202,686.54	1,202,686.54	-	0.00
Repo Agmt	Housing Trust Fund-GR	1.53	02/28/20	03/02/20	1,096,006.00	1,096,006.00	0.00				1,096,006.00	1,096,006.00	-	0.00
Repo Agmt	Bootstrap -GR				357,316.35	357,316.35		(357,316.35)					-	0.00
Repo Agmt	Bootstrap -GR	1.53	02/28/20	03/02/20	1,647,931.42	1,647,931.42		(297,000.00)			1,350,931.42	1,350,931.42	-	0.00
Repo Agmt	Bootstrap -GR	1.53	02/28/20	03/02/20	1,170,000.00	1,170,000.00	787,698.87				1,957,698.87	1,957,698.87	-	0.00
Housing Trust Fund Total					9,908,785.15	9,908,785.15	2,845,376.04	(3,073,305.82)	0.00	0.00	9,680,855.37	9,680,855.37	0.00	0.00
Repo Agmt	Multi Family	1.53	02/28/20	03/02/20	868,718.77	868,718.77		(30,511.70)			838,207.07	838,207.07	-	0.00
Repo Agmt	Multi Family	1.53	02/28/20	03/02/20	694,838.55	694,838.55	118,720.84				813,559.39	813,559.39	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	1.53	02/28/20	03/02/20	6,848,354.78	6,848,354.78	929,799.90				7,778,154.68	7,778,154.68	-	0.00
Compliance Total					8,411,912.10	8,411,912.10	1,048,520.74	(30,511.70)	0.00	0.00	9,429,921.14	9,429,921.14	0.00	0.00
Repo Agmt	Asset Management	1.53	02/28/20	03/02/20	1,440,528.42	1,440,528.42		(14,968.83)			1,425,559.59	1,425,559.59	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	1.53	02/28/20	03/02/20	1,302,681.31	1,302,681.31	225,070.26				1,527,751.57	1,527,751.57	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	1.53	02/28/20	03/02/20	11,204,396.99	11,204,396.99		(52,225.82)			11,152,171.17	11,152,171.17	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	1.53	02/28/20	03/02/20	440,744.18	440,744.18		(6,658.14)			434,086.04	434,086.04	-	0.00
Housing Initiatives Total					14,388,350.90	14,388,350.90	225,070.26	(73,852.79)	0.00	0.00	14,539,568.37	14,539,568.37	0.00	0.00
Repo Agmt	Homelessness - HB4102	1.53	02/28/20	03/02/20	281,841.96	281,841.96	44,102.51				325,944.47	325,944.47	-	0.00
Homelessness - HB4102 Total					281,841.96	281,841.96	44,102.51	0.00	0.00	0.00	325,944.47	325,944.47	0.00	0.00
Total Non-Indenture Related Investment Summary					38,164,816.48	38,164,816.48	4,210,729.84	(3,877,186.61)	0.00	0.00	38,498,359.71	38,498,359.71	0.00	0.00

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION
PUBLIC FUNDS INVESTMENT ACT
Internal Management Report (Sec. 2256.023)
Quarter Ending February 29, 2020

Investment Type	FAIR VALUE	CARRYING	ACCRETION /	AMORTIZATION /	MATURITIES	TRANSFERS	CARRYING	FAIR VALUE	CHANGE	ACCRUED	RECOGNIZED	
	(MARKET)	VALUE					VALUE	VALUE	(MARKET)	INT REC'BL		GAIN
	@ 11/30/19	@ 11/30/19	PURCHASES	SALES			@ 02/29/20	@ 02/29/20	(MARKET)	@ 02/29/20		
NON-INDENTURE RELATED:												
General Fund	Repurchase Agreements	5,173,926.37	5,173,926.37	47,660.29	(699,516.30)	-	-	4,522,070.36	4,522,070.36	-	734,095.00	-
Housing Trust Fund	Repurchase Agreements	9,908,785.15	9,908,785.15	2,845,376.04	(3,073,305.82)	-	-	9,680,855.37	9,680,855.37	-	824.00	-
Compliance	Repurchase Agreements	8,411,912.10	8,411,912.10	1,048,520.74	(30,511.70)	-	-	9,429,921.14	9,429,921.14	-	802.00	-
Housing Initiatives	Repurchase Agreements	14,388,350.90	14,388,350.90	225,070.26	(73,852.79)	-	-	14,539,568.37	14,539,568.37	-	1,236.00	-
Ending Homelessness Trust Fund	Repurchase Agreements	281,841.96	281,841.96	44,102.51	-	-	-	325,944.47	325,944.47	-	27.00	-
NON-INDENTURE RELATED TOTAL		38,164,816.48	38,164,816.48	4,210,729.84	(3,877,186.61)	0.00	0.00	38,498,359.71	38,498,359.71	0.00	736,984.00	0.00

(b) (8) 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 9, 2019

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

	Date: 4/13/20
David Cervantes Director of Administration	
	Date: April 13, 2020
Monica Galuski Director of Bond Finance/Chief Investment Officer	

2c

BOARD REPORT ITEM
BOND FINANCE DIVISION
APRIL 23, 2020

Report on the Department's 2nd Quarter Investment Report relating to funds held under Bond Trust Indentures

BACKGROUND

- The Department's Investment Policy excludes funds invested under a bond trust indenture for the benefit of bond holders because the trustee for each trust indenture controls the authorized investments in accordance with the requirements of that 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 details the types of investments, maturity dates, carrying (face amount) values, and fair market values at the beginning and end of the quarter.
- Overall, the portfolio carrying value decreased by approximately \$7.8 million (see page 3), resulting in an end of quarter balance of \$1,203,353,636.

The portfolio consists of those investments described in the attached Bond Trust Indentures Supplemental Management Report.

	<u>Beginning Quarter</u>	<u>Ending Quarter</u>
Mortgage Backed Securities (MBS)	79%	85%
Guaranteed Investment Contracts/Investment Agreements	8%	2%
Repurchase Agreements	4%	4%
Treasury Backed Mutual Funds	3%	3%
Treasury Notes / Bonds	6%	6%

The increase in MBS is due to the issuance of single family bonds last quarter and the purchase of the related MBS. The decrease in Guaranteed Investment Contracts is due to the draw of proceeds issued last quarter to purchase MBS.

Portfolio activity for the quarter:

- The MBS purchases this quarter were approximately \$75.2 million, due to the issuance of single family bonds and the investment of proceeds in MBS.
- The maturities in MBS were approximately \$14.8 million, which represent loan repayments or payoffs.

The table below shows the trend in MBS activity.

	2nd Qtr FY 19	3rd Qtr FY 19	4th Qtr FY 19	1st Qtr FY 20	2nd Qtr FY 20	Total
Purchases	\$ 120,432,081	\$ 72,347,936	\$ 109,650,734	\$ 99,520,103	\$ 75,233,628	\$ 477,184,482
Sales	\$ 17,579,637					\$ 17,579,637
Maturities	\$ 12,796,395	\$ 13,691,518	\$ 16,187,797	\$ 16,188,430	\$ 14,887,354	\$ 73,751,494
Transfers						\$ -

- The process of valuing investments at fair market value identifies unrealized gains and losses. These gains or losses do not impact the overall portfolio because the Department typically holds MBS investments until maturity.
- The fair market value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) decreased \$21.1 million (see pages 3 and 4), with fair market 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 29, 2020, was 3.45%, down from 3.68% at the end of February 2020. There are various factors that affect the fair market 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 a general movement toward higher yields 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 of more importance than the assessed relative value in the bond market as a whole.
- The more relevant measures of indenture parity are reported on page 5 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indenture with assets greater than liabilities in a range from 105.54% to 110.96%, which would indicate the Department has sufficient assets to meet its obligations.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
 BOND FINANCE DIVISION
 BOND TRUST INDENTURES
 Supplemental Management Report
 Quarter Ending February 29, 2020

	FAIR VALUE (MARKET) @ 11/30/19	CARRYING VALUE @ 11/30/19	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 02/29/20	FAIR VALUE (MARKET) @ 02/29/20	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 02/29/20	RECOGNIZED GAIN
INDENTURE RELATED:											
Single Family	664,239,811	633,976,240	92,989,638	(85,492,359)	(10,661,554)	-	630,811,965	669,543,769	8,468,233	2,132,758	-
RMRB	293,780,252	276,498,682	967,630	(3,356,257)	(3,807,109)	-	270,302,945	290,032,684	2,448,169	947,686	-
Taxable Mortgage Program	3,532,858	3,532,858	81,006	-	-	-	3,613,864	3,613,864	-	734,095	-
Multi Family	308,675,673	297,191,181	38,324,416	(36,472,045)	(418,690)	-	298,624,862	320,307,064	10,197,711	497,946	-
	1,270,228,594	1,211,198,961	132,362,690	(125,320,661)	(14,887,354)	-	1,203,353,636	1,283,497,382	21,114,113	4,312,485	-

(b) (8) 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 9, 2019

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

	4/7/20
David Cervantes Director of Administration	
	4/7/2020
Monica Galuski Director of Bond Finance/Chief Investment Officer	

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS
 BOND FINANCE DIVISION
 BOND TRUST INDENTURES
 Supplemental Management Report
 Quarter Ending February 29, 2020

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 11/30/19	CARRYING VALUE @ 11/30/19	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 02/29/20	FAIR VALUE (MARKET) @ 02/29/20	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
INDENTURE RELATED:										
Mortgage-Backed Securities	1,023,872,612	964,909,416	75,233,628	0	(14,887,354)	0	1,025,255,691	1,105,329,567	21,110,681	0
Guaranteed Inv Contracts	103,547,754	103,547,754	5,190,881	(85,326,325)	0	0	23,412,310	23,412,310	0	0
Investment Agreements	1,432,056	1,432,056	0	(1,385,449)	0	0	46,607	46,607	0	0
Treasury-Backed Mutual Funds	34,354,642	34,354,642	9,203,443	(10,313,848)	0	0	33,244,237	33,244,237	0	0
Repurchase Agreements	37,387,251	37,387,251	13,613,765	(5,635,800)	0	0	45,365,216	45,365,216	0	0
Treasury Notes / Bonds	69,634,280	69,567,843	29,120,972	(22,659,239)	0	0	76,029,576	76,099,445	3,432	0
	1,270,228,594	1,211,198,961	132,362,690	(125,320,661)	(14,887,354)	0	1,203,353,636	1,283,497,382	21,114,113	0

(b) (8) 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 9, 2019

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

	4/7/20
David Cervantes Director of Financial Administration	
	
Monica Galuski Director of Bond Finance/Chief Investment Officer	4/7/2020

Texas Department of Housing and Community Affairs
Bond Finance Division
Executive Summary
As of February 29, 2020

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Multi-Family Indenture Funds	Combined Totals
PARITY COMPARISON:				
PARITY ASSETS				
Cash	\$ 1,115,453	\$ 36,748	\$ 15,000,102	\$ 16,152,303
Investments ⁽¹⁾	\$ 49,550,081	\$ 14,114,614	\$ 272,301,529	\$ 335,966,224
Mortgage Backed Securities ⁽¹⁾	\$ 580,553,975	\$ 256,188,332		\$ 836,742,307
Loans Receivable ⁽²⁾	\$ 19,292	\$ -	\$ 706,452,818	\$ 706,472,110
Accrued Interest Receivable	\$ 2,132,758	\$ 947,686	\$ 3,821,281	\$ 6,901,725
TOTAL PARITY ASSETS	\$ 633,371,559	\$ 271,287,380	\$ 997,575,730	\$ 1,902,234,669
PARITY LIABILITIES				
Notes Payable	\$ 12,000,000	\$ 10,000,000	\$ 114,381,594	\$ 136,381,594
Bonds Payable ⁽¹⁾	\$ 577,976,617	\$ 245,160,000	\$ 780,749,067	\$ 1,603,885,684
Accrued Interest Payable	\$ 8,743,349	\$ 1,890,476	\$ 3,901,072	\$ 14,534,897
Other Non-Current Liabilities ⁽³⁾				\$ -
TOTAL PARITY LIABILITIES	\$ 598,719,966	\$ 257,050,476	\$ 899,031,733	\$ 1,754,802,175
PARITY DIFFERENCE	\$ 34,651,593	\$ 14,236,904	\$ 98,543,997	\$ 147,432,494
PARITY	105.79%	105.54%	110.96%	108.40%

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value. This adjustment is consistent with indenture cashflows prepared for Also, the CHMRB Bonds were redeemed in full in January 2019.

(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).

Note: Based on preliminary and unaudited financial statements, subject to change in audited financial statements.

ACTION ITEMS

3a

BOARD ACTION REQUEST

SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION

APRIL 23, 2020

Presentation, discussion, and possible action on waivers to certain provisions of Texas Administrative Code to allow for payment of mortgages as a homelessness prevention activity under the Homeless Housing and Services Program

RECOMMENDED ACTION

WHEREAS, the Homeless Housing and Services Program (HHSP) was created by the 81st Texas Legislature to be administered by the Texas Department of Housing and Community Affairs (the Department) to fund homelessness prevention and homeless services in Texas municipalities with populations over 285,500;

WHEREAS, the Texas Legislature has, through the enactment of House Bill (HB) 1 (86th Legislature), provided General Revenue funds of \$9,800,000 over the biennium to be allocated to programs in these municipalities;

WHEREAS, HB 1 included Rider 16, which designated an additional \$1,500,000 each fiscal year to provide services to unaccompanied homeless youth and homeless young adults 24 years of age and younger to be distributed through HHSP; and

WHEREAS, the Department is responding to the needs of Texans impacted by unforeseeable and non-preventable loss of income due to COVID-19 by requesting and receiving permission to waive certain provisions of 10 TAC Chapter 7, in order to allow for HHSP funds to be used for homelessness prevention by allowing them to be utilized for past-due mortgage payments or late fees incurred on or after March 13, 2020, through August 31, 2020, in certain circumstances for the benefit of those qualified Texans economically impacted by COVID-19;

NOW, therefore, it is hereby

RESOLVED, that the Board grants, and delegates to the Executive Director or his designee permission to waive 10 TAC §7.2(b)(5) and 10 TAC §7.6(a) as described herein for entities providing assistance to those low income Texans economically impacted by COVID-19 under HHSP homelessness prevention, effective until August 31, 2020.

BACKGROUND

On July 25, 2019, the TDHCA Board of Directors (the Board) awarded \$4,900,000 in state general revenue funding allocated by HB 1 for HHSP to the nine Texas municipalities with a population greater than 285,500 in HHSP general set-aside awards for State Fiscal Year (SFY) 2020.

On March 26, 2020, the Board authorized awards of \$239,884 in previously deobligated general set-aside HHSP funding, which will be or has been allocated to each of the nine municipalities that accepts or has accepted the offer of funding. The Board also granted waivers to certain provisions of 10 TAC Chapter 7, allowing for an expedited contracting process for these deobligated funds.

The Department administers HHSP in accordance with Tex. Gov't Code §2306.2585 and 10 TAC Chapters 1 and 2, and Chapter 7, Subchapters A and B. Allowable activities include case management for households experiencing or at-risk of homelessness; construction, conversion, or rehabilitation of structures targeted to serving Homeless persons or persons at-risk of homelessness; essential services for Homeless persons or persons at risk of homelessness; provision of direct services; operation of emergency shelters or administrative facilities; and other Homeless-related activity, as approved by the Department in writing. Additional HHSP funding is also available under the youth set-aside, and is required to be utilized for persons experiencing homelessness, not persons at-risk of homelessness.

In order to provide homelessness prevention services, including payment of past-due mortgage payments and fees associated with past due amounts incurred between March 13, 2020, and August 31, 2020, under the authority found in 10 TAC §7.1 and for good cause staff requests waivers of several provisions of 10 TAC Chapter 7, as follows:

- 10 TAC §7.2(b)(5), which defines At-risk of Homelessness for the purpose described below. The current definition excludes homeowners from the definition, rendering them ineligible to receive services under the homelessness prevention, case management, and essential services activities.
- 10 TAC §7.6(a) which requires all persons served to be entered into the Homeless Management Information System (HMIS). This waiver would apply to any otherwise eligible homeowners served with mortgage payments or past due fees for HHSP funds, as they do not meet the requirements for HMIS entry.

It should be noted that 10 TAC §7.27(e) lists eligible costs for homelessness prevention, with language that includes but does not limit costs; therefore, a waiver is not required to allow payment of past-due mortgages under homelessness prevention.

The waivers noted above would be granted to HHSP subrecipients upon request, for immediate implementation; when requested the HHSP Subrecipients' Contract(s) would be amended to reflect the effective date of the waiver as the date of the request or the date of this board meeting, whichever is later.

Staff recommends that the waiver not be applicable to homeowners who are eligible for the mortgage loan relief offered in the CARES Act, which allows borrowers with federally insured mortgages up to a year of payment forbearance and, in accordance with Mortgage Letter 2020-06, requires, among other protections, lenders to waive late fees and enable the homeowners to be evaluated for a National Emergency Standalone Partial Claim at the end of their forbearance period, protecting the borrower from foreclosure.

Staff also recommends that the waiver not be applicable to households who, excluding the value of their owner occupied residence, have greater than \$2,000 in assets, including retirement accounts that may be withdrawn with no penalty as a result of the CARES Act, at the time of application for assistance for homelessness prevention. The household must meet the income eligibility limit as adopted by the HHSP subrecipient, or 30% of Area Median Income, if the HHSP Subrecipient has not adopted a different income limit.

4a

BOARD REPORT ITEM
 BOND FINANCE DIVISION
 APRIL 23, 2020

Report regarding the impact of the coronavirus on the municipal market and on the Department's mortgage revenue bond programs

BACKGROUND

Attached is a market update provided by the Department's Municipal Advisor, Stifel, Nicolaus & Company, Incorporated (Stifel) that describes relevant aspects of the market disruption caused by the coronavirus. The report addresses general market conditions, as well as implications for the Department's bond program and bond indentures. Because the Department's multifamily bonds are stand-alone, conduit issues, the focus is on the single family program.

The Department has two active single family indentures, the Single Family Mortgage Revenue Bond (SFMRB) indenture, and the Residential Mortgage Revenue Bond (RMRB) indenture:

Indenture Assets and Liabilities as of February 29, 2020	SFMRB Indenture	RMRB Indenture
Indenture Rating:	Sr: AA+/Aaa Jr: AA+/Aa2	AA+/Aaa
Total Assets (for parity)	633,371,559	271,287,380
Mortgage-Backed Securities	580,553,975	256,188,332
Mortgage Loans	19,292	-
Revenue and Reserve Funds	50,665,534	14,151,362
Accrued Interest Receivable	2,132,758	947,686
Total Liabilities	598,719,966	257,050,476
Total Bonds	577,976,617	245,160,000
<i>Fixed Rate, Senior Lien Bonds</i>	507,716,617	245,160,000
<i>Variable Rate, Senior Lien Bonds</i>	66,405,000	-
<i>Variable Rate, Junior Lien Bonds</i>	3,855,000	-
Total Notes	12,000,000	10,000,000
Bond and Note Accruals	8,743,349	1,890,476
Equity	34,651,593	14,236,904
Parity (%)	105.79%	105.54%
Additional, Non-Parity Assets		
Second Lien Mortgages	84,793,654	96,098,855

Both indentures are financially sound, and both meet rating agency requirements for maintaining the existing ratings on the bonds and indentures. The two areas of potential exposure, addressed below, would be the impact of forbearance on mortgage-loan related assets, and market volatility with respect to variable rate debt.

Fortunately, the Department pools its mortgage loans into mortgage-backed securities (MBS), with payments guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac. As a result, debt service payments on the Department's single family bonds will continue to be made as scheduled.

Mortgage Loans and Forbearance

The Coronavirus Aid, Relief, and Economic Security (CARES) Act applies to Federally backed mortgage loans; all first mortgage loans originated under the Department's Single family program are Federally backed mortgage loans and, as such, fall under the CARES Act. Single family program borrowers that experience a financial hardship due, directly or indirectly to COVID-19, may request forbearance for up to 180 days, with the ability to extend up to an additional 180 days. While in forbearance, only scheduled payments (with no additional fees, penalties, or interest) shall accrue to the borrower's account. As with forbearances following Hurricane Harvey, the Department's Master Servicer, Idaho Housing and Finance Association (IHFA), will work with borrowers to resolve forbearances in accordance with the guidance and requirements of FHA, VA, USDA, Ginnie Mae, Fannie Mae, and Freddie Mac, as applicable. In addition, the CARES Act placed a moratorium on foreclosures (other than with respect to vacant or abandoned property), including initiation, movement for judgment or order of sale, eviction, or foreclosure sale until at least May 17, 2020.

While a loan is in forbearance, IHFA, as servicer for the MBS, will advance scheduled mortgage loan payments as required under its contracts with Ginnie Mae, Fannie Mae, and Freddie Mac. The market, and servicers in general, have expressed concern about the ability of servicers to advance payments for forbearance loans. While Ginnie Mae has committed to provide liquidity to assist with these advances, the scope and mechanics of that assistance are unclear. The Federal Housing Finance Agency (FHFA) has not yet announced what, if any, assistance it will provide to servicers of loans backed by Fannie Mae or Freddie Mac. While IHFA has indicated that they have sufficient liquidity to meet the forbearance provisions of the CARES Act, under certain conditions, the Department may need to advance forbearance-related payments; that exposure is limited to the \$750,000 escrow account that the Department maintains for this purpose, and advanced amounts will be refunded to the Department.

Variable Rate Bonds

As of April 1, variable rate bonds totaled \$64,275,000, just 11% of the bonds outstanding under the SFMRB indenture, with the remainder fixed rate. And while there were interest rate spikes on variable rate bonds mid-March, the variable rate bond market seems to have recovered and rates have stabilized near or, in some cases, lower than they were prior to the recent volatility. The Department's variable rate bonds have been successfully remarketed each week since the

volatility began. With the variable rate debt comprising such a small percentage of the outstanding bonds (and continuing to decline), and with the strength of the SFMRB indenture, we do not anticipate any meaningful negative impact to the indentures with respect to the variable rate bonds. The attached report from Stifel addresses this in more detail.

Summary

The Department's Taxable Mortgage Program (TMP) has continued uninterrupted through this period of volatility. In fact, mortgage loan origination has been at record levels. While Participating Lenders have had many questions about HFA programs, the Department's Homeownership Division has been in almost constant communication with the lending community, assuring them that we are open for business as usual. Due to the economic impact of the coronavirus, we expect to experience a higher-than-usual cancellation rate for reserved loans, but have no way to predict what that rate will be. Staff is preparing for the potential implementation of a new bond program to enhance mortgage loan options to borrowers, but in the meantime, TMP continues to operate business as usual.

Staff, in consultation with the Department's Financial Advisor, closely manages the Department's indentures, seeking to improve efficiencies and/or add stability whenever possible. While there will be some negative impact to the indentures as a result of the economic impact of the coronavirus, the indentures can withstand the impact and will remain a viable financing source for low, very low, and moderate income homebuyers long into the future.

MARKET UPDATE FOR TDHCA BOARD MEETING

April 24, 2020



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APPENDIX A – STIFEL REPORT - TDHCA HOMEBUYER PROGRAMS MONTHLY REPORT

APPENDIX B - ADDITIONAL MARKET INFORMATION FROM STIFEL

DISCLOSURE: Stifel is providing information and is declaring to any obligated person that it has done so within the regulatory framework of MSRB Rule G-23 as a financial advisor, as defined therein, and not an underwriter to the issuer for this proposed issuance of municipal securities. A “financial advisory relationship” shall be deemed to exist when a firm enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters. Accordingly, any services provided by Stifel as they relate to our role as financial advisor should not be construed as those of an underwriter or placement agent.

These materials have been prepared by Stifel for the client or potential client to whom such materials are directly addressed and delivered for discussion purposes only. All terms and conditions are subject to further discussion and negotiation. Stifel does not express any view as to whether financing options presented in these materials are achievable or will be available at the time of any contemplated transaction. These materials do not constitute an offer or solicitation to sell or purchase any securities and are not a commitment by Stifel to provide or arrange any financing for any transaction or to purchase any security in connection therewith and may not be relied upon as an indication that such an offer will be provided in

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MARKET DISRUPTION DUE TO THE CORONAVIRUS

The impact of the spread of the coronavirus, subsequent decisions on shuttering various types of businesses and accompanying stay-at-home orders and concerns around the economic fallout of such decisions had disruptive effects on the capital markets in March 2020.

TIMELINE:

March 3, 2020	Federal Reserve announces emergency 0.50% cut to its target federal funds rate, down to 1.00 – 1.25%
March 15, 2020	Federal Reserve announces several actions to support its dual mandate of price stability and full employment and support the functioning of markets. <ol style="list-style-type: none"> 1.00% cut to its target federal funds rate, down to 0.00 – 0.25% \$500 billion in purchases of US Treasury securities and \$200 billion in purchases of agency mortgage-backed securities Coordinated dollar swap lines with other central banks
March 17, 2020	Federal Reserve establishes additional funding facilities to support functioning of capital markets: <ol style="list-style-type: none"> Commercial Paper Funding Facility (CPFF) Primary Dealer Credit Facility (PDCF)
March 18, 2020	Federal Reserve establishes the Money Market Mutual Fund Liquidity Facility (MMLF) to fund assets from money market mutual funds.
March 18, 2020	The SIFMA Index resets at 5.20% - up nearly 400 basis points (4.00%) from the previous week as tax-exempt bond and money market funds see collective outflows of over \$17 billion.
Week ending March 20, 2020	Municipal market yields increase dramatically relative to US Treasuries, with 30-year AAA MMD hitting 3.37% (vs. 1.55% UST)
March 23, 2020	Federal Reserve announces that it does not have a cap for US Treasury and agency MBS purchases (quantitative easing), with purchases “in the amounts needed to support smooth market functioning”. Federal Reserve also announces expansion of QE to include agency commercial mortgage-backed securities, establishes facilities for the purchase of corporate bonds in both primary and secondary markets (PMCCF and SMCCF), expands the MMLF to include municipal VRDNs, and establishes the Term Asset-Backed Securities Loan Facility (TALF).
March 25 & 26, 2020	Municipal market stages significant recovery with AAA MMD yields improving 65 bps and 60 bps, respectively. March 25, 2020 is AAA MMD’s largest one-day move. The SIFMA Index sets at 4.71%, down from 5.20%, as dealer inventories start to clear.
March 27, 2020	The CARES Act is passed (Coronavirus Aid, Relief and Economic Stimulus).
April 1, 2020	The SIFMA Index sets at 1.28%, as inflows into tax-exempt money market funds supports demand for VRDNs.

April 9, 2020

The Federal Reserve announces an additional \$2.3 trillion in lending facilities to support the economy. These include the Municipal Liquidity Facility that will purchase up to \$500 billion in tax, revenue and bond anticipation notes from state issuers, those cities with populations over 1 million and those counties with populations over 2 million.

Sources:

www.federalreserve.gov

Investment Company Institute

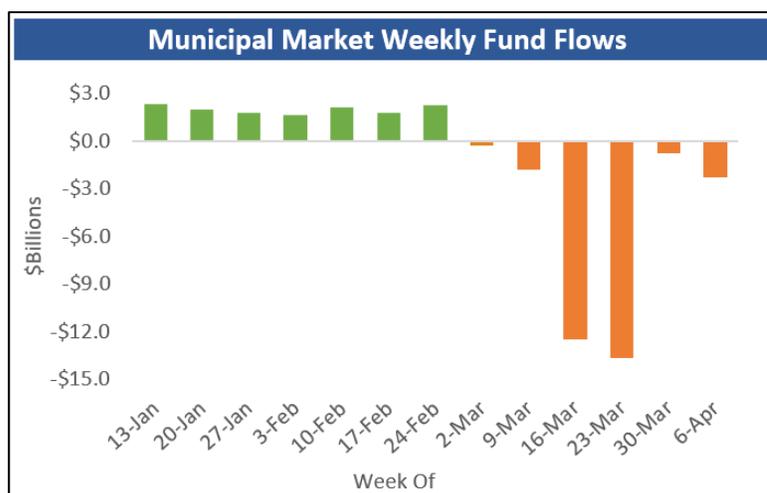
Lipper

Thomson Reuters

EXODUS FROM MUNI BOND FUNDS

Record outflows from tax-exempt bond funds drove selling to meet redemptions. Money market funds were hit with redemptions at the same time, leaving no buyers to absorb tenders of VRDNs. With visible inventory swelling to over \$30B, resets of daily and VRDNs spiked as dealers tried to attract buyers. With the Federal Reserve introducing, then expanding, its MMLF to purchase assets from tax-exempt money market funds, including VRDNs, demand began to stabilize. Tax-exempt money market funds saw inflows by the week of April 1, and the SIFMA Index set 0.74% the week of April 8.

Lipper reported a 6th straight week of municipal fund outflows, totaling \$2.3 billion, up from the prior week's \$750 million.



HOUSING BOND CALENDAR

Housing Finance Agencies were not exempt from the flight of muni bond investors. During the week of March 9th, two taxable pass-through transactions priced (one TEMS and a state multi-family). The market began its deterioration towards the middle part of that week. In the ensuing weeks, no State HFA transactions priced in the market. There are currently 8 State HFA single family transaction on a "Day-to-Day" status.

CONSIDERATIONS FOR TDHCA

Variable Rate Bonds

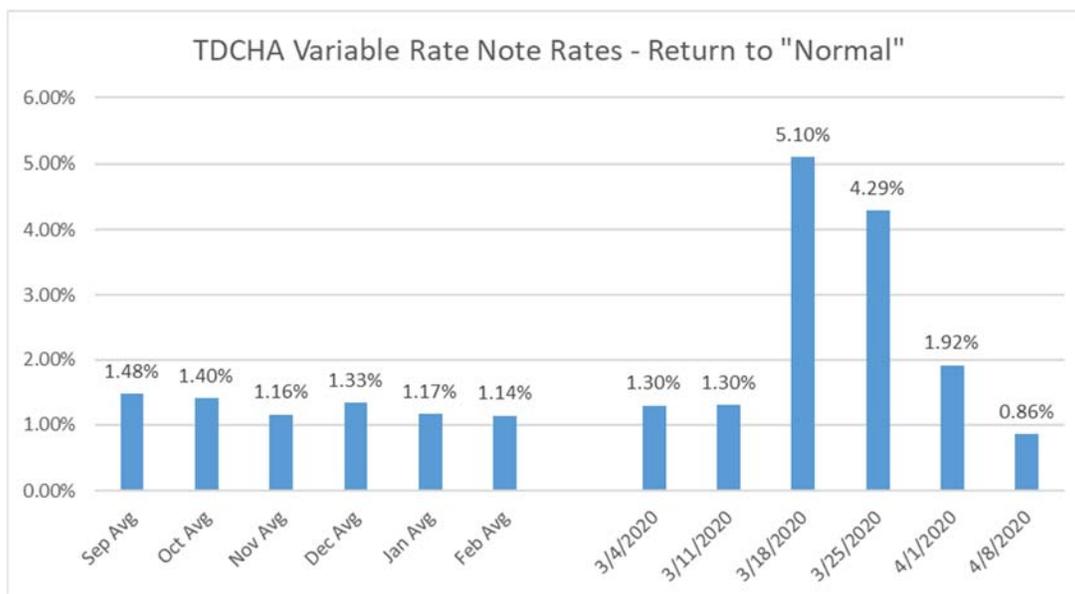
- SFMRB indenture has \$64 million of VRDNs representing 11% of the \$568 million bonds outstanding.
- Variable rate debt continues to decline from the original \$367 million issued.
- Liquidity is provided by State of Texas Comptroller and is has the highest short term ratings by Moody's (VMIG 1) and Standard & Poors (A-1+)
- Remarketed weekly by JP Morgan (\$52.6 million-82%) and Piper Sandler (\$11.6 million-18%).
- The RMRB Indenture has no variable rate debt.

The following table shows the fixed and variable rate bonds outstanding in the Single Family MRB Indenture as of 3/1/2020:

Single Family MRB Indenture as of March 1, 2020			
Series	Fixed Rate Bonds	Variable Rate Bonds	Total Outstanding Bonds
2004B		\$16,655,000	\$16,655,000
2004D		\$11,645,000	\$11,645,000
2005A		\$16,285,000	\$16,285,000
2007A		\$15,835,000	\$15,835,000
2013A	\$13,330,000		\$13,330,000
2015AB	\$29,320,000		\$29,320,000
2016AB	\$48,025,000		\$48,025,000
2017ABC	\$109,163,049		\$109,163,049
2018A	\$138,885,000		\$138,885,000
2019A	\$164,945,000		\$164,945,000
2004A JL		\$3,855,000	\$3,855,000
	\$503,668,049	\$64,275,000	\$567,943,049
	88.7%	11.3%	100.0%

- Short term rates for all corporate and municipal debt (including TDHCA) spiked for about 2 - 3 weeks beginning mid-March. The market has settled back to more “normal” levels, especially for higher credits like TDHCA. This is due, in part, to Federal liquidity support.

The following graph shows the TDHCA tax-exempt VRDN rate resets since September:



Swaps

- TDHCA's swaps have not been adversely affected by the current market disruption.
- The VRDN/swap structure continues to perform as designed - which is to provide an effective hedge against fluctuations in interest rates.
- The following summarizes TDHCA's swap counterparties:

Swap Counterparty Summary						
Swap Counterparty	S&P Rating	Moody's Rating	Fitch Rating	Bond Series	3/1/2020	
					Total Outstanding Notional Amount	Counterparty Concentration
Goldman Sachs Bank USA	A+/Stable	A1/Stable	A+/Stable	2004D	10,885,000	19%
JPMorgan Chase Bank	A+/Stable	Aa2/Stable	AA/Stable	2005A & 2007A	32,120,000	55%
BNY Mellon	AA-/Stable	Aa2/Stable	AA/Stable	2004B	14,895,000	26%
Total					57,900,000	100%

Fixed Rate Bonds

- Current market has no credit or liquidity impact on TDHCA's fixed rate bonds
- Represent 89% of the SFMRB Indenture and 100% of the RMRB Indenture

Rating Agency Indenture Cashflow Projections

- Stifel prepares detailed cashflows for both SFMRB and RMRB indentures
- We incorporate the very stringent stress test requirements from both rating agencies, including "worst case" tests for variable rate debt.
- All scenarios pass every rating agency criteria to maintain the highest rating offered by Moody's (Aaa) and Standard & Poor's (AA+)

APPENDIX A: STIFEL REPORT - TDHCA HOMEBUYER PROGRAMS MONTHLY REPORT

APPENDIX B: ADDITIONAL MARKET INFORMATION FROM STIFEL

1. Municipal Market Update – Week of April 13, 2020
2. Economic Commentaries - Lindsey Piegza, Chief Economist
3. Economic Forecast Grid through 4Q 2020
4. Muni Market Outlook – Week of April 13, 2020
5. Agency Market Snapshot – as of April 13, 2020

APPENDIX A

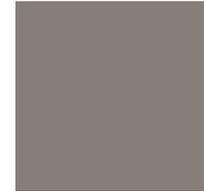
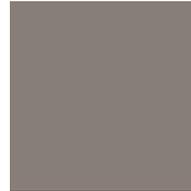
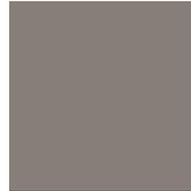
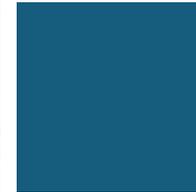
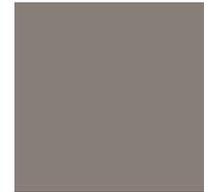
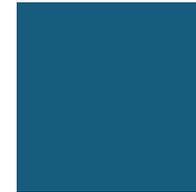
STIFEL REPORT - TDHCA HOMEBUYER PROGRAMS MONTHLY REPORT



Texas Department of Housing and Community Affairs

My First Home and My Choice Texas Homebuyer Programs Monthly Report

March 2020



Disclosure

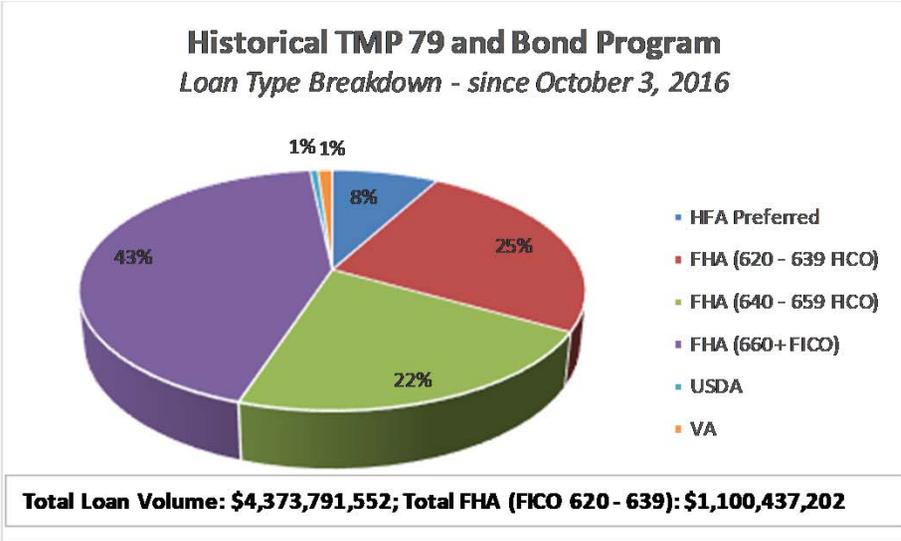
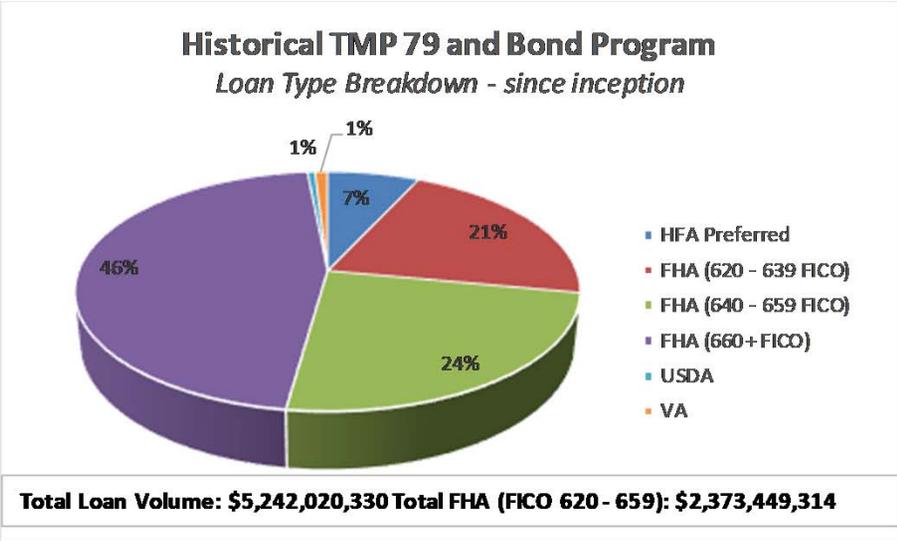
*Source data presented in this report was provided by Housing and Development Services, Inc. d/b/a eHousingPlus and has not been independently verified by Stifel, Nicolaus & Company, Incorporated. Data contained within this report is being provided for informational purposes only. Please note that information contained within is **confidential** in nature and only intended for use by the Texas Department of Housing and Community Affairs. Public and unlawful distribution of this material may result in legal action.*

My FIRST Texas Home and My CHOICE Texas Home

- **Program Summary from March 2020**
 - New loan reservation volume was **up over 60%** in March from February 2020 with about **\$293 million** in new, non-cancelled loan reservations
 - FHA loans in Bond Eligible, Combo and My Choice products continue to comprise 95% of new loan reservations
 - Conventional loan volume increased in February 2020 by \$7.7 million in loan reservations and remains about 5% of new loan reservations.
- **March was a tumultuous month in the capital markets**, with spreads to US Treasuries widening on most every asset class, including mortgage-backed securities.
 - TDHCA's volume spiked, likely as a result of stresses facing other correspondent lending channels.

FICO Scores – Historical and Recent Data

- For loans reserved on or after October 3, 2016, Idaho Housing Finance Authority is the servicer for TDHCA’s TMP 79 and Bond-eligible loans.
- The tables below highlight FICO scores across FHA loans, relative to all TMP 79 and Bond-eligible loans.



* Only includes non-cancelled loans as of 4/1/20

Pipeline Summary – All Loans

Program Summary - Stage Summary by Reservation Date				
	Since Inception		March-20	
	Loan Count	Loan Amount	Loan Count	Loan Amount
Total Pipeline:	38,371	\$6,345,870,821	1,655	\$307,784,262
<i>Snapshot Stage Summary - as of 3/31/2020</i>				
Reservation	1,087	\$200,154,365	990	\$182,382,154
UW Certification	774	\$145,382,462	492	\$92,749,333
eHP Compliance	284	\$52,013,571	66	\$12,089,074
Purchased/Service	918	\$167,266,671	33	\$6,403,753
Pooled	0	\$0	0	\$0
Investor/Trustee	28,784	\$4,681,424,868	0	\$0
Cancelled	6,524	\$1,099,628,885	74	\$14,159,948
<i>Cumulative Stage Summary - as of 3/31/2020</i>				
Reservation	38,371	\$6,345,870,821	1,655	\$307,784,262
UW Certification	31,401	\$5,145,558,832	591	\$111,242,160
eHP Compliance	30,029	\$4,906,847,901	99	\$18,492,827
Purchased/Service	29,704	\$4,848,877,114	33	\$6,403,753
Pooled	28,785	\$4,681,610,443	0	\$0
Investor/Trustee	28,785	\$4,681,610,443	0	\$0
Cancelled	6,524	\$1,099,628,885	74	\$14,159,948

Pipeline Speed Summary Average Number of Days		
Stage Progression	Since Inception	Last 3 Months
From Reservation to Underwriter Certification	15.26	16.56
From Underwriter Certification to eHP Compliance	24.58	25.72
From eHP Compliance to Loan Purchase	17.86	20.96
From Reservation to Loan Purchase	57.69	63.24
From Loan Purchase to MBS Purchase	28.61	22.81
From Reservation to MBS Purchase	86.30	86.05
From Reservation to Loan Cancellation	41.29	

Last 3 Months is by MBS Settlement Date - both Govt

- In the wake of a dramatic flight to quality and Fed quantitative easing, US Treasury yields declined precipitously in March: the 2-year UST yield was down 0.66% to 0.25% and the 10-year UST yield was down 0.48% to 0.67%.
- Specified pool activity nearly dried up in the middle of March. There is some activity in the 4% and 4.5% coupons. Pay-ups have come down substantially since February and early March.

Loan Size Distribution - by Reservation Date*				
Loan Size	Since Inception		March-20	
	Loan Count	Total Loan Amount	Loan Count	Total Loan Amount
<\$85K	1,196	\$88,830,285	27	\$2,032,696
<\$110K	3,835	\$349,225,301	93	\$8,566,660
<\$125K	6,472	\$660,896,049	156	\$16,024,277
<\$150K	12,320	\$1,446,649,121	347	\$42,409,611
<\$175K	18,936	\$2,542,427,102	610	\$85,570,745
>=\$175K	12,911	\$2,703,814,833	971	\$208,053,568

* Only includes non-cancelled loans as of 4/1/20

Month over Month Comparison – by Loan Product

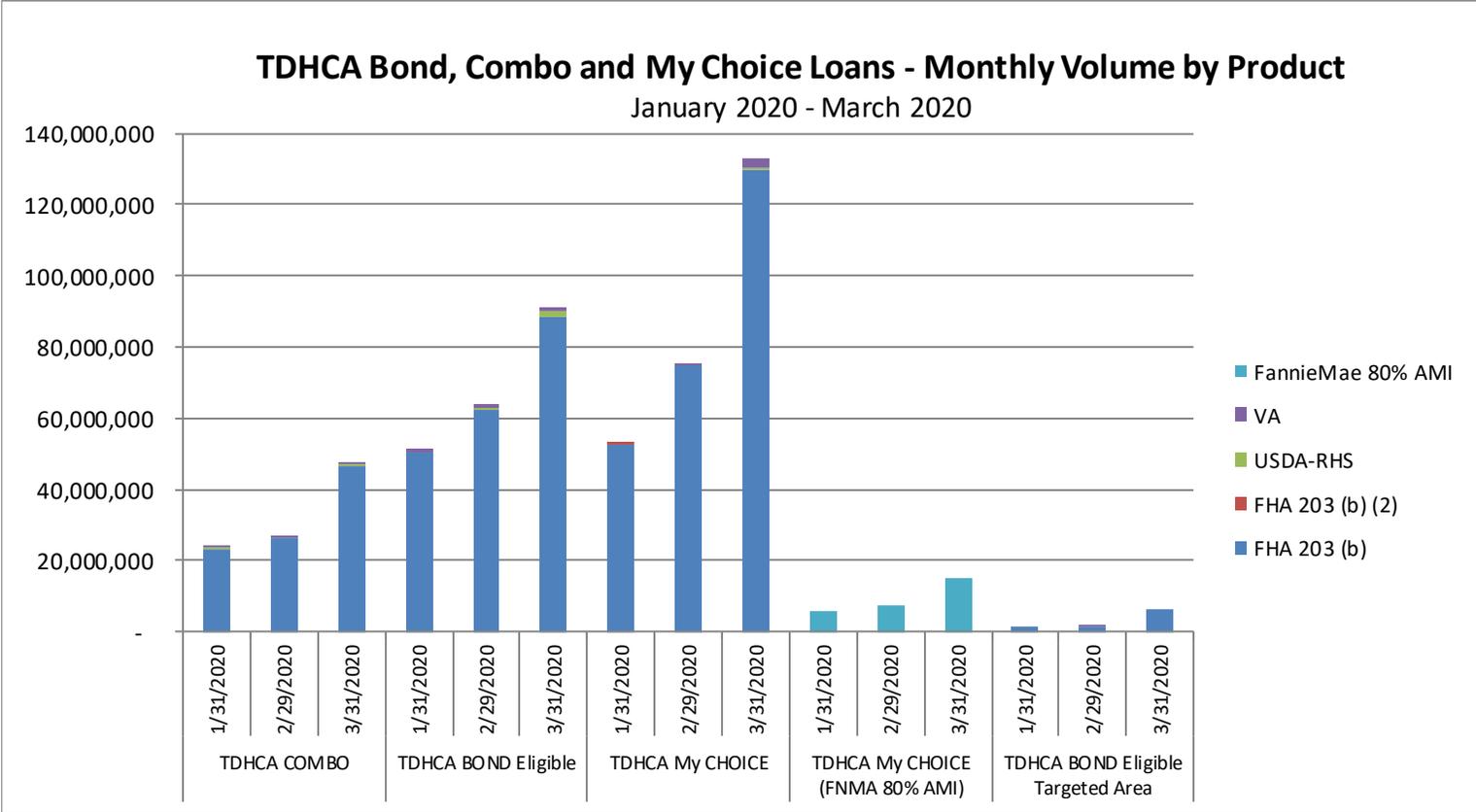
Monthly Loan Volume by Product - February 2020					
Allocation Name	FHA 203 (b)	USDA-RHS	VA	FNMA 80% AMI	Grand Total
TDHCA BOND					0
TDHCA BOND Eligible	62,280,897	377,767	1,333,017		63,991,681
TDHCA BOND Eligible Targeted Area	1,709,800		125,500		1,835,300
TDHCA COMBO	26,465,856	122,727	153,450		26,742,033
TDHCA My CHOICE	74,681,023	321,150	214,830		75,217,003
TDHCA My CHOICE (FNMA 80% AMI)				7,522,824	7,522,824
Grand Total	165,137,576	821,644	1,826,797	7,522,824	175,308,841

Monthly Loan Volume by Product - March 2020					
Allocation Name	FHA 203 (b)	USDA-RHS	VA	FNMA 80% AMI	Grand Total
TDHCA BOND					0
TDHCA BOND Eligible	88,591,094	1,451,014	1,274,750		91,316,858
TDHCA BOND Eligible Targeted Area	6,413,116				6,413,116
TDHCA COMBO	46,691,895	368,181	689,050		47,749,126
TDHCA My CHOICE	129,939,478	464,634	2,512,410		132,916,522
TDHCA My CHOICE (FNMA 80% AMI)				15,228,692	15,228,692
Grand Total	271,635,583	2,283,829	4,476,210	15,228,692	293,624,314

Month Over Month Change - March 2020 versus February 2020					
Allocation Name	FHA 203 (b)	USDA-RHS	VA	FNMA 80% AMI	Grand Total
TDHCA BOND	0	0	0	0	0
TDHCA BOND Eligible	26,310,197	1,073,247	(58,267)	0	27,325,177
TDHCA BOND Eligible Targeted Area	4,703,316	0	(125,500)	0	
TDHCA COMBO	20,226,039	245,454	535,600	0	21,007,093
TDHCA My CHOICE	55,258,455	143,484	2,297,580	0	57,699,519
TDHCA My CHOICE (FNMA 80% AMI)	0	0	0	7,705,868	0
Grand Total MoM Change (\$\$)	106,498,007	1,462,185	2,649,413	7,705,868	110,609,605
Grand Total MoM Change (%)	64.49%	177.96%	145.03%	102.43%	63.09%

* Only includes non-cancelled loans as of 4/1/20

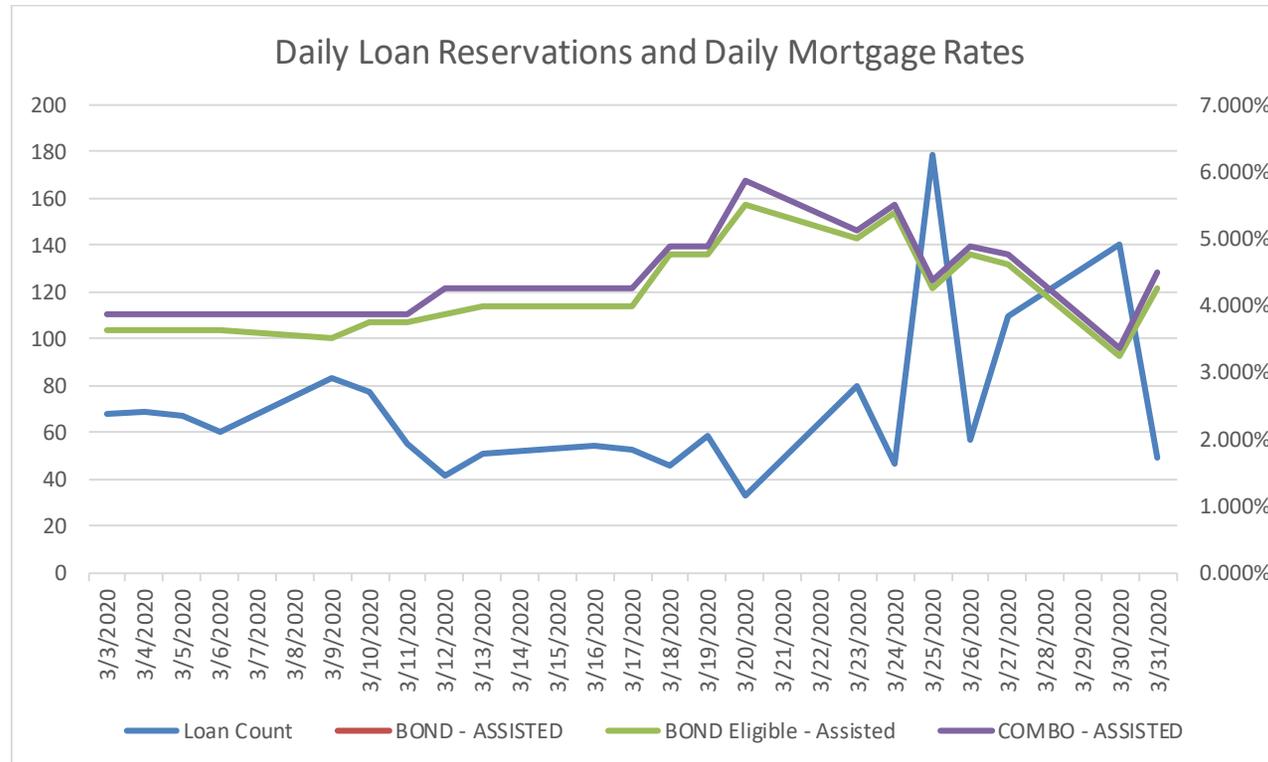
Loan Program Volume



* Only includes non-cancelled loans as of 4/1/20

Daily Reservations and Mortgage Rates

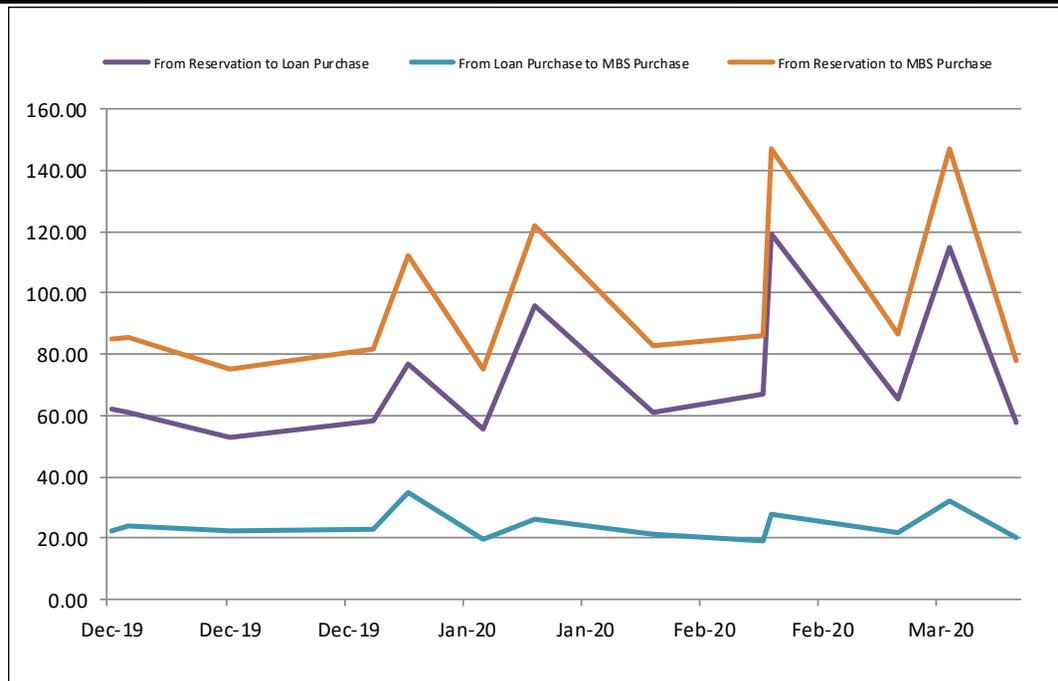
- The chart below has loan count for daily loan reservations, compared to 4% assistance government loan mortgage rates.



* Only includes non-cancelled loans as of 4/1/20

Pipeline Speed Analysis – by Settlement Date

Pipeline Speed Summary													
Average Number of Days by MBS Purchase Date													
Settlement Date	12/3/2019	12/5/2019	12/17/2019	1/3/2020	1/7/2020	1/16/2020	1/22/2020	2/5/2020	2/18/2020	2/19/2020	3/5/2020	3/11/2020	3/19/2020
Settlement Par Amount	41,877,725	30,783,582	40,467,448	57,633,059	32,837,293	49,628,111	6,114,733	82,212,657	52,998,831	5,655,846	89,026,532	598,599	91,972,695
From Reservation to Underwriter Certification	17.42	16.52	14.50	15.32	21.42	15.03	21.17	15.98	16.66	21.18	17.05	14.00	15.76
From Underwriter Certification to eHP Compliance	24.22	25.57	20.74	23.05	34.67	22.34	47.94	25.32	26.91	52.52	26.53	60.33	24.54
From eHP Compliance to Loan Purchase	20.63	19.17	17.61	20.02	20.82	18.12	26.75	19.94	23.34	45.73	21.57	40.67	17.58
From Reservation to Loan Purchase	62.27	61.26	52.85	58.39	76.90	55.49	95.86	61.24	66.91	119.42	65.16	115.00	57.88
From Loan Purchase to MBS Purchase	22.64	24.16	22.27	23.09	35.13	19.81	26.17	21.52	19.31	27.61	21.71	32.00	20.18
From Reservation to MBS Purchase	84.91	85.42	75.12	81.48	112.03	75.30	122.03	82.76	86.22	147.03	86.86	147.00	78.06



Lender Performance History – Top 25

Lender Cancellation History						
Lender	Since Inception			Last Three Months		
	Total Loan Reservations (\$)	Loan Cancellations (\$)	Loan Cancellations (%)	Total Loan Reservations (\$)	Loan Cancellations (\$)	Loan Cancellations (%)
loanDepot.com, LLC	\$667,283,939	\$127,899,144	19.17%	\$105,006,805	\$4,180,486	3.98%
Cornerstone Home Lending, Inc.	\$583,244,552	\$109,774,566	18.82%	\$52,869,042	\$4,549,557	8.61%
Guild Mortgage Company	\$443,179,178	\$61,510,220	13.88%	\$26,493,100	\$2,230,642	8.42%
Everett Financial, Inc.	\$423,338,262	\$76,659,932	18.11%	\$48,333,125	\$3,227,554	6.68%
CalCon Mutual Mortgage LLC dba OneTrust Home Loans	\$338,668,998	\$71,414,900	21.09%	\$27,982,146	\$3,316,920	11.85%
DHI Mortgage Co., Ltd.	\$211,957,007	\$28,773,864	13.58%	\$17,325,291	\$2,079,089	12.00%
CMG Mortgage, Inc. dba CMG Financial	\$189,560,907	\$45,349,903	23.92%	\$18,759,187	\$1,616,559	8.62%
Academy Mortgage Corporation	\$148,356,927	\$27,694,556	18.67%	\$20,967,429	\$2,598,990	12.40%
Broker Solutions Inc, DBA New American Funding	\$137,643,894	\$12,993,508	9.44%	\$2,979,430	\$0	0.00%
Fairway Independent Mortgage Corporation	\$129,566,735	\$21,113,657	16.30%	\$16,755,526	\$1,377,724	8.22%
LoanDepot.com, LLC dba iMortgage	\$127,039,163	\$26,006,128	20.47%			
PrimeLending, a Plains Capital Company	\$125,767,868	\$21,773,251	17.31%	\$7,740,952	\$1,291,960	16.69%
SFMC, LP dba Service First Mortgage Company	\$123,308,192	\$11,035,369	8.95%	\$21,570,800	\$722,292	3.35%
Security National Mortgage Company	\$108,292,247	\$6,019,399	5.56%	\$8,169,987	\$0	0.00%
Caliber Home Loans, Inc.	\$108,156,327	\$29,096,908	26.90%	\$6,539,635	\$721,194	11.03%
Gateway Mortgage Group, a division of Gateway First Bank	\$97,093,038	\$19,507,587	20.09%	\$20,898,505	\$3,961,969	18.96%
Wallick & Volk, Inc	\$85,630,518	\$11,825,448	13.81%	\$15,187,051	\$906,062	5.97%
Castle & Cooke Mortgage, LLC	\$78,695,040	\$14,250,402	18.11%	\$683,343	\$0	0.00%
ARK-LA-TEX Financial Services	\$76,082,065	\$10,228,912	13.44%	\$3,591,489	\$0	0.00%
InterLinc Mortgage Services, LLC	\$75,272,264	\$15,215,668	20.21%	\$3,331,626	\$139,428	4.18%
Houstonian Mortgage Group, Inc.	\$74,984,764	\$8,754,055	11.67%			
Envoy Mortgage, Ltd	\$72,120,081	\$16,428,938	22.78%			
AmCap Mortgage Ltd.	\$71,625,448	\$10,030,047	14.00%	\$4,840,891	\$299,845	6.19%
Nations Reliable Lending, LLC	\$70,011,938	\$9,748,317	13.92%	\$6,263,390	\$436,939	6.98%
Eagle Home Mortgage, LLC.	\$62,530,801	\$19,690,862	31.49%	\$10,715,272	\$3,011,107	28.10%

Highlighted lenders have cancellations greater than 20%

Lender Performance History

Lender Volume History - Current/Exceptions Loans						
Lender	Since Inception - Top 15			Last Three Months - Top 15		
	Loan Amount	# of Loans	Rank (by Loan Amount)	Loan Amount	# of Loans	Rank (by Loan Amount)
loanDepot.com, LLC	\$539,384,795	2,690	1	\$100,826,319	481	1
Cornerstone Home Lending, Inc.	\$473,469,986	2,944	2	\$48,319,485	253	2
Guild Mortgage Company	\$381,668,958	2,437	3	\$24,262,458	135	5
Everett Financial, Inc.	\$346,678,330	1,977	4	\$45,105,571	246	3
CalCon Mutual Mortgage LLC dba OneTrust Home Loans	\$267,254,098	1,360	5	\$24,665,226	118	4
DHI Mortgage Co., Ltd.	\$183,183,143	956	6	\$15,246,202	71	12
CMG Mortgage, Inc. dba CMG Financial	\$144,211,004	826	7	\$17,142,628	98	9
Broker Solutions Inc, DBA New American Funding	\$124,650,386	978	8	\$2,979,430	19	38
Academy Mortgage Corporation	\$120,662,371	740	9	\$18,368,439	104	7
SFMC, LP dba Service First Mortgage Company	\$112,272,823	655	10	\$20,848,508	119	6
Fairway Independent Mortgage Corporation	\$108,453,078	760	11	\$15,377,802	100	11
PrimeLending, a Plains Capital Company	\$103,994,617	648	12	\$6,448,992	35	12
LoanDepot.com, LLC dba iMortgage	\$101,033,035	585	13			
Caliber Home Loans, Inc.	\$79,059,419	704	14	\$8,169,987	50	25
Wallick & Volk, Inc	\$73,805,070	651	15	\$14,280,989	75	14
Gateway Mortgage Group, a division of Gateway First Bank	\$77,585,451	309	16	\$16,936,536	97	10
Town Square Mortgage & Investments, Inc	\$47,730,410	310	29	\$17,365,611	106	8
Infinity Mortgage Holdings, LLC	\$35,273,888	206	37	\$10,564,994	61	15
Synergy One Lending Inc	\$33,722,860	169	40	\$14,313,554	67	13

Lenders highlighted in **green** moved up more than 5 places in the Last Three Months versus Since Inception

Lenders highlighted in **red** moved down more than 5 places in the Last Three Months versus Since Inception

Pipeline Summary – Conventional Program

Program Summary - Stage Summary by Reservation Date				
	Since Inception		March-20	
	Loan Count	Loan Amount	Loan Count	Loan Amount
Total Pipeline:	3,106	\$522,417,287	91	\$15,678,325
Snapshot Stage Summary - as of 3/31/2020				
Reservation	59	\$10,161,197	54	\$9,412,295
UW Certification	32	\$5,368,195	28	\$4,594,813
eHP Compliance	22	\$4,191,100	4	\$884,934
Purchased/Servicer	73	\$13,059,156	2	\$336,650
Pooled	0	\$0	0	\$0
Investor/Trustee	2,305	\$386,641,137	0	\$0
Cancelled	615	\$102,996,502	3	\$449,633
Cumulative Stage Summary - as of 3/31/2020				
Reservation	3,106	\$522,417,287	91	\$15,678,325
UW Certification	2,481	\$417,088,420	34	\$5,816,397
eHP Compliance	2,402	\$404,249,385	4	\$884,934
Purchased/Servicer	2,402	\$404,249,385	2	\$336,650
Pooled	2,305	\$386,641,137	0	\$0
Investor/Trustee	2,305	\$386,641,137	0	\$0
Cancelled	615	\$102,996,502	3	\$449,633

Pipeline Speed Summary Average Number of Days		
Stage Progression	Since Inception	Last 3 Months
From Reservation to Underwriter Certification	14.95	15.78
From Underwriter Certification to eHP Compliance	24.38	23.83
From eHP Compliance to Loan Purchase	18.75	17.43
From Reservation to Loan Purchase	58.08	57.05
From Loan Purchase to MBS Purchase	30.86	30.83
From Reservation to MBS Purchase	88.94	87.88
From Reservation to Loan Cancellation	38.73	

Last 3 Months is by MBS Settlement Date - Conventional Loans only. Not weighted average.

- With the volatility and liquidity challenges in the market, the specified pool market deteriorated in March.
- There was some thawing of activity in the 4% and 4.5% coupons towards the end of the month, but at much lower pay-ups than February.

Loan Size Distribution - by Reservation Date*				
Loan Size	Since Inception		March-20	
	Loan Count	Total Loan Amount	Loan Count	Total Loan Amount
<\$85K	109	\$7,857,610	3	\$191,185
<\$110K	270	\$23,781,940	8	\$695,246
<\$125K	431	\$42,777,961	12	\$1,156,481
<\$150K	850	\$100,323,244	23	\$3,088,814
<\$175K	1,395	\$189,234,750	44	\$6,039,500
>=\$175K	1,095	\$230,034,023	44	\$9,189,192

* Only includes non-cancelled loans as of 4/1/20

Geographical Distribution – by City

- Below are the top 25 cities for loan reservation volume in TDHCA’s program: since inception and the current month

Loan Distribution - By City*			
City	Loan Count	Total Loan Amount	Percent
San Antonio	3,383	\$553,299,241	17.91%
Houston	2,932	\$451,436,140	14.62%
El Paso	2,771	\$343,518,784	11.12%
Fort Worth	1,287	\$227,649,209	7.37%
Dallas	778	\$131,029,105	4.24%
Humble	741	\$127,433,374	4.13%
Manor	603	\$123,310,272	3.99%
Katy	673	\$119,234,917	3.86%
Austin	405	\$82,862,261	2.68%
Kyle	381	\$81,711,342	2.65%
Arlington	461	\$80,489,113	2.61%
Spring	484	\$79,740,001	2.58%
Jarrell	447	\$79,411,541	2.57%
Crowley	318	\$63,824,047	2.07%
New Braunfels	291	\$62,394,590	2.02%
Hockley	316	\$60,590,793	1.96%
Laredo	359	\$53,535,897	1.73%
Conroe	319	\$53,186,949	1.72%
Princeton	227	\$51,187,393	1.66%
Forney	222	\$46,601,811	1.51%
Corpus Christi	328	\$46,414,490	1.50%
Pflugerville	198	\$43,385,496	1.40%
Horizon City	333	\$42,866,786	1.39%
Mesquite	252	\$41,793,514	1.35%
Hutto	197	\$41,743,549	1.35%
Total	18,706	3,088,650,614	100.00%

Loan Distribution - By City*, March 2020			
City	Loan Count	Total Loan Amount	Percent
San Antonio	169	\$30,360,536	19.77%
Houston	120	\$21,765,069	14.17%
El Paso	82	\$10,933,842	7.12%
Fort Worth	62	\$12,277,623	7.99%
Katy	43	\$8,933,712	5.82%
Jarrell	31	\$5,734,832	3.73%
Spring	33	\$6,092,911	3.97%
Dallas	29	\$5,042,210	3.28%
Forney	15	\$3,462,312	2.25%
Arlington	27	\$5,527,476	3.60%
Kyle	18	\$4,222,708	2.75%
Humble	35	\$6,949,616	4.53%
Laredo	20	\$3,411,613	2.22%
Crowley	13	\$2,967,735	1.93%
Manor	19	\$4,247,302	2.77%
Venus	13	\$2,578,311	1.68%
New Braunfels	16	\$3,593,959	2.34%
Austin	10	\$2,485,495	1.62%
Garland	8	\$1,811,071	1.18%
Baytown	10	\$1,792,047	1.17%
Iowa Colony	12	\$2,628,238	1.71%
Amarillo	13	\$1,686,331	1.10%
Waxahachie	5	\$1,145,861	0.75%
Hutto	7	\$1,698,909	1.11%
Grand Prairie	11	\$2,222,790	1.45%
Total	821	153,572,509	100.00%

* Only includes non-cancelled loans as of 4/1/20

Loan Level Summary – since TMP 79 Inception

Loan Balance Distribution (Cumulative)*			
Loan Balance	Loan Count	Total Loan Amount	Percent
<= \$50k	20	\$935,580	0.02%
<= \$100k	2,575	\$216,579,843	4.13%
<= \$150k	12,320	\$1,446,649,121	27.57%
<= \$200k	24,743	\$3,627,753,636	69.15%
<= \$250k	30,702	\$4,935,421,964	94.08%
> \$250k	1,145	\$310,819,972	5.92%
Min:	\$32,051	Max	\$389,500
Avg	\$164,732		

Lock Volume by Property Type*			
Property Type	Loan Count	Total Loan Amount	Percent
SFR	30,836	\$5,092,273,499	97.07%
Condo	379	\$66,353,484	1.26%
Townhome	217	\$31,242,364	0.60%
Manuf Home	376	\$50,435,769	0.96%
Duplex	36	\$5,558,894	0.11%
Total	31,844	\$5,245,864,010	100.00%

Lock Volume by Property Category*			
Category	Loan Count	Total Loan Amount	Percent
New	11,374	\$2,127,965,907	40.56%
Existing	20,472	\$3,118,164,404	59.44%
Total	31,846	\$5,246,130,311	100.00%

Gross Rate Distribution*			
Rate	Loan Count	Total Loan Amount	Percent
2.750%	17	\$3,273,921	0.06%
2.875%	14	\$2,972,204	0.06%
3.000%	2	\$338,553	0.01%
3.125%	10	\$1,994,672	0.04%
3.250%	232	\$33,504,144	0.64%
3.375%	106	\$20,657,500	0.39%
3.500%	310	\$44,343,743	0.85%
3.600%	13	\$2,336,745	0.04%
3.625%	376	\$61,314,722	1.17%
3.750%	893	\$136,723,292	2.61%
3.875%	731	\$129,471,179	2.47%
3.990%	143	\$26,247,559	0.50%
4.000%	1,323	\$207,512,436	3.96%
4.125%	2,115	\$345,230,014	6.58%
4.250%	2,202	\$381,141,195	7.27%
4.375%	3,243	\$533,264,526	10.16%
4.380%	65	\$11,759,067	0.22%
4.400%	122	\$21,153,721	0.40%
4.450%	140	\$24,113,451	0.46%
4.500%	2,715	\$446,293,477	8.51%
4.550%	235	\$41,528,546	0.79%
4.625%	1,266	\$209,014,228	3.98%
4.650%	1	\$223,771	0.00%
4.750%	1,917	\$287,497,339	5.48%
4.875%	1,528	\$257,586,430	4.91%
4.990%	348	\$58,214,116	1.11%
5.000%	1,743	\$273,159,120	5.21%
5.125%	738	\$127,499,964	2.43%
5.250%	1,069	\$169,431,274	3.23%
5.300%	418	\$68,188,737	1.30%
5.375%	1,573	\$271,261,952	5.17%
5.430%	680	\$115,255,983	2.20%
5.500%	2,282	\$378,606,873	7.22%
5.625%	1,481	\$249,387,475	4.75%
5.750%	963	\$164,086,616	3.13%
5.875%	693	\$117,385,202	2.24%
6.000%	140	\$24,268,190	0.46%
Total	31,847	5,246,241,936	100.00%

* Only includes non-cancelled loans as of 4/1/20

Borrower Profile Summary – since TMP 79 Inception

Annual Household Income Distribution*			
Income	Loan Count	Loan Amounts	Percent
<=20,000	153	\$17,455,376	0.33%
<=30,000	1,293	\$136,582,518	2.60%
<=40,000	4,213	\$538,346,263	10.26%
<=50,000	6,825	\$1,025,882,330	19.55%
<=60,000	7,917	\$1,332,842,713	25.41%
<=70,000	6,035	\$1,093,425,000	20.84%
<=80,000	3,543	\$692,944,338	13.21%
<=90,000	1,467	\$316,409,527	6.03%
>90,000	401	\$92,353,872	1.76%
Total	31,847	\$5,246,241,936	100.00%
Min:	\$1,904	Max	\$152,604
Wtg Ave	\$57,259		

FICO Distribution*			
FICO	Loan Count	Loan Amounts	Percent
<=620	338	59,730,912	1.14%
<=640	7,032	1,213,477,965	23.14%
<=660	7,971	1,280,798,021	24.42%
<=680	5,428	877,354,711	16.73%
<=700	3,509	573,247,139	10.93%
<=720	2,550	416,773,631	7.95%
<=740	2,024	329,877,884	6.29%
<=760	1,462	240,294,680	4.58%
<=780	863	142,836,878	2.72%
<=800	479	81,401,158	1.55%
>800	181	28,837,691	0.55%
Total	31,837	5,244,630,670	100.00%
Min:	612	Max	900
Wtg Ave	674		

Age Distribution*			
Age	Loan Count	Loan Amounts	Percent
<=20	114	17,992,035	0.34%
<=25	3,452	536,348,955	10.22%
<=30	7,401	1,197,376,850	22.83%
<=35	6,449	1,071,387,421	20.42%
<=40	4,546	771,545,321	14.71%
<=45	3,228	552,561,724	10.53%
<=50	2,459	417,815,225	7.97%
<=55	1,750	287,208,806	5.48%
<=60	1,267	206,865,951	3.94%
>60	1,176	186,379,805	3.55%
Total	31,842	\$5,245,482,093	100.00%
Min:	18	Max	99
Wtg Ave	36		

Lock Volume by Household Size*			
Size	Loan Count	Loan Amounts	Percent
1	9,117	\$1,457,782,008	29.42%
2	7,665	\$1,252,004,969	24.22%
3	6,692	\$1,115,535,862	21.52%
4	5,006	\$841,724,756	15.86%
5	2,354	\$399,790,183	6.27%
6	737	\$129,948,466	2.06%
7	208	\$37,031,786	0.55%
8+	68	\$12,423,907	0.10%
Total	31,847	\$5,246,241,936	100.00%

Lock Volume by Marital Status*			
Status	Loan Count	Loan Amounts	Percent
Married	13,422	\$2,239,922,622	42.70%
Unmarried	14,393	\$2,402,671,028	45.80%
Single	3,672	\$550,299,196	10.49%
Divorced	223	\$33,836,802	0.65%
Single Parent HHLD	108	\$15,212,957	0.29%
Widowed	27	\$3,912,666	0.07%
Total	31,845	\$5,245,855,270	100.00%

Lock Volume by Ethnicity*			
Status	Loan Count	Loan Amounts	Percent
African American	4,579	\$803,983,908	15.33%
Asian/Pacific Islander	401	\$71,650,659	1.37%
Hispanic	15,683	\$2,428,115,902	46.30%
Native American	63	\$10,209,038	0.19%
Other/Declined to Respond	3,538	\$683,677,309	13.04%
White	7,573	\$1,246,801,059	23.77%
Total	31,837	\$5,244,437,874	100.00%

* Only includes non-cancelled loans as of 4/1/20

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The information in this presentation reflects prevailing market conditions and our views as of this date, all of which are subject to change. Any actual transaction would be subject to market conditions at the time of execution and the related documentation. To fully understand the economic and legal terms and conditions of any transaction, the Department must carefully review the related documentation and should consult its own legal, tax and financial advisors.

In preparing this presentation, we have relied upon and assumed, without independent verification, the accuracy and completeness of all information available from public sources or which was provided to us by or on behalf of the Department or which was otherwise reviewed by us. In addition, our analyses are not and do not purport to be appraisals of the creditworthiness of the Department, which may affect the results.

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APPENDIX B**ADDITIONAL MARKET INFORMATION FROM STIFEL**

1. Municipal Market Update – Week of April 13, 2020
2. Economic Commentary - Lindsey Piegza, Chief Economist
3. Economic Forecast Grid through 4Q 2020
4. Muni Market Outlook – Week of April 13, 2020
5. Agency Market Snapshot – as of April 13, 2020

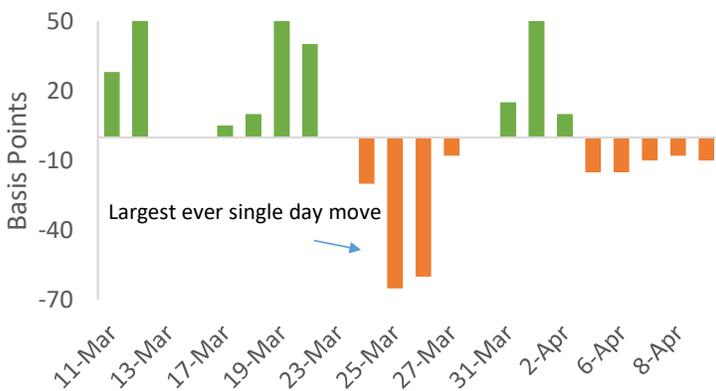
Top Takeaways From Last Week

- Following several weeks of increased market volatility, municipal interest rates began to show signs of stability, with MMD dropping 10-15 basis points each day. The 10-year and 30-year AAA MMD are 43 basis points below the prior week's close.
- Compared to the prior week, transactions continued to price with greater success, notably across a broader range of sectors. With reduced volatility throughout the week, traditional municipal investors showed increased participation in the primary market. While still below "normal" activity, the trend is in the direction of more typical market behavior.
- Short-term interest rates continued to fall, with SIFMA resetting at 0.74%, down from 1.83%.
- Jobless claims rose another 6.6 million this week, bringing the total number of claims over 16.7 million over the last three weeks. Claims are expected to remain in the millions for several more weeks.
- The Fed has announced it will provide up to \$2.3 trillion in loans to support the economy. According to Fed officials, this funding will assist households and employers of all sizes and bolster the ability of state and local governments to deliver critical services during the coronavirus pandemic.

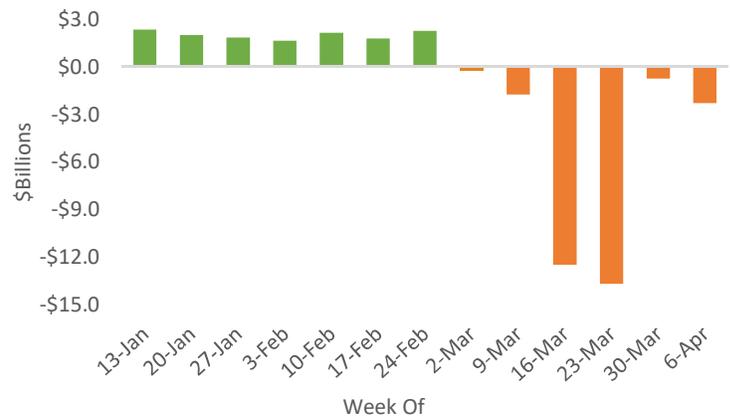
Municipal Interest Rates Drop as Investor Demand Rises; Municipal Bond Outflows Continue at Reduced Levels

- Interest rates saw reduced volatility throughout the week.
- Last week, MMD saw steady drops throughout the week, resulting in a 43 basis point reduction from the prior week's close.
- March 25th marked the largest ever single day move with the 30-year MMD maturity falling by 65 basis points.
- 20-year MMD is now 63 basis points above the record lows set at the beginning of March.
- Lipper reported a 6th straight week of municipal fund outflows, totaling \$2.3 billion, up from the prior week's \$750 million.

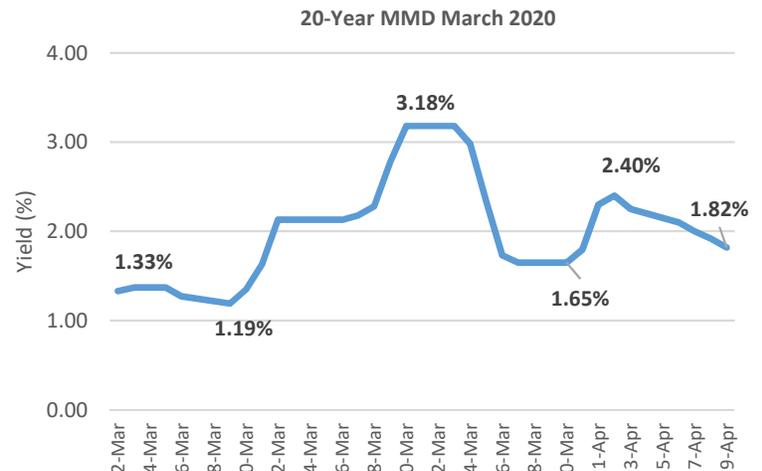
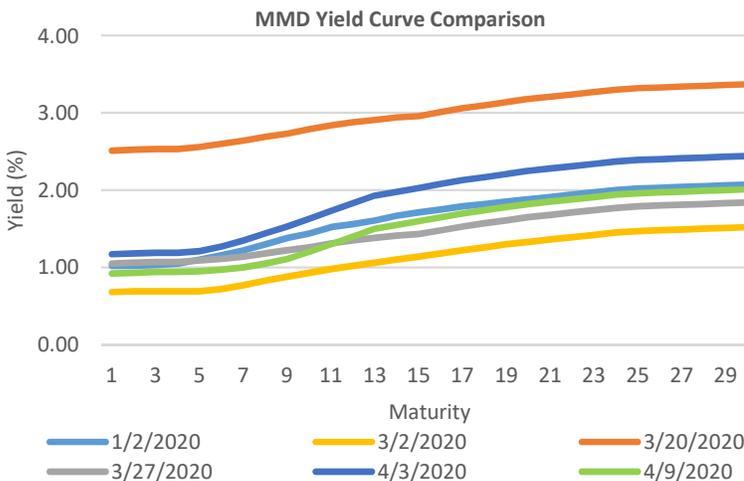
Changes in 30-Year MMD – Last 3 Weeks



Municipal Market Weekly Fund Flows



Interest Rate Movement – AAA MMD Index



Sources: Lipper, Thomson Reuters TM3

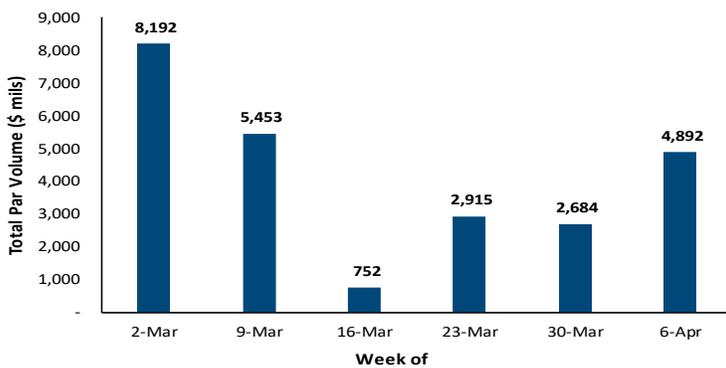
Federal Reserve Announces Creation of \$500 Billion Municipal Liquidity Facility

- The Federal Reserve Bank will commit to lend to a special purpose vehicle (SPV) with the capacity to purchase up to \$500 billion of Eligible Notes directly from eligible issuers. For now, the Fed will only participate in primary market offerings.
- Overall terms and economics of the program are still in development. Eligible issuers will include states, the District of Columbia, cities with a population over one million residents, and counties with a population over two million residents. Only one issuer per state, city, or county is eligible to participate. However, issuers may be able to wrap and include constituent entities.
- Eligible securities include tax anticipation notes, tax and revenue anticipation notes, bond anticipation notes, and other similar short-term securities with a final maturity up to 24 months from date of issuance.
- Proceeds can be used “To help manage the cash flow impact of income tax deferrals resulting from an extension of an income tax filing deadline; potential reductions of tax and other revenues or increases in expenses related to or resulting from the COVID-19 pandemic; and requirements for the payment of principal and interest on obligations of the relevant state, city, or county.”

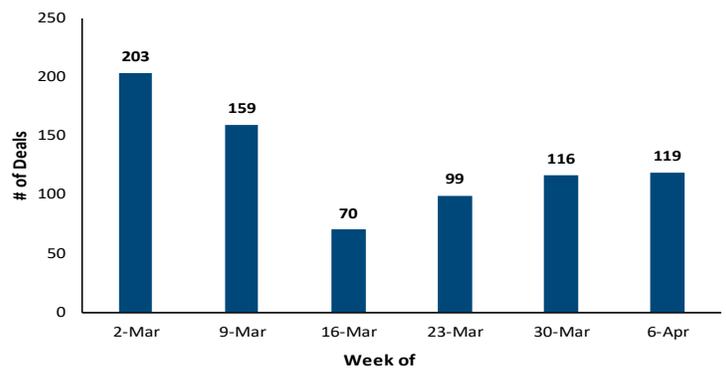
Primary Market Success Improves as Interest Rates Stabilize

- Compared to the last several weeks, more transactions successfully priced as a result of the reduced volatility and increased investor demand.
- Even with a short week due to the Good Friday holiday, last week’s initial new issue calendar listed 167 issues, totaling \$6.6 billion in par, up from last week’s \$4.0 billion, but still below the 2020 average of \$8.3 billion through the first week of March. Of those, 119 issues, totaling nearly \$4.9 billion in par priced successfully, several of which included transactions for a wider variety of issuers than the last several weeks, including hospital, sales tax, and appropriation credits.
- Stifel served as lead/sole manager on 9 negotiated transactions, totaling over \$113 million in aggregate par. Stifel senior managed transactions across many sectors, completing tax-exempt and taxable issues for issuers ranging in credit quality from non-rated to AAA. As a follow-up to the largest deal of the week of 4/3 (\$258 million Chino Valley USD (CA)), Stifel sold an additional \$21.7 million for the District as a taxable advance refunding.

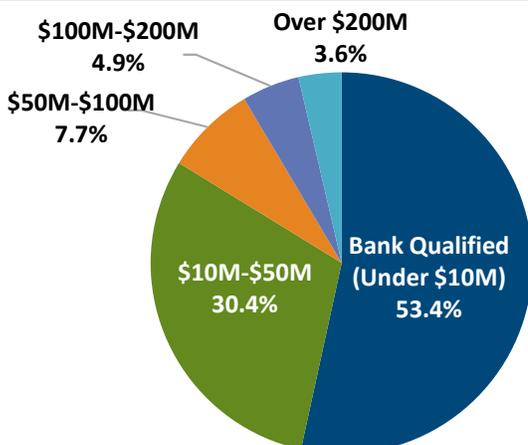
Transaction Volume Since March 2020



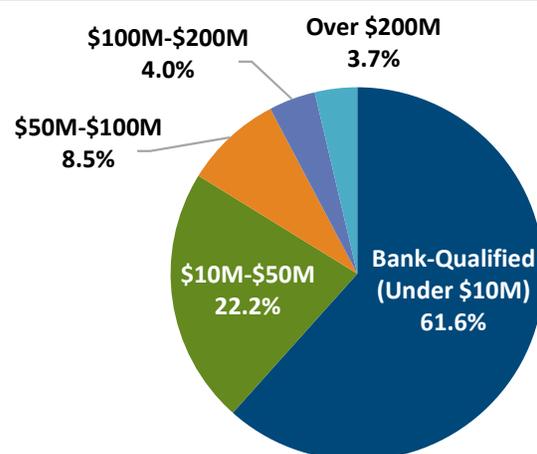
Weekly Transactions Since March 2020



Transaction Size Distribution - 2019



Transaction Size Distribution – Since March 2020



Sources: Bloomberg, Thomson Reuters TM3, Federal Reserve Board

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April 13, 2020

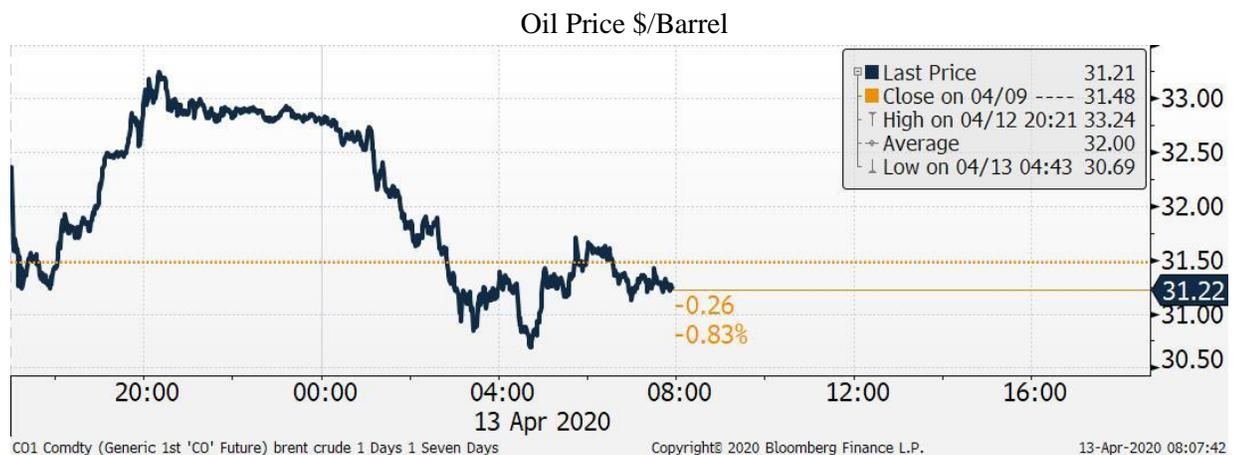
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Further Support for the Economy as Recovery Will be a “Long, Hard Road”

OPEC+ agreed to cut production by a record 9.7 million barrels per day, a tenth of global supply, following a meeting of the players on Sunday. Prices, however, remain volatile over concerns the cuts will not be enough to offset oversupply as the coronavirus deeply depletes global demand. While most agree it is a step in the right direction, one analyst called the decision “*too little, too late.*”

Crude is down more than 53% since the start of the year.

This morning, crude is down 0.83%, currently trading at \$31.22 a barrel as of 9:07am ET.



Source: Bloomberg

According to Minneapolis Fed President Neel Kashkari, the pathway to an economic recovery from the coronavirus will be a “*long, hard road.*” Speaking on CBS’s “*Face the Nation*” Sunday morning, Kashkari explained he does not expect a quick V-shaped rebound but a slow, drawn out struggle to recovery. “*Barring some healthcare miracle*” such as an effective therapy or vaccine, “*it seems we’re going to have various phases of rolling flare ups,*” with “*different parts of the economy turning back on, maybe turning back off again.*” Kashkari also said \$350 billion in emergency funds for small businesses would not be enough “*because if we need to have different phases of shutdowns for the next several months or until we have a therapy or vaccine, we’re going to need more help than that.*”

Cleveland Fed President Loretta Mester echoed Kashkari’s sentiment, suggesting the Fed is far from done with “*assisting the economy.*” Speaking in an online discussion organized by Cleveland’s City Club, Mester said the Fed is “*always looking for things where if we have a tool to be able to do it, and if we think it’s needed, we’re going to do it.*”

Since the start of March, the Federal Reserve has taken unprecedented action to support the economy – beyond the moves taken during the financial crisis – and its key players including households, small and medium-sized businesses and state and local governments. Amid a myriad of policy announcements, the Fed has committed to an unlimited purchase of assets, lowered the Federal funds rate to zero and launched a total of nine liquidity and lending facilities. Chairman Powell, speaking on Thursday of last week during a Brookings Institution webcast, suggested the Fed is willing to do whatever it takes to support the

economy, buying assets or making loans in any market it deems necessary. “*We will continue to use these powers forcefully, pro-actively, and aggressively until’ we are confident that we are solidly on the road to recovery,*” he said.

Speaking of a potential vaccine, according to an early analysis published in *The New England Journal of Medicine*, Gilead Sciences' experimental drug for patients with severe COVID-19 infections showed “*promise.*” While more rigorous tests are still needed, the early indications of success are raising hopes that the first treatment for the novel virus may be on the horizon.

On Friday, the CPI fell 0.4% in March, a tenth of a percentage point more than expected, according to *Bloomberg*, and the largest monthly decline since January 2015. Year-over-year, headline consumer prices rose 1.5% in February, down from the 2.3% pace reported the month prior and a thirteen-month low.

Energy costs dropped 5.8% in March, the third consecutive month of decline, while food prices increased 0.3%. Excluding food and energy, the core CPI fell 0.1% at the end of the first quarter, following a 0.2% rise the month prior. Over the past 12 months, the core CPI increased 2.1%, a nine-month low.

In the details, recreation prices rose 0.1%, and medical care prices gained 0.4% at the end of the first quarter, a three-month high. Additionally, education and communication costs increased 0.1%, thanks to a 0.8% gain in personal computer prices. On the weaker side, housing prices were flat, despite a 0.3% gain in the OER, services costs fell 0.1%, and transportation prices dropped 2.9%, the third consecutive month of decline. Also, apparel prices fell 2.0%, and commodities prices declined 1.0%, also the third consecutive month of decline.

Today the economic calendar is empty.

Tomorrow, import prices are expected to fall 3.2% in March following a 0.5% decline the month prior.

Later this week, on Wednesday, retail sales are expected to drop 8.0% in March, the Empire Manufacturing Index is expected to decline from -21.5 to a reading of -35.0 in April, and the NAHB Housing Marking Index is expected to fall from 72 to a reading of 55 in April.

On Thursday, initial jobless claims are expected to rise 5.35M in the week ending April 11. Housing starts are expected to fall 18.7% and building permit are expected to decline 10.5% in March.

On Friday, the Leading Index is expected to drop 7.0% in March following a 0.1% gain in February.

-Lindsey Piegza, Ph.D., Chief Economist

Glossary

- CPI – Consumer Price Index
- NAHB – National Association of Home Builders
- OER – Owner’s Equivalent Rent
- OPEC – Organization of Petroleum Exporting Countries
- SA – Seasonally Adjusted
- YoY – Year over Year

Economic Releases

Date Time	Event	Period	Prior	Revised	Surv(H)	Surv(L)	Surv(M)	Actual	
04/09/20 07:30	PPI Final Demand MoM	Mar	-0.60%	--	0.00%	-0.90%	-0.40%	-0.20%	
04/09/20 07:30	PPI Ex Food and Energy MoM	Mar	-0.30%	--	0.30%	-0.70%	0.00%	0.20%	
04/09/20 07:30	PPI Ex Food, Energy, Trade MoM	Mar	-0.10%	--	0.20%	-0.20%	0.00%	-0.20%	
04/09/20 07:30	PPI Final Demand YoY	Mar	1.30%	--	1.80%	-0.10%	0.50%	0.70%	
04/09/20 07:30	PPI Ex Food and Energy YoY	Mar	1.40%	--	1.70%	0.20%	1.20%	1.40%	
04/09/20 07:30	PPI Ex Food, Energy, Trade YoY	Mar	1.40%	--	1.30%	1.10%	1.30%	1.00%	
04/09/20 07:30	Initial Jobless Claims	4-Apr	6648k	6867k	7500k	2500k	5500k	6606k	
04/09/20 07:30	Continuing Claims	28-Mar	3029k	3059k	9447k	6500k	8236k	7455k	
04/09/20 09:00	Wholesale Inventories MoM	Feb F	-0.50%	--	-0.20%	-0.50%	-0.50%	-0.70%	
04/09/20 09:00	Wholesale Trade Sales MoM	Feb	1.60%	1.30%	--	--	--	-0.80%	
04/09/20 09:00	U. of Mich. Sentiment	Apr P	89.1	--	89	50	75	71	
04/09/20 09:00	U. of Mich. Current Conditions	Apr P	103.7	--	91	32.2	84.1	72.4	
04/09/20 09:00	U. of Mich. Expectations	Apr P	79.7	--	68	42	60.7	70	
04/09/20 09:00	U. of Mich. 1 Yr Inflation	Apr P	2.20%	--	--	--	--	2.10%	
04/09/20 09:00	U. of Mich. 5-10 Yr Inflation	Apr P	2.30%	--	--	--	--	2.50%	
04/09/20 23:00	Bloomberg April United States Economic Survey								
04/10/20 07:30	CPI MoM	Mar	0.10%	--	0.00%	-0.80%	-0.30%	-0.40%	
04/10/20 07:30	CPI Ex Food and Energy MoM	Mar	0.20%	--	0.40%	-0.50%	0.10%	-0.10%	
04/10/20 07:30	CPI YoY	Mar	2.30%	--	1.90%	1.20%	1.60%	1.50%	
04/10/20 07:30	CPI Ex Food and Energy YoY	Mar	2.40%	--	2.40%	1.70%	2.30%	2.10%	
04/10/20 07:30	CPI Index NSA	Mar	258.678	--	259	257.468	258.12	258.115	
04/10/20 07:30	CPI Core Index SA	Mar	267.07	--	267.407	266.23	267	266.795	
04/10/20 07:30	Real Avg Hourly Earning YoY	Mar	0.60%	--	--	--	--	1.60%	
04/10/20 07:30	Real Avg Weekly Earnings YoY	Mar	0.70%	0.60%	--	--	--	0.70%	
04/10/20 13:00	Monthly Budget Statement	Mar	-\$146.9b	--	-\$102.0b	-\$165.0b	-\$120.0b	-\$119.1b	
04/14/20 07:30	Import Price Index MoM	Mar	-0.50%	--	-0.30%	-8.00%	-3.20%	--	
04/14/20 07:30	Import Price Index ex Petroleum MoM	Mar	0.20%	--	0.00%	-2.00%	-0.20%	--	
04/14/20 07:30	Import Price Index YoY	Mar	-1.20%	--	-3.40%	-5.90%	-4.90%	--	
04/14/20 07:30	Export Price Index MoM	Mar	-1.10%	--	-0.50%	-3.50%	-1.90%	--	
04/14/20 07:30	Export Price Index YoY	Mar	-1.30%	--	--	--	--	--	
04/15/20 06:00	MBA Mortgage Applications	10-Apr	-17.90%	--	--	--	--	--	
04/15/20 07:30	Retail Sales Advance MoM	Mar	-0.50%	--	0.00%	-24.00%	-8.00%	--	
04/15/20 07:30	Retail Sales Ex Auto MoM	Mar	-0.40%	--	1.00%	-22.60%	-5.00%	--	
04/15/20 07:30	Retail Sales Ex Auto and Gas	Mar	-0.20%	--	-3.00%	-12.00%	-7.00%	--	
04/15/20 07:30	Retail Sales Control Group	Mar	0.00%	--	3.10%	-7.30%	-2.00%	--	
04/15/20 07:30	Empire Manufacturing	Apr	-21.5	--	-20	-40	-35	--	
04/15/20 08:15	Industrial Production MoM	Mar	0.60%	--	-1.70%	-10.00%	-4.20%	--	
04/15/20 08:15	Capacity Utilization	Mar	77.00%	--	75.80%	69.80%	73.60%	--	
04/15/20 08:15	Manufacturing (SIC) Production	Mar	0.10%	--	-2.10%	-7.50%	-4.40%	--	
04/15/20 09:00	Business Inventories	Feb	-0.10%	--	0.00%	-1.00%	-0.40%	--	
04/15/20 09:00	NAHB Housing Market Index	Apr	72	--	69	40	55	--	
04/15/20 13:00	U.S. Federal Reserve Releases Beige Book								
04/15/20 15:00	Net Long-term TIC Flows	Feb	\$20.9b	--	--	--	--	--	
04/15/20 15:00	Total Net TIC Flows	Feb	\$122.9b	--	--	--	--	--	

Source: Bloomberg

April 13, 2020

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ADDITIONAL INFORMATION AVAILABLE UPON REQUEST

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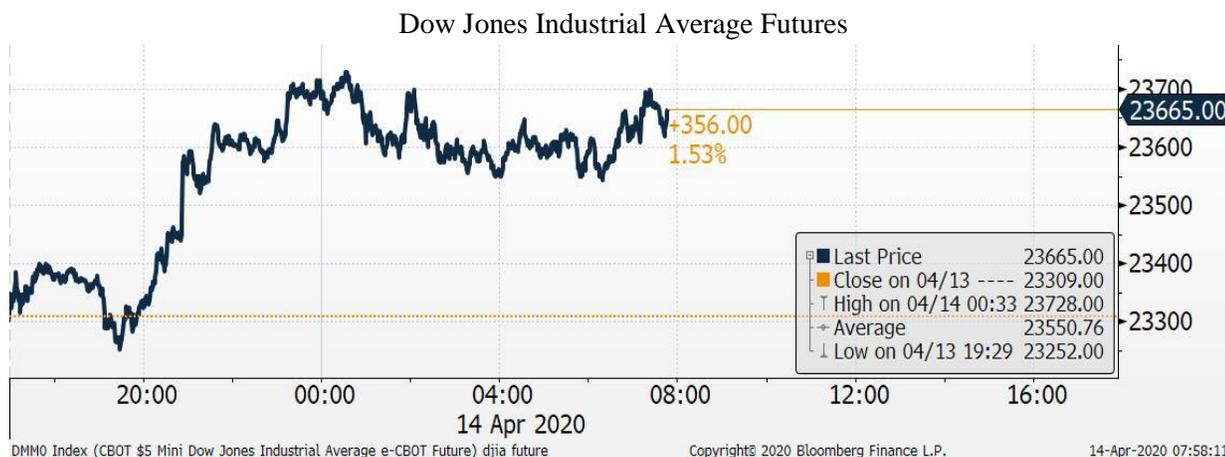
The Curve Has Flattened – Evidence to Open Up the Economy?

Equity markets are on the rise around the globe amid optimism that the coronavirus curve is flattening.

The Stoxx Europe 600 Index is up 0.6%, currently trading at 333.66 as of 8:55am ET.

In Asia, Hong Kong’s Hang Seng Index rose 0.6% to close at 24,435.40, China’s CSI 300 Index rose 1.9% to close at 3,825.70, and Japan’s Nikkei 225 rose 3.1% to close at 19,638.81.

U.S. futures are up 1.5%, currently trading at 23,665.00 as of 8:58am ET.



Source: Bloomberg

The latest numbers show the total number of coronavirus cases worldwide has topped 1.9M with over 120K deaths. In the U.S., there are over 582K reported cases and more than 23K deaths. In Spain, there are over 172K cases and more than 18K deaths, and in Italy there are over 159K cases with over 20K deaths. Meanwhile in China, there are over 83K cases and more than 3K deaths.

Of course, while there appears to be progress being made with the number of new daily cases still rising but slowing, many worry reopening the economy too soon will spark a second-round wave of infections. On the other hand, the longer U.S. workers remain home and businesses remain closed, the more difficult it will be to restart the U.S. economy and the longer the recovery period will be.

As Minneapolis Fed President Neel Kashkari noted over the weekend, the pathway to an economic recovery from the coronavirus will be a "long, hard road." We certainly agree; even after closure restrictions are lifted, it will take time for businesses to reconnect to workers and supply chains, and on the demand side, it will take time for consumers to move back into the market, restrained by lingering fears as well as financial constraints. While the second quarter is likely to be the hardest hit with a contraction of near 20%, the economy is likely to remain in negative territory well through the fall, potentially longer.

Since the start of March, the Federal Reserve has taken unprecedented action beyond the moves taken during the financial crisis to support the economy and its key players including households, small and

medium-sized businesses, as well as state and local governments. Amid a myriad of policy announcements, the Fed has committed to an unlimited purchase of assets, lowered the Federal funds rate to zero and launched a total of nine liquidity and lending facilities. Furthermore, the federal government has pledged over \$2 trillion in funding to support U.S. workers and businesses.

Combined, monetary and fiscal efforts are likely to help provide a lifeline to workers struggling to pay rent and put food on the table, as well as businesses having difficulty keeping employees and covering costs, however, it is hardly a panacea. The legislation and liquidity provided will hardly compensate for the full amount of income, revenue, consumption and spending lost as a result of a forced economic shutdown resulting in a painful contraction.

According to the IMF, as a result of a worldwide shutdown, the global economy is also likely to fall into recession, contracting 3% on an annual basis. By 2021, however, the IMF is optimistic growth will return to the black, up nearly 6% for the year. Such optimism, it is worth noting, however, is based on a projection the virus will soon be contained and will not return for a second-round of infections in the fall.

Yesterday, the economic calendar was empty.

This morning, import prices fell 2.3% in March, less than the expected 3.2% decline, according to *Bloomberg*, albeit the largest decline since January 2015. Year-over-year, import prices fell 4.1% following a 1.3% drop the month prior.



Source: Bloomberg

Tomorrow, retail sales are expected to drop 8.0% in March, the Empire Manufacturing Index is expected to decline from -21.5 to a reading of -35.0 in April, and the NAHB Housing Marking Index is expected to fall from 72 to a reading of 55 in April.

-Lindsey Piegza, Ph.D., Chief Economist

Glossary

IMF – International Monetary Fund

NAHB – National Association of Home Builders

SA – Seasonally Adjusted

YoY – Year over Year

Economic Releases

Date Time	Event	Period	Prior	Revised	Surv(H)	Surv(L)	Surv(M)	Actual
04/10/20 07:30	CPI MoM	Mar	0.10%	--	0.00%	-0.80%	-0.30%	-0.40%
04/10/20 07:30	CPI Ex Food and Energy MoM	Mar	0.20%	--	0.40%	-0.50%	0.10%	-0.10%
04/10/20 07:30	CPI YoY	Mar	2.30%	--	1.90%	1.20%	1.60%	1.50%
04/10/20 07:30	CPI Ex Food and Energy YoY	Mar	2.40%	--	2.40%	1.70%	2.30%	2.10%
04/10/20 07:30	CPI Index NSA	Mar	258.678	--	259	257.468	258.12	258.115
04/10/20 07:30	CPI Core Index SA	Mar	267.07	--	267.407	266.23	267	266.795
04/10/20 07:30	Real Avg Hourly Earning YoY	Mar	0.60%	--	--	--	--	1.60%
04/10/20 07:30	Real Avg Weekly Earnings YoY	Mar	0.70%	0.60%	--	--	--	0.70%
04/10/20 13:00	Monthly Budget Statement	Mar	-\$146.9b	--	-\$102.0b	-\$165.0b	-\$120.0b	-\$119.1b
04/14/20 07:30	Export Price Index MoM	Mar	-1.10%	--	-0.50%	-3.50%	-1.90%	-1.60%
04/14/20 07:30	Export Price Index YoY	Mar	-1.30%	--	--	--	--	-3.60%
04/14/20 07:30	Import Price Index MoM	Mar	-0.50%	-0.70%	-0.20%	-8.80%	-3.20%	-2.30%
04/14/20 07:30	Import Price Index ex Petroleum MoM	Mar	0.20%	--	0.00%	-4.20%	-0.20%	-0.10%
04/14/20 07:30	Import Price Index YoY	Mar	-1.20%	-1.30%	-3.40%	-10.30%	-5.00%	-4.10%
04/15/20 06:00	MBA Mortgage Applications	10-Apr	-17.90%	--	--	--	--	--
04/15/20 07:30	Retail Sales Advance MoM	Mar	-0.50%	--	0.00%	-24.00%	-8.00%	--
04/15/20 07:30	Retail Sales Ex Auto MoM	Mar	-0.40%	--	0.70%	-22.60%	-5.00%	--
04/15/20 07:30	Retail Sales Ex Auto and Gas	Mar	-0.20%	--	-0.90%	-12.00%	-5.20%	--
04/15/20 07:30	Retail Sales Control Group	Mar	0.00%	--	3.10%	-7.30%	-2.00%	--
04/15/20 07:30	Empire Manufacturing	Apr	-21.5	--	-24	-60	-35	--
04/15/20 08:15	Industrial Production MoM	Mar	0.60%	--	2.00%	-10.00%	-4.00%	--
04/15/20 08:15	Capacity Utilization	Mar	77.00%	--	76.00%	69.80%	74.00%	--
04/15/20 08:15	Manufacturing (SIC) Production	Mar	0.10%	--	-2.10%	-8.00%	-4.20%	--
04/15/20 09:00	Business Inventories	Feb	-0.10%	--	0.00%	-1.00%	-0.40%	--
04/15/20 09:00	NAHB Housing Market Index	Apr	72	--	69	30	55	--
04/15/20 13:00	U.S. Federal Reserve Releases Beige Book							
04/15/20 15:00	Net Long-term TIC Flows	Feb	\$20.9b	--	--	--	--	--
04/15/20 15:00	Total Net TIC Flows	Feb	\$122.9b	--	--	--	--	--
04/16/20 07:30	Housing Starts	Mar	1599k	--	1580k	798k	1300k	--
04/16/20 07:30	Housing Starts MoM	Mar	-1.50%	--	-1.20%	-50.10%	-18.70%	--
04/16/20 07:30	Building Permits	Mar	1464k	1452k	1477k	950k	1292k	--
04/16/20 07:30	Building Permits MoM	Mar	-5.50%	-6.30%	1.70%	-34.60%	-11.00%	--
04/16/20 07:30	Philadelphia Fed Business Outlook	Apr	-12.7	--	-18	-50	-30	--
04/16/20 07:30	Initial Jobless Claims	11-Apr	6606k	--	8000k	2000k	5625k	--
04/16/20 07:30	Continuing Claims	4-Apr	7455k	--	15000k	13000k	13630k	--
04/16/20 08:45	Bloomberg Consumer Comfort	12-Apr	49.9	--	--	--	--	--

Source: Bloomberg

April 14, 2020

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ADDITIONAL INFORMATION AVAILABLE UPON REQUEST

Publish Date: March 2020

End of Quarter Figures

	Q3 2019	Q4 2019	Q1 2020	Q2 2020	Q3 2020	Q4 2020		2019	2020
Growth indicators									
GDP, QoQ %	2.1%	2.1%	-1.6%	-14.8%	-4.5%	0.8%		2.3%	-5.0%
Interest rate, %									
FF	2.00	1.75	0.25	0.25	0.25	0.25		2.19	0.25
3month UST bills	1.82	1.55	0.10	0.06	0.15	0.25		1.96	0.14
2yr UST notes	1.62	1.57	0.34	0.30	0.45	0.60		1.80	0.42
5yr UST notes	1.55	1.69	0.43	0.35	0.75	0.87		1.81	0.60
10yr UST notes	1.67	1.92	0.59	0.38	0.90	1.05		2.00	0.73
30yr UST bonds	2.11	2.39	1.19	1.05	1.30	1.45		2.46	1.25
2s to 10s Spread bps	4	35	25	8	45	45		20	31

Lindsey Piegza, Ph.D. - Chief Economist

Source: Bloomberg, Stifel

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ADDITIONAL INFORMATION AVAILABLE UPON REQUEST

Representative Name & Title:

Phone:

Address:

Week of April 13, 2020

UPCOMING ISSUANCE
\$1.16B Great Lakes Water Auth, MI Rev (716MM TE/375MMT),
\$750MM Massachusetts DFA Rev - Harvard Univ (450TE/300T), Aaa/AAA
\$378MM The California County Tobacco Securitization Agy Rev
\$339MM Illinois Fin Auth Rev - NorthShore Univ Health, Aa/AA/-
\$349MM Washington State MVFT GO, Aaa/AA+/AA+, 2021-27
\$343MM Los Angeles, CA Dept of Water & Power Rev, Aa2-/AA-, 2025-29
\$340MM Ontario, CA Taxable Pension Obligation, -/AA/AA-
\$304MM Lower Colorado River Auth Rev, -/A/A+, 2021-50
\$228MM Hamilton County, OH Hosp Rev - UC Health, A3/A/-, 2026-40, 45, 50
\$280MM Wisconsin State Taxable Rev, Aa1/AA/AA+, 2021-42
30-Day Visible Supply: \$13.1 Billion 7-Day Visible Supply: \$3.85 Billion

MAJOR ECONOMIC DATA			
RELEASE	DAY	ESTIMATE	ACTUAL
Retail Sales - March %	15-Apr	-8.0	
Empire Manufacturing - April	15-Apr	-35	
Industrial Production - March %	15-Apr	-4.2	
Housing Starts - March	16-Apr	1300K	
Initial Jobless Claims	16-Apr	5200k	
Leading Index - March %	17-Apr	-7.0	

TAXABLE MUNICIPAL GO/MAKE WHOLE TREASURY SPREAD				
	5/5	10/10	20/30	30/30
AAA	127	160	177	186
AA	137	175	191	200
A	168	207	218	227
BBB	230	280	285	295

COMMENTARY

The Municipal market further stabilized last week with support from the \$2.3 trillion Federal Reserve loan support program and elevated ratios of Municipals to US Treasuries (5YR - 231%, 10YR - 166%, 30YR - 150%). New issue volume grew to \$6.6 billion for municipals last week, up from \$4.9 billion the prior week. This weeks calendar shows \$3.85 billion with a backlog of day-to-day deals that could help to grow the issuance. Lipper reported outflows of -\$2.3 billion for Municipal Mutual Funds last week. The four-week moving average is -\$7.23 billion. Current Muni/Treasury ratios are supportive for Municipal new issues again this week. Short term rates continued to recover with the SIFMA 7-day index dropping to 0.74% from 1.83%. Economic data is expected to show continued stress from the uncertainty of the coronavirus pandemics toll on the US Economy.

RATE DATA				
	TODAY	WEEK PRIOR	MONTH PRIOR	YEAR PRIOR
AAA GO				
2 YEAR	0.93	1.18	1.12	1.55
5 YEAR	0.95	1.21	1.20	1.67
10 YEAR	1.20	1.63	1.61	1.93
15 YEAR	1.60	2.03	1.91	2.26
20 YEAR	1.82	2.25	2.13	2.50
30 YEAR	2.01	2.44	2.32	2.68
US TREASURY				
2 YEAR	0.23	0.25	0.34	2.39
5 YEAR	0.42	0.42	0.51	2.38
10 YEAR	0.73	0.65	0.77	2.46
30 YEAR	1.35	1.26	1.39	2.97
FED FUNDS	0.00-0.25	0.00-0.25	0.00-0.25	2.25-2.50
PRIME RATE	3.25	3.25	4.25	5.50
MIG 1 - 1YR	1.39	1.39	1.14	1.68
MUB ETF	113.120	109.930	111.510	110.670
SIFMA 7DAY	0.74	1.83	1.28	1.54
MSRB 7DAY TRD	\$56,806MM	\$74,569MM	\$105,704MM	\$60,977MM
BOND BUYER INDEXES				
20 Bond GO¹	2.92	2.84	2.57	3.85
11 Bond GO²	2.30	2.37	2.10	3.36
25 Bond REV³	2.99	3.34	3.07	4.32

¹ GO bonds maturing in 20 years, avg. rating equivalent to Moody's Aa2 & S&P's AA

² GO bonds maturing in 20 years, avg. rating equivalent to Moody's Aa1 & S&P's AA+

³ Revenue bonds maturing in 30 years, avg. rating equivalent to Moody's A1 & S&P A+

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Agency Market Snapshot

as of: April 13, 2020

Treasury Yields:

	Yield	1 Day Chg	3m High	3m Low	Spreads	Sprd	Last Updated
2Yr	0.23	0.00	1.59	0.21	2s/3s	0.07	10:09:08 AM
3Yr	0.30	0.01	1.60	0.26	2s/4s	0.13	10:09:08 AM
4Yr Int.	0.36	0.01	1.62	0.31	2s/5s	0.19	10:09:09 AM
5Yr	0.42	0.02	1.65	0.35	2s/10s	0.51	10:09:10 AM
7Yr	0.61	0.02	1.77	0.49	5s/10s	0.32	10:09:08 AM
10Yr	0.74	0.02	1.85	0.54	7s/10s	0.12	10:09:10 AM
30Yr	1.38	0.03	2.30	1.00	10s/30s	0.64	10:09:09 AM

Swap Rates:

	Yield	1 Day Chg	3m High	3m Low	Last Updated
2Yr	0.46	-0.01	1.64	0.44	10:09:10 AM
3Yr	0.46	0.00	1.62	0.43	10:09:09 AM
4Yr	0.51	0.01	1.63	0.46	10:09:09 AM
5Yr	0.57	0.00	1.65	0.50	10:09:09 AM
7Yr	0.69	0.01	1.70	0.57	10:09:10 AM
10Yr	0.81	0.01	1.79	0.62	10:09:09 AM
30Yr	1.03	0.03	1.98	0.65	10:09:10 AM

Agency Bullet Yields:

	Yield	1 Day Chg	3m High	3m Low	G-Sprd
2Yr	0.35	0.00	1.60	0.35	0.11
3Yr	0.45	0.00	1.62	0.34	0.15
4Yr	0.61	0.00	1.70	0.47	0.20
5Yr	0.81	0.00	1.82	0.50	0.28
7Yr	1.26	0.00	2.03	0.66	0.57

Bermudan Call Yields:

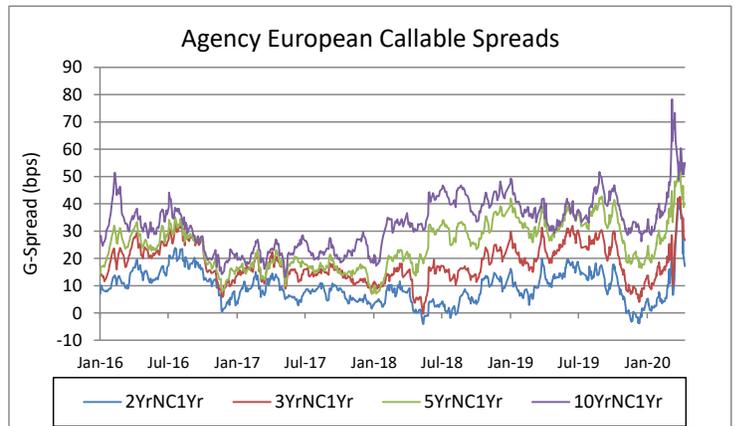
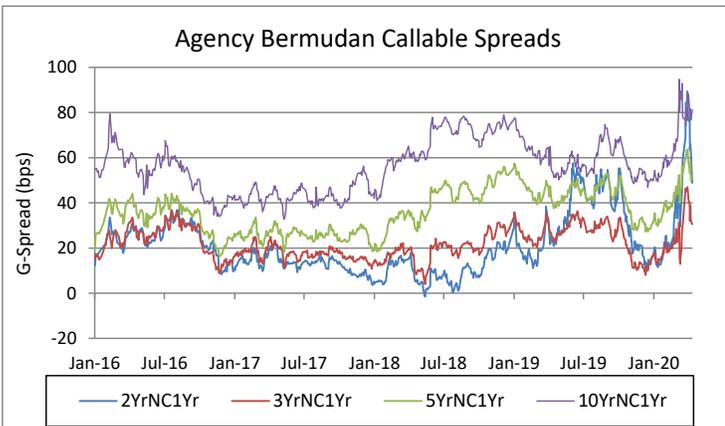
Lckout/Tenor	2Yr	3Yr	4Yr	5Yr	7Yr	10Yr	15Yr	20Yr	30Yr
3mth	0.72	0.81	0.96	1.08	1.35	1.74	2.16	2.51	3.00
6mth	0.53	0.71	0.89	1.06	1.34	1.71	2.15	2.43	2.86
1Yr	0.41	0.61	0.80	0.94	1.23	1.56	2.00	2.27	2.62
2Yr		0.50	0.68	0.81	1.11	1.44	1.89	2.15	2.52
3Yr			0.57	0.71	1.02	1.33	1.75	2.00	2.39
4Yr				0.64	0.95	1.26	1.65	1.92	2.33
5Yr					0.87	1.20	1.58	1.86	2.27

European Call Yields:

Lckout/Tenor	2Yr	3Yr	4Yr	5Yr	7Yr	10Yr	15Yr	20Yr	30Yr
3mth	0.69	0.73	0.80	0.86	1.02	1.26	1.44	1.58	1.77
6mth	0.50	0.62	0.74	0.86	1.06	1.32	1.53	1.65	1.81
1Yr	0.40	0.57	0.71	0.83	1.05	1.29	1.56	1.69	1.84
2Yr		0.49	0.66	0.76	1.02	1.28	1.59	1.72	1.91
3Yr			0.57	0.70	0.97	1.23	1.53	1.68	1.89
4Yr				0.64	0.92	1.19	1.48	1.66	1.90
5Yr					0.86	1.15	1.46	1.64	1.89

At-the-Money Implied Swaption Vol:

Expiry/Tenor	---2Yr---		---3Yr---		---5Yr---		---10yr---		---15yr---		---20yr---		---30yr---								
	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low							
3mth	46.0	51.1	59.9	81.2	85.1	87.0	91.5	91.6	38.2	91.9	42.7	110.5	52.6	139.3	59.9	144.9	59.1	148.8	58.2	156.7	57.0
6mth	43.5	48.6	57.5	75.3	79.3	80.6	84.2	84.1	36.6	78.4	41.0	92.0	51.6	113.6	61.2	117.9	60.2	121.2	59.4	125.1	58.3
1Yr	44.0	47.8	56.5	71.1	73.2	74.8	78.3	70.1	40.3	70.2	44.5	81.5	54.5	94.6	62.3	97.4	61.3	100.0	60.0	102.6	58.9
2Yr	52.7	56.1	59.6	68.7	69.2	68.8	70.7	70.8	50.9	71.3	51.8	74.7	57.6	83.6	62.8	84.2	60.9	84.4	59.1	86.0	58.0
3Yr	58.7	60.4	61.6	67.6	66.6	65.8	67.7	70.3	55.9	69.0	57.8	72.6	58.6	79.3	62.7	78.8	60.3	76.5	58.3	76.6	57.1
5Yr	63.5	64.1	62.9	65.0	62.1	62.1	63.0	69.0	60.7	68.4	61.3	68.1	61.9	71.7	62.5	70.5	59.3	69.3	57.3	68.4	55.8
10Yr	63.0	62.1	62.4	60.0	58.4	57.0	56.5	65.8	59.4	64.3	59.9	66.9	58.4	64.6	58.4	61.5	56.1	61.2	53.6	61.3	51.6



Source: FNMA, FHLMC, FHLB, Stifel

*Callable yields displayed in grids and graphs represent indicative reverse inquiry levels for GSE issuers with a 7 business day settlement period.

**Implied swaption volatility based on 3 month LIBOR index and represents normal volatility, NOT Black Scholes volatility

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4b

BOARD ACTION REQUEST
BOND FINANCE DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action regarding the Issuance of Multifamily Green Tax-Exempt Bonds (Green M-TEBS - Oaks on Clark Apartments) Resolution No. 20-015 and a Determination Notice of Housing Tax Credits

RECOMMENDED ACTION

WHEREAS, the Board adopted an inducement resolution for Oaks on Clark at the Board meeting of October 10, 2019;

WHEREAS, a 4% Housing Tax Credit application for Oaks on Clark, sponsored by THF Oaks on Clark GP, LLC, THF Housing Development Corporation, and the Related Companies, L.P. was submitted to the Department on January 2, 2020;

WHEREAS, a Certification of Reservation (Reservation) was issued in the amount of \$10,000,000 on April 8, 2020, with a bond delivery deadline of October 5, 2020;

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 2 and deemed acceptable by the Executive Award and Review Advisory Committee (EARAC) after review and discussion;

WHEREAS, the applicant has requested a waiver, in accordance with 10 TAC §11.207 of the Qualified Allocation Plan (QAP) of certain provisions contained in 10 TAC §11.302 of the QAP related to Underwriting and Loan Policy due to the unique circumstances associated with the proposed development;

WHEREAS, staff recommends waivers for the following provisions be granted, §11.302(e)(1)(C) to allow determination of the building acquisition value based on the "as is" value as established by an appraisal and §11.302(e)(7)(C)(ii) to allow an adjusted developer fee on the acquisition value, both of which are explained in more detail in the Real Estate Analysis Report included with this item;

WHEREAS, granting the waiver better serves the purposes articulated in Tex. Gov't Code, §§2306.001 and 2306.002 based on the unique circumstances surrounding the competitive bidding and acquisition process of a portfolio of properties across the country and the closing timeline of those properties that was not within the control of the applicant; and

WHEREAS, EARAC recommends the issuance of Multifamily Green Tax-Exempt Bonds for the Oaks on Clark Apartments and the issuance of a Determination Notice subject to compliance conditions as noted below for the Category 2 portfolio;

NOW, therefore, it is hereby

RESOLVED, the waivers of §11.302(e)(1)(C) and §11.302(e)(7)(C)(ii) of the Underwriting and Loan Policy Rules are hereby granted;

RESOLVED, that the issuance of Multifamily Green Tax-Exempt Bonds (Oaks on Clark Apartments) in an amount not to exceed \$10,000,000, Resolution No. 20-015 is hereby approved in the form presented to this meeting;

FURTHER RESOLVED, the issuance of a Determination Notice of \$597,284 in 4% Housing Tax Credits for Oaks on Clark Apartments, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, and subject to the following compliance conditions, is hereby approved in the form presented to this meeting; and

1. THF Housing Development Corporation is required to have qualified personnel, or a qualified third party, perform a onetime review of 10% of files and complete the recommended actions of the reviewer on or before September 1, 2020 or by the time the 60-day post-closing documents are submitted to the Department, whichever is earlier, for the list of Developments identified in (a) through (e). Evidence of reviews and corrections must be submitted to the Department upon request.
 - a. CMTS ID 2729 (537072) Turtle Creek Townhomes
 - b. CMTS ID 3213 (02012) Highland Oaks Apartments
 - c. CMTS ID 5053 (14415) THF Palladium Midland
 - d. CMTS ID 5285 (17605/17605B) The Magnolia
 - e. CMTS ID 5286 (17606/17606B) Linwood Square
2. THF Housing Development Corporation is required to ensure that the Director of Compliance at THF Housing Management Corporation attend the training listed in (A) and provide TDHCA with a certification of attendance or completion on or before September 1, 2020 or by the time the 60-day post-closing documents are submitted to the Department, whichever is earlier.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association (available trainings can be found at: Texas Rental Industry Events | Texas Apartment Association)

FURTHER RESOLVED, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The Bonds will be issued in accordance with Tex. Gov't. Code §2306.352 *et seq.* which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. Tex. Gov't Code §2306.472 provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

Development Information: Oaks on Clark is located at 4622 Clark Avenue in San Antonio, Bexar County, and proposes the acquisition and rehabilitation of 80 units that will continue to serve the general population. The development was built in 1980 and later received an award of Low Income Housing Tax Credits on December 31, 2004. The Reservation was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served. All of the units will be rent and income restricted at 60% of AMFI. Additionally, the existing Section 8 HAP contract is expected to continue for all of the units. Rehabilitation costs (includes building costs and site work) are approximately \$46k per unit.

Waiver Request: The applicant has requested waivers of 10 TAC §11.302(e)(1)(C) to allow determination of the building acquisition value based on the "as is" value as established by an appraisal, and §11.302(e)(7)(C)(ii) to allow an adjusted developer fee on the acquisition value. The Real Estate Analysis Report included herein goes into more detail on the request for each of these waivers and the unique circumstances associated with them. Staff believes that granting the waiver better serves the purposes articulated in Tex. Gov't Code, §§2306.001 and 2306.002 based on the unique circumstances surrounding the competitive bidding and acquisition process of a portfolio of properties across the country and the closing timeline of those properties that was not within the control of the applicant.

Organizational Structure and Previous Participation: The Borrower is THF Oaks on Clark, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by EARAC after further review and discussion.

Public Hearing/Public Comment: A public hearing for the proposed development was conducted by staff on March 5, 2020, and there were no attendees. A copy of the hearing transcript is included herein. The Department received three letters of opposition that were submitted at the time of the bond inducement and are also included herein.

Summary of Financial Structure

This transaction utilizes a Fannie Mae Multifamily Pass-Through Mortgage-Backed Security (MBS). The mortgage loan will be originated by the Department to the Borrower on the closing date and funded with bond proceeds. Simultaneously with the closing, the loan will be assigned to the Fannie Mae lender (Wells Fargo Multifamily Capital) and the funds used by the lender by which to acquire the loan

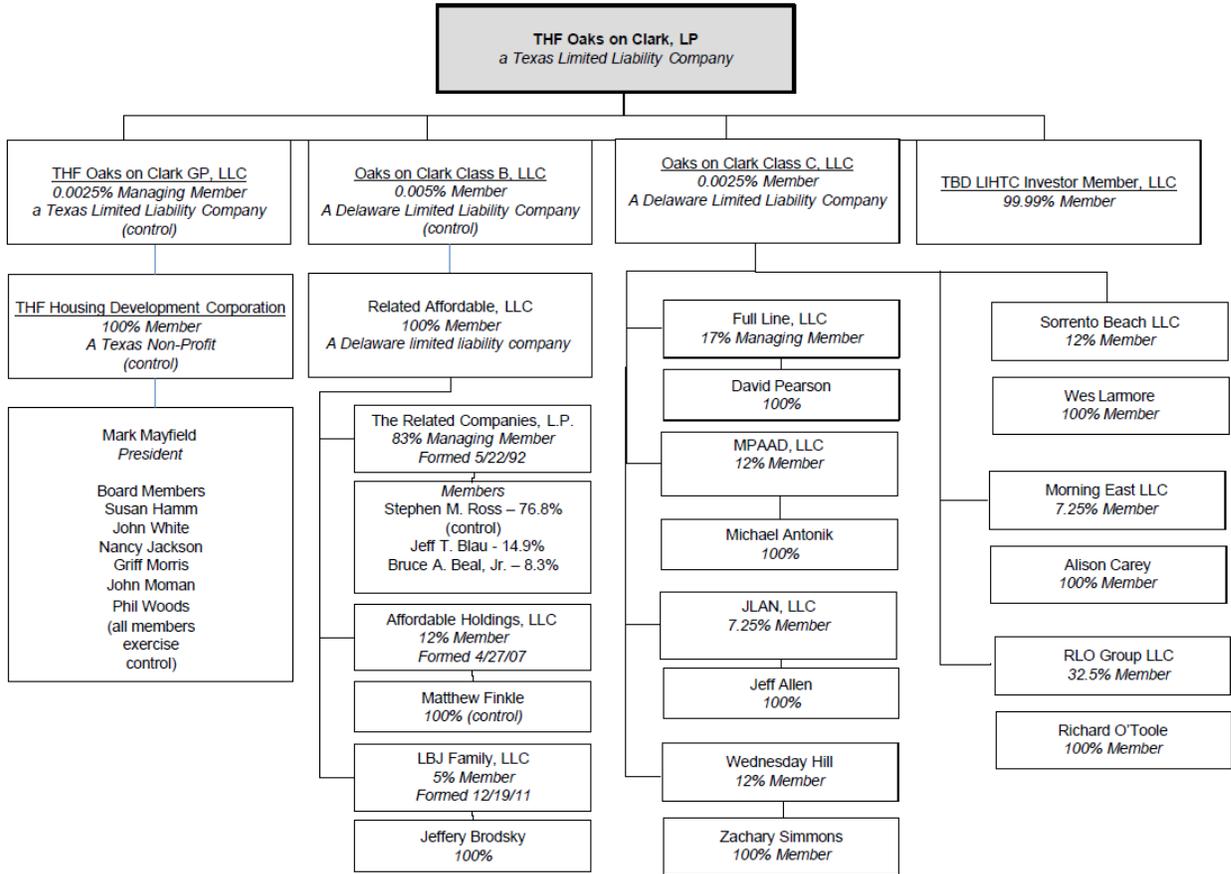
will be deposited into the collateral account to secure the bonds. The project will be 100% cash collateralized at all times, which offers protection for the bondholders. Approximately 10-15 days from the closing date Wells Fargo Multifamily Capital will assign the loan to Fannie Mae and in exchange, Fannie will deliver the MBS to the trustee. The trustee will use the funds (loan proceeds from Wells Fargo) in the collateral account to purchase the MBS which will be used to secure the bonds from that point forward. Payments on the bonds will be guaranteed by Fannie Mae.

Under the proposed structure, the Department will issue tax-exempt fixed rate bonds in an amount not to exceed \$10,000,000 that will be initially placed with Wells Fargo Multifamily Capital. The bonds will have an interest rate that mirrors the pass-through rate on the MBS, currently estimated to be 2.150%, which does not include servicing (0.420%) or guarantee fees (0.780%). The all-in rate will be 3.35%. The loan will have a term of 16 years and a 35-year amortization. The bonds will have a maximum maturity date of May 1, 2055, but are expected to reach maturity on June 1, 2036, and have received a Aaa rating by Moody's.

Additionally, unique to this transaction is that it's utilizing a new product from Fannie under their Green Building Program. The name of the issuance reflects that they are Multifamily Green Tax-Exempt Bonds. Fannie Mae offers incentives (preferential pricing and a free energy and water audit paid by Fannie) for owners who commit to property improvements that are projected to reduce the property's annual energy and/or water consumption by at least 30%. As a result of these features it will disclose the Green Loan as a Green MBS and will be able to access a broader MBS investor market.

A copy of the Exhibits recommended to be approved by the Board as referenced in Resolution No. 20-015 can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.

Exhibit A



RESOLUTION NO. 20-015

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY GREEN TAX-EXEMPT BONDS (GREEN M-TEBS – OAKS ON CLARK) SERIES 2020; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; 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 (the “Act”), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely 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 “Board”) from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, 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 multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Green Tax-Exempt Bonds (GREEN M-TEBS – OAKS ON CLARK) Series 2020 (the “Bonds”) pursuant to and in accordance with the terms of an Indenture of Trust (the “Indenture”) between the Department and BOKF, NA, as trustee (the “Trustee”), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to THF Oaks on Clark, LP, a Texas limited partnership (the “Borrower”) in order to finance the cost of acquisition, equipping and rehabilitation of a qualified residential rental development described in Exhibit A attached hereto (the “Development”) located within the

State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by a resolution adopted on October 10, 2019, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas; and

WHEREAS, it is anticipated that the Department, the Trustee, the Lender (defined below) and the Borrower will execute and deliver a Financing Agreement (the "Financing Agreement") pursuant to which (i) the Department will agree to make a mortgage loan (the "Loan") to the Borrower to enable the Borrower to finance the cost of acquisition, equipping and rehabilitation of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount sufficient to pay the interest on the Bonds in accordance with the terms of a [Multifamily Loan and Security Agreement (Non-Recourse)] (the "Loan Agreement") by and between the Borrower and the Department and to pay other costs described in the Financing Agreement; and

WHEREAS, it is anticipated that the Note will be secured by a [Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing] (the "Mortgage") from the Borrower for the benefit of the Department; and

WHEREAS, it is anticipated that the obligations of the Borrower under the Financing Agreement (other than for the repayment of principal and interest) will be secured by a Subordinate Multifamily Leasehold Deed of Trust, Security Agreement and Fixture Filing (the "Subordinate Mortgage") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Borrower will obtain a loan from, Wells Fargo Bank, National Association, as lender (the "Lender"), and the Lender will deposit the proceeds of such loan with the Trustee, to be held by the Trustee as security for the Bonds in accordance with the Indenture; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement") to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Development and to establish the expectations of the Department, the Trustee, and the Borrower as to future events regarding the Bonds, the Development, and the use and investment of proceeds of the Bonds; and

WHEREAS, the Board has determined that the Department, the Trustee, the Borrower and the Texas Housing Foundation, a Texas regional housing authority, as fee owner, will

execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Bexar County, Texas; and

WHEREAS, the Lender has agreed to permit the Loan and to allow the lien of the Subordinate Mortgage in accordance with the terms of a Subordination Agreement (Affordable) (the "Subordination Agreement") among the Lender, the Department, the Trustee and the Borrower; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Bonds of an Official Statement (the "Official Statement") and to authorize the Authorized Representatives (as defined herein) of the Department to deem the Official Statement "final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Official Statement as may be required to provide a final Official Statement for use in the public offering and sale of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Purchase Contract (the "Bond Purchase Agreement") with Wells Fargo Bank, National Association (the "Underwriter"), and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Financing Agreement, the Tax Exemption Agreement, the Regulatory Agreement, the Loan Agreement, the Subordination Agreement, the Official Statement and the Bond Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Mortgage, the Subordinate Mortgage and the Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Mortgage, the Subordinate Mortgage and the Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1

ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, and Chapter 1371, Texas Government Code, all under and in accordance with the conditions set

forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the initial purchaser thereof pursuant to the Bond Purchase Agreement.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That the Chair or Vice Chair of the Board or the Executive Director of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Bond Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative (as defined below) of the Department of the Indenture and the Bond Purchase Agreement; provided, however, that (i) the Bonds shall bear interest at the interest rate set forth in the Bond Purchase Agreement in accordance with the provisions of the Indenture; provided that in no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law; and provided further that the initial interest rate on the Bonds shall not exceed 6.00% (ii) the aggregate principal amount of the Bonds shall not exceed \$10,000,000; (iii) the final maturity of the Bonds shall occur not later than May 1, 2055; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Bond Purchase Agreement shall not exceed 100% of the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives (as defined below) are each hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Financing Agreement and the Loan Agreement. That the form and substance of the Financing Agreement and the Loan Agreement are hereby approved, and that the Authorized Representatives are each hereby authorized to execute the Financing Agreement and the Loan Agreement, and to deliver the Financing Agreement and the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement relating to the Bonds are hereby approved and the Authorized Representatives are each hereby authorized to execute the Tax Exemption Agreement and to deliver the Tax Exemption Agreement to the Borrower and the Trustee.

Section 1.6 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives are each hereby authorized to execute, attest and affix the

Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Bexar County, Texas.

Section 1.7 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Bond Purchase Agreement is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives are each hereby authorized to execute the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Borrower, the Underwriter, and/or any other parties to the Bond Purchase Agreement, as appropriate.

Section 1.8 Acceptance of the Note, the Mortgage and the Subordinate Mortgage. That the form and substance of the Note, the Mortgage and the Subordinate Mortgage are hereby accepted by the Department and that the Authorized Representatives are each hereby authorized to endorse and deliver the Note without recourse.

Section 1.9 Approval, Execution and Delivery of the Subordination Agreement. That the form and substance of the Subordination Agreement are hereby approved, and that the Authorized Representatives are each hereby authorized to execute the Subordination Agreement, and to deliver the Subordination Agreement to the Lender and the Borrower and to cause the Subordination Agreement to be filed of record in the real property records of Bexar County, Texas.

Section 1.10 Approval, Execution, Use and Distribution of the Official Statement. That the form and substance of the Official Statement and its use and distribution by the Underwriter in accordance with the terms, conditions and limitations contained therein are hereby approved, ratified, confirmed and authorized; that the Chair and Vice Chair of the Board and the Executive Director of the Department are hereby severally authorized to deem the Official Statement "final" for purposes of Rule 15c2-12 under the Securities and Exchange Act of 1934; that the Authorized Representatives named in this Resolution are each authorized hereby to make or approve such changes in the Official Statement as may be required to provide a final Official Statement for the Bonds; that the Authorized Representatives named in this Resolution are each authorized hereby to accept the Official Statement, as required; and that the use and distribution of the Official Statement by the Underwriter hereby is authorized and approved, subject to the terms, conditions and limitations contained therein, and further subject to such amendments or additions thereto as may be required by the Bond Purchase Agreement and as may be approved by the Executive Director of the Department and the Department's counsel.

Section 1.11 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them

consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.12 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department (“Bond Counsel”), may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.13 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit B - Indenture
- Exhibit C - Financing Agreement
- Exhibit D - Loan Agreement
- Exhibit E - Tax Exemption Agreement
- Exhibit F - Regulatory Agreement
- Exhibit G - Bond Purchase Agreement
- Exhibit H - Note
- Exhibit I - Mortgage
- Exhibit J - Subordinate Mortgage
- Exhibit K - Subordination Agreement
- Exhibit L - Official Statement

Section 1.14 Authorized Representatives. That 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 Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the 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

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of

state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agency. That the action of the Executive Director of the Department or any successor and the Department's consultants in seeking a rating from Moody's Investors Services, Inc., and its successors and assigns, is approved, ratified and confirmed hereby.

Section 2.5 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be Wells Fargo Bank, National Association, or any other party identified in the Bond Purchase Agreement.

Section 2.7 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

ARTICLE 3

CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower,

independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Financing Agreement, the Tax Exemption Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Financing Agreement, the Tax Exemption Agreement and the Regulatory Agreement, which require, among other things, that the Development be occupied by individuals and families of low, very low and extremely low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low, very low and extremely low income and families of moderate income in the State to obtain

decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low, very low and extremely low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Loan will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 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, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act, regarding meetings of the Governing Board.

PASSED AND APPROVED this 23rd day of April, 2020.

EXHIBIT A

Description of Development

Borrower: THF Oaks on Clark, LP, a Texas limited partnership

Development: The Development is a 80-unit affordable, multifamily housing development known as Oaks on Clark, to be located at 4622 Clark Avenue, San Antonio, Bexar County, TX 78223. It consists of six (6) residential apartment buildings and one (1) office/community building with approximately 67,460 net rentable square feet. The unit mix will consist of:

20	one-bedroom/one-bath units
32	two-bedroom/one-bath units
20	three-bedroom/two-bath units
8	four-bedroom/two-bath units
<hr/>	
80	Total Units

Unit sizes will range from approximately 643 square feet to approximately 1,152 square feet.

20600 Oaks on Clark - Application Summary

REAL ESTATE ANALYSIS DIVISION
April 16, 2020

PROPERTY IDENTIFICATION	
Application #	20600
Development	Oaks on Clark
City / County	San Antonio / Bexar
Region/Area	9 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1981)

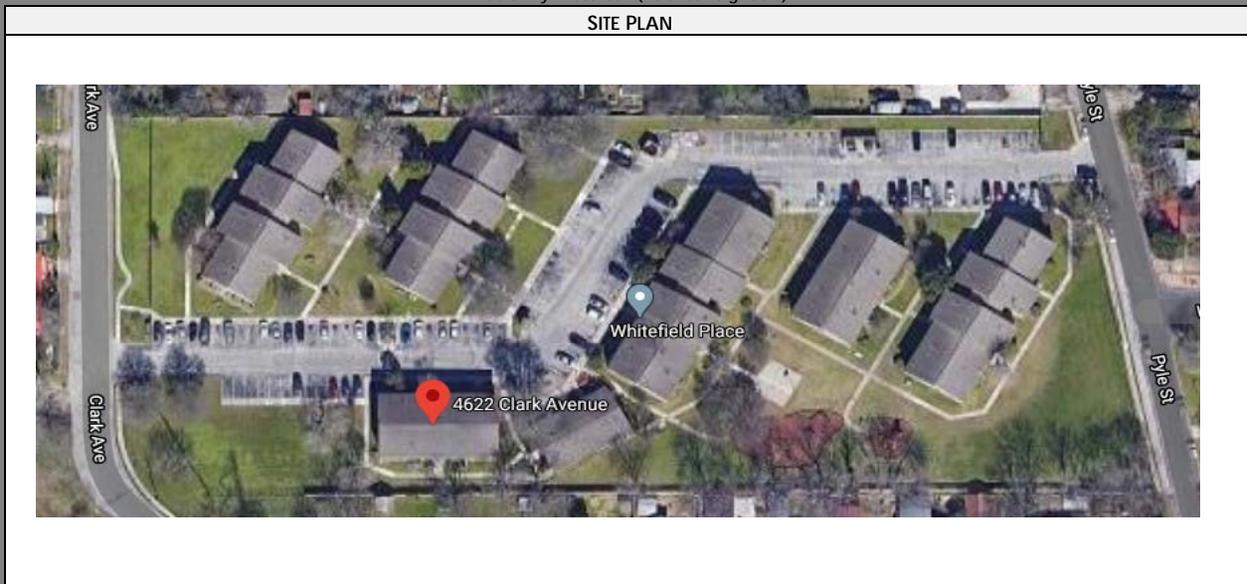
RECOMMENDATION						
TDHCA Program	Request	Recommended				
LIHTC (4% Credit)	\$607,920	\$597,284	\$7,466/Unit	\$0.97		
	Amount	Rate	Amort	Term	Lien	
TDHCA Bonds	\$10,000,000	3.70%	35	16	1	

KEY PRINCIPAL / SPONSOR		
Related Affordable Mathew Finkle, President Wes Larmore, Vice President THF Foundation Mark Mayfield, President		
Related Parties	Contractor - TBD	Seller - 0



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	20	25%	40%	-	0%
2	32	40%	50%	-	0%
3	20	25%	60%	80	100%
4	8	10%	MR	-	✓
TOTAL	80	100%	TOTAL	80	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	✓ 1.21	Expense Ratio	✓ 39.5%
Breakeven Occ.	✓ 84.8%	Breakeven Rent	\$1,001
Average Rent	\$1,124	B/E Rent Margin	✓ \$123
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$5,157/unit	Controllable	\$3,520/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			✓ 0.0%
Highest Unit Capture Rate	✓ 2%	4 BR/50%	###
Dominant Unit Cap. Rate	✓ 1%	2 BR/50%	32
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	80	100% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	843 SF	Density	14.8/acre
Acquisition	\$98K/unit	\$7,800K	
Building Cost	\$49.80/SF	\$42K/unit	\$3,360K
Hard Cost	\$51K/unit		\$4,088K
Total Cost	\$212K/unit		\$16,920K
Developer Fee	\$1,864K	(56% Deferred)	Paid Year: 8
Contractor Fee	\$572K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work	\$2K	4%	Finishes/Fixtures \$19K 38%
Building Shell	\$12K	23%	Amenities \$2K 4%
HVAC	\$5K	10%	Total Exterior \$16K 37%
Appliances	\$2K	4%	Total Interior \$26K 63%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Wells Fargo Multifamily Capital	16/35	3.70%	\$10,000,000	1.21	Existing Reserves	0/0	0.00%	\$80,000	1.21	Wells Fargo	\$5,793,078
TOTAL DEBT (Must Pay)			\$10,000,000		CASH FLOW DEBT / GRANTS			\$80,000		TOTAL EQUITY SOURCES	\$6,840,252
TOTAL DEBT SOURCES											\$10,080,000
TOTAL CAPITALIZATION											\$16,920,252

CONDITIONS

- 1 Approval of the Recommended Credit Allocation requires Board approval of the requested waivers as recommended.
- 2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
 - a: Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
 - b: Certification of comprehensive testing for mold; that any appropriate abatement procedures were implemented; and that a Mold & Moisture Minimization Plan is being followed.
- 3 Receipt and acceptance by Cost Certification:
 - a: Certification from the Bexar County Appraisal District that the property qualifies for a 100% property tax exemption.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER

Issuer	TDHCA
Expiration Date	10/5/2020
Bond Amount	\$10,000,000
BRB Priority	3
Bond Structure	Fannie Mae MBS
% Financed with Tax-Exempt Bonds	70.0%

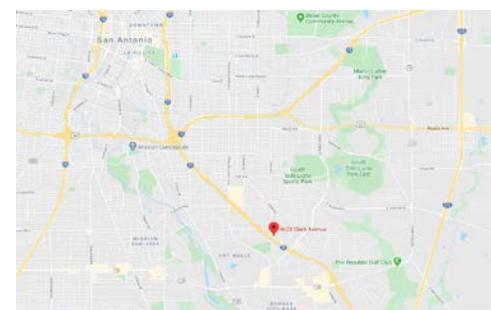
RISK PROFILE

STRENGTHS/MITIGATING FACTORS

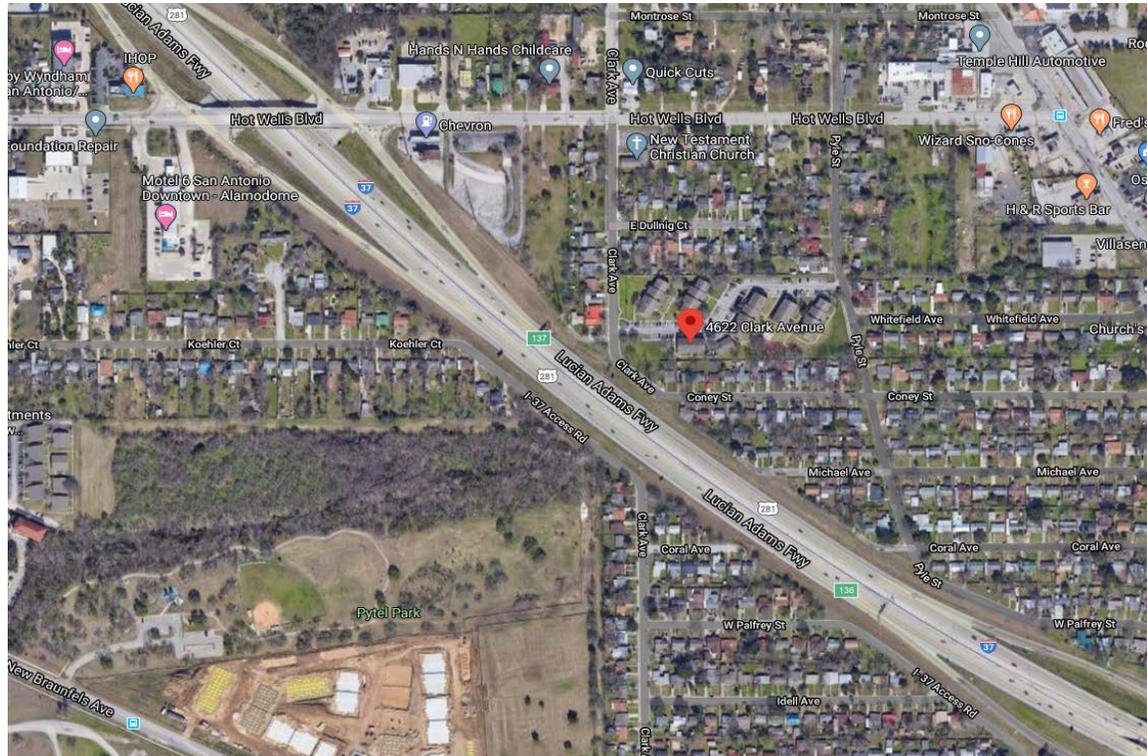
- ▣ 100% of units covered by Section 8 contract at market
- ▣ Experienced Developer

WEAKNESSES/RISKS

AREA MAP



AERIAL PHOTOGRAPH(S)





DEVELOPMENT IDENTIFICATION

TDHCA Application #: 20600 Program(s): TDHCA Bonds/4% HTC

Oaks on Clark

Address/Location: 4622 Clark Ave

City: San Antonio County: Bexar Zip: 78223

Population: General Program Set-Aside: General Area: Urban

Activity: Acquisition/Rehab Building Type: Garden (Up to 4-story) Region: 9

Analysis Purpose: New Application - Initial Underwriting

ALLOCATION

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
Private Activity Bonds	\$10,000,000	3.75%	35	16	\$10,000,000	3.70%	35	16	1
LIHTC (4% Credit)	\$607,920				\$597,284				

Based on the unique circumstances of the acquisition as described in the Report, Staff recommends Board approval of waivers of the following rules:

- a) 11.302(e)(1)(C) - to allow determination of the building acquisition value based on the "as is" value as established by an appraisal; and
- b) 11.302(e)(7)(C)(ii) - to allow an adjusted Developer Fee on the acquisition value as described in the Report.

CONDITIONS

- 1 Approval of the Recommended Credit Allocation requires Board approval of the requested waivers as recommended.
- 2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
 - a: Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
 - Status:**
 - b: Certification of comprehensive testing for mold; that any appropriate abatement procedures were implemented; and that a Mold & Moisture Minimization Plan is being followed.
 - Status:**
- 3 Receipt and acceptance by Cost Certification:
 - a: Certification from the Bexar County Appraisal District that the property qualifies for a 100% property tax exemption.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

SET-ASIDES

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
60% of AMI	60% of AMI	80

DEVELOPMENT SUMMARY

In July 2018 affiliates of the Related Companies (“Related”) acquired all of the ownership interests held by AIMCO in 52 affordable housing properties across the country; six are located in Texas of which Oaks on Clark (aka Whitefield Place) is one. Related subsequently acquired the remaining tax credit investor held interests in these properties. The intent of acquisition was to renovate and preserve the affordability for the entire portfolio using a combination of tax exempt bonds and 4% tax credits. This requires Related to hold the various interest positions until the properties come off of their initial compliance periods which range from 2019 to 2026. Financing for the transaction was provided by a combination of Deutsche Bank and affiliates of Related.

The Applicant is requesting that TDHCA allow in an identity of interest transaction (i) an increase in the original purchase price to the “as is” value as established by an appraisal acceptable to TDHCA and (ii) developer fee on the acquisition price due to the nature of the transaction.

The Applicant's stated justification for this waiver is based on the required timing and nature of a portfolio transaction. Due to the competitive nature of the bidding (from investors that did not have the long term preservation and renovation of the projects in mind), there was no way for Related to negotiate a contract that allowed for a phased acquisition over time as the various properties come off of their initial compliance period and are ready for resyndication. The portfolio had to be acquired all at once. Had Related been able to negotiate such a contract, then each development would be treated as an arm's length transaction at the time of acquisition, and TDHCA rules regarding identity of interest transactions would not apply.

The Applicant states that the purchase price for the portfolio was greatly influenced by the immediate nature of the transaction which involved a significant equity investment and the assumption of several layers of risk (timing, operations, compliance, guarantees, etc.). Related's ability to raise the equity (for which a return has to be paid) and assume the risks lead to a purchase price that is well below what it would have been had Related been able to negotiate the phased contract discussed above.

The Applicant states that the identity of interest rules apply simply because of the forced timing on the sale and, without this waiver, would not account for the return required by the investors or the risk assumed by Related. Therefore, Related is requesting that the underwritten purchase price and acquisition eligible basis be based on an “as is” appraisal to allow a return to the investors that made this acquisition possible and acquisition developer fee should be allowed to reflect the risk Related took in acquiring this portfolio.

Oaks on Clark (fka Whitefield Place) is an 80 unit, multifamily affordable housing community located in San Antonio, Texas. Built in 1980 and consists of one , two , and three bedroom in seven buildings on a 5.4 acre site. Currently a U.S. Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments (HAP) contracts covers all 80 units.

The rehabilitation program will focus on energy efficiency upgrades, resident safety upgrades, improving resident amenities and quality of life and replacing aging systems to extend the useful of the buildings.

The unit interior work includes:

General Interior: painting, flooring, energy efficient lighting, new energy efficient heating and cooling systems, electrical panel upgrades, new doors as needed and new window treatments, upgrade safety pull chord system

Bathrooms: new vanities, sinks, and faucets, medicine cabinets, tub surrounds as needed, toilets, and painting

Kitchens: new cabinets, counters, sinks, faucets, appliances, new dishwashers, microwaves

RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	100% of units covered by Section 8 contract at market rents
▫	Experienced Developer

WEAKNESSES/RISKS	
▫	
▫	

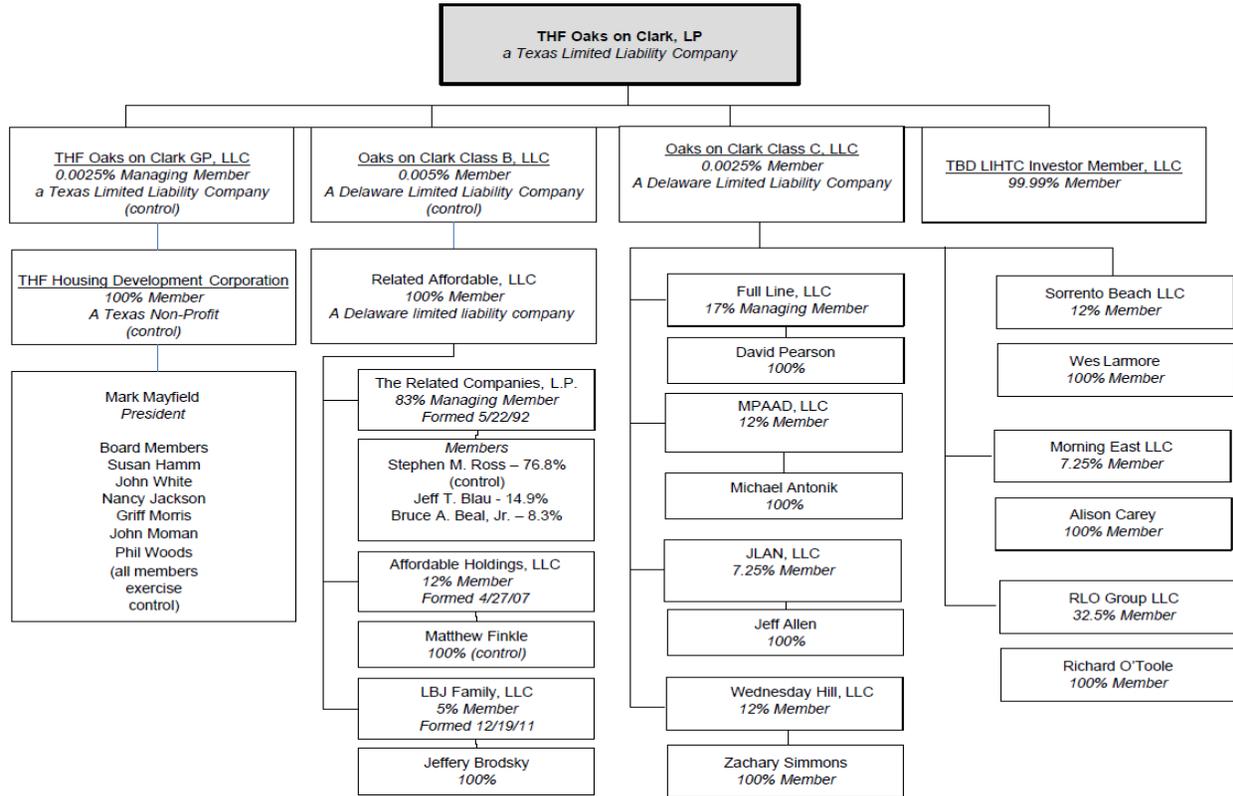
DEVELOPMENT TEAM

PRIMARY CONTACTS

Name: Wes Larmore
 Phone: (213) 634-1566
 Relationship: Applicant/Developer

Name: Mark Mayfield
 Phone: (830) 693-8100
 Relationship: Applicant/Developer

OWNERSHIP STRUCTURE



- o Applicant, Developer, Cost Estimator, Property Manager and Bond Issuer are related entities
- o The Related Companies organization was founded by Stephen Ross in 1972. Today, Related owns and operates a portfolio of assets valued at over \$30 billion. With offices in Boston, Chicago, Los Angeles, San Francisco, South Florida, Washington, D.C., Abu Dhabi, London and Shanghai, they manage an operating portfolio that includes luxury, affordable and workforce apartments, commercial, retail and mixed-use developments. Related Affordable, LLC is a subsidiary of The Related Companies, L.P. They have built, renovated and managed over 10,000 affordable housing units including the development of over 28 HTC properties in Texas. For more information go to www.related.com.

DEVELOPMENT SUMMARY

SITE PLAN



Comments:

No onsite detention. Two ingress/egress points on Clark Ave. and Pyle St.

BUILDING ELEVATION



Comments:

Built in 1981, development consists of six two-story apartment buildings with little ornamentation.

RELOCATION PLAN

"The planned rehabilitation will require that tenants be moved into another unit onsite for a period of five to ten business days while their unit is being renovated. The scope of work should not require any offsite tenant relocation from the units or prolonged tenant absences. Moving services will be provided by the owner along with additional assistance for any tenants that may require it. The rehabilitation will be phased and in no case will tenants be relocated out of their units for more than a year."

Applicant has budgeted \$120,000 for relocation expenses. Should relocation go over budget, the difference is expected to be funded out of deferred developer fee.

The identity of interest rule states that the REA underwriting use the original acquisition price in the analysis and in determining the building eligible basis. Additionally, the rules state that no developer fee will be attributable to the building acquisition basis. Thus the allowable developer fee would be limited to other eligible costs. Since the acquisition timing in this case was caused by the terms of the portfolio sale the developer has asked that a current appraised value be used for the acquisition price, with eligible basis on that price, and that developer fee be allowed on the acquisition basis.

The very unique circumstances of the acquisitions within the portfolio acquisition warrant consideration for a waiver of the identity of interest rules.

Because of the portfolio execution, there is no individual acquisition price assigned to each property. In light of this some allocation of the total purchase price would be made and generally accepted accounting principals would use relative appraised values in capitalizing each property. Therefore use of the as-is appraised value is reasonable.

If the Applicant had submitted a single application at the time of acquisition from a third party, it would be eligible for a 15% developer fee on the acquisition basis. For identity of interest acquisitions of properties with project-based rental assistance financed with tax exempt bonds where the current owner has held the property for at least 60 months, REA rules allow a 5% developer fee on the acquisition basis. For the subject portfolio, the Applicant cannot submit the applications until each property's initial compliance expires. During this interim waiting period, the property is operating and generating revenue for the Owner.

Given the unusual timing of the applications from this portfolio, REA recommends a pro-rated developer fee on the acquisition based on the time elapsed between the acquisition of the portfolio and the submission of the tax credit application to TDHCA (steadily decreasing from 15% at original portfolio acquisition in July 2018 to 5% allowed by rule in July 2023).

APPRAISED VALUE

Appraiser: Gill Group		Date: 1/17/2020
Land as Vacant: 5.42 acres	\$245,000	Per Unit: \$3,063
Existing Buildings: (as-is)	\$8,275,000	Per Unit: \$103,438
Total Development: (as-is)	\$8,520,000	Per Unit: \$106,500

GENERAL INFORMATION

Flood Zone:	<u>X</u>	Scattered Site?	<u>No</u>
Zoning:	<u>MF-33</u>	Within 100-yr floodplain?	<u>No</u>
Re-Zoning Required?	<u>No</u>	Utilities at Site?	<u>Yes</u>
Year Constructed:	<u>1981</u>	Title Issues?	<u>No</u>

Surrounding Uses:

The immediately surrounding properties consist of a residential subdivision to the north; residential subdivision to the east across Pyle Street; residential subdivision to the west of Clark Avenue, and residential homes followed by Clark Avenue to the south.

Other Observations:

During the underwriting process, the Applicant reported that a fire had occurred in one of the residential buildings. The Applicant stated they are still waiting on the insurance adjusters report but essentially they expect insurance proceeds in the amount of approximately \$1 million. They anticipate the seller to do repairs of approximately \$300K prior to closing and give the buyer a credit on the purchase price of \$700k. Costs to bring the building to a post-rehab condition (i.e. not just back to its original condition but in line with the other units) is coming in between \$1.1 million - \$1.3 million.

The Applicant provided a revised cost schedule and schedule of sources reflecting adjustments resulting from the fire.

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: Partner Engineering and Science, Inc Date: 9/17/2019

Recognized Environmental Conditions (RECs) and Other Concerns:

- "Due to the age of the subject property buildings, there is a potential that asbestos-containing material (ACM) are present. Readily visible suspect ACMs and painted surfaces were observed in good condition. Should these materials be replaced, the identified suspect ACMs would need to be sampled to confirm the presence or absence of asbestos prior to any renovation or demolition activities to prevent potential exposure to workers and/or building occupants."
- "Partner did identify visual or olfactory evidence of mold or water damage at the subject property. Minor water staining was observed in restroom ceilings of Units 122 and 220, which have reportedly been repaired. No active mold was identified. Dirty air vents with possible mold growth were observed in Units 122, 127, and 229."

Partner Recommends the following:

An Operations and Maintenance (O&M) Program should be implemented in order to safely manage the suspect ACMs located at the subject property.

A Mold & Moisture Minimization Plan should be implemented at the subject property.

MARKET ANALYSIS

Provider: Novogradac Consulting

Date: 12/13/2019

Contact: Erik Johnson

Phone: 562-256-3574

Primary Market Area (PMA): 138 sq. miles 7 mile equivalent radius

The PMA consists of 22 census tracts in southeast San Antonio, inside Loop 410.

ELIGIBLE HOUSEHOLDS BY INCOME								
Bexar County Income Limits								
HH Size		1	2	3	4	5	6	7+
50% AMGI	Min	\$1	\$1	\$1	\$1	\$1	\$1	\$1
	Max	\$24,850	\$28,400	\$31,950	\$35,500	\$38,350	\$41,200	\$46,900

AFFORDABLE HOUSING INVENTORY						
Competitive Supply (Proposed, Under Construction, and Unstabilized)						
File #	Development	In PMA?	Type	Target Population	Comp Units	Total Units
	None					
Other Affordable Developments in PMA since 2015						
19003	The Legacy at Piedmont		New	Elderly	n/a	49
18289	Village at Roosevelt		New	General	n/a	57
18419	St. John's		New	General	n/a	228
18142	San Juan Mission Villas		New	Elderly	n/a	102
Stabilized Affordable Developments in PMA (pre-2015)					Total Units	1,641
					Total Developments	8

OVERALL DEMAND ANALYSIS				
	Market Analyst		Underwriter	
	HTC	Assisted	HTC	Assisted
Total Households in the Primary Market Area		33,931		34,500
Potential Demand from the Primary Market Area		10,351		10,394
10% External Demand		1,035		1,039
Potential Demand from Other Sources		0		0
GROSS DEMAND		11,386		11,433
Subject Affordable Units		80		80
Unstabilized Competitive Units				
RELEVANT SUPPLY		80		80
Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE		0.7%		0.7%

Population:	General	Market Area:	Urban	Maximum Gross Capture Rate:	10%
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND

* N/A due to all units qualifying from \$1 up.

Demand Analysis:

Capture rate limits do not apply to existing affordable housing that is at least 50% occupied and that provides a leasing preference to existing tenants. The Subject property is covered by a Housing Assistance Program contract, meaning that all households below the maximum income level are eligible and incomes are limited to 50% AMI and below.

Subject will extend leasing preference to current tenants. Underwriter has not included competitive units in the capture rate calculations as tenants are expected to return and Subject units will not compete for qualified demand in the PMA.

Market Analyst qualified demand from \$1 up to the 60% AMI maximum income.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE										
Unit Type	Market Analyst					Underwriter				
	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate
1 BR/50%						2,796	280	20	0	1%
1 BR/60%	3,659	366	20		0.5%					
2 BR/50%						2,609	261	32	0	1%
2 BR/60%	3,396	340	32		1%					
3 BR/50%						1,558	156	20	0	1%
3 BR/60%	2,045	205	20		1%					
4 BR/50%						484	48	8	0	2%
4 BR/60%	1,251	125	8		1%					

Market Analyst Comments:

71 percent of the renter population in the PMA earned less than \$40,000 in 2019. (p. 35)

Two of the comparable LIHTC properties reported waiting lists. The Subject currently maintains an extensive waiting list as well. We anticipate that the Subject will continue to maintain a waiting list post-renovation. (p. 94)

Underwriter Comments:

Affordable properties still monitored in the PMA average 94% occupancy.

Revisions to Market Study:	0
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OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)

NOI:	\$631,744	Avg. Rent:	\$1,124	Expense Ratio:	39.5%
Debt Service:	\$519,954	B/E Rent:	\$1,001	Controllable Expenses:	\$3,520
Net Cash Flow:	\$111,790	UW Occupancy:	95.0%	Property Taxes/Unit:	\$0
Aggregate DCR:	1.21	B/E Occupancy:	84.8%	Program Rent Year:	2019

Applicant's pro forma assumes HUD approval of large mark-up-to-market HAP Renewal, which is supported by the applicant's Rent Comparability Study. In an email dated Feb 25, 2020, Southwest Housing Compliance Corporation (third party administrator) indicated HUD approval of the proposed HAP rents.

Underwriter's expense pro forma based on historical expenses for this property as the current related party Management Company has operated this project for the past 1.5 years and will be retained.

General & Administrative historicals have a line item for Relocation Expenses of \$12k which the Underwriter removed from estimate.

Feasibility is dependent on Applicant's assumed 100% property tax exemption. All else equal, using property tax estimates based on higher rents results in a first year DCR of 0.95, below threshold.

Applicant has budgeted \$40K for Supportive Services on this project. Pursuant to TDHCA underwriting rules, this amount will be included in the DCR calculation at cost certification, regardless if actually incurred. Applicant submitted a letter from Lender confirming that they are aware of this amount in the Application.

Related-Party Property Management Company: Yes

Revisions to Rent Schedule:	0	Revisions to Annual Operating Expenses:	0
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DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (TDHCA's Costs- Based on PCA)

Acquisition	\$45,203/ac	\$97,500/unit	\$7,800,000	Contractor Fee	\$572,374
Off-site + Site Work		\$4,463/unit	\$357,000	Soft Cost + Financing	\$2,274,917
Building Cost	\$49.80/sf	\$41,996/unit	\$3,359,716	Developer Fee	\$1,863,606
Contingency	10.00%	\$4,646/unit	\$371,672	Reserves	\$320,967
Total Development Cost	\$211,503/unit		\$16,920,252	Rehabilitation Cost	\$46,459/unit
Qualified for 30% Basis Boost?	Located in OCT with < 20% HTC units/HH				

Acquisition:

Acquisition cost is based on the "as-is" appraised value of the property.

Site Work:

Costs of \$100K for repairing pot holes and parking lots and \$65K for repairing concrete walkways.

Building Cost:

\$162,000 allocated to fixing mechanical, electrical, and plumbing systems.

The scope of work for the interior of the units include \$80K for carpeting, \$19K for vinyl flooring, and \$116K for kitchen appliances and cabinets.

REHABILITATION COSTS / UNIT / % HARD COST							
Site Work	\$165,000	\$2,063/unit	4%	Finishes/Fixtures	\$1,549,800	\$19,373/unit	38%
Building Shell	\$927,600	\$11,595/unit	23%	HVAC	\$408,000	\$5,100/unit	10%
Amenities	\$167,000	\$2,088/unit	4%	Appliances	\$153,200	\$1,915/unit	4%
Total Exterior	\$1,259,600	\$15,745/unit	37%	Total Interior	\$2,111,000	\$26,388/unit	63%

Contingency:

In addition to stated contingency, \$816M of repayable non-deferred developer fee exists that could cover cost overruns.

Developer Fee:

Developer Fee on the acquisition basis is limited as explained above under Site and Acquisition.

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$16,920,252	\$15,723,201	\$597,284

Related-Party Contractor: Yes

Related-Party Cost Estimator: Yes

Revisions to Development Cost Schedule: 0

UNDERWRITTEN CAPITALIZATION

BOND RESERVATION			
Issuer	Amount	Reservation Date	Priority
TDHCA	\$ 10,000,000	4/8/2020	3
Closing Deadline	Bond Structure		
10/5/2020	Fannie Mae MBS		

Percent of Cost Financed by Tax-Exempt Bonds	70.0%
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Comments:

Permanent loan is to be provided by FNMA ("Fannie Mae") under their M.TEB Program (Mortgage Backed Securities ("MBS") as Tax Exempt Bond Collateral). The Construction loan by Wells Fargo Multifamily Capital will close simultaneously with the Tax-Exempt Bonds transaction. At closing, the Loan proceeds, and any additional eligible funds that may be required will be remitted to the Bond Trustee to hold as collateral for the Bonds. Once the conditions to conversion have been met, Fannie Mae will certify the Loan for purchase and issue its MBS to the Bond Trustee. The Bond Trustee will simultaneously remit the Loan proceeds to Fannie Mae to purchase the MBS.

INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
Wells Fargo Multifamily Capital	Tax Exempt Construction Loan	\$10,000,000	3.70%	35%
Wells Fargo	HTC	\$5,306,607	\$0.97	18%
Oaks on Clark Developer, LLC	Deferred Dev Fee	\$1,631,381	0.00%	6%
		\$28,937,988	Total Sources	

PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
Wells Fargo Multifamily Capital	\$10,000,000	3.70%	35	16	\$10,000,000	3.70%	35	16	59%
Total	\$10,080,000				\$10,080,000				

Comments:

Permanent loan is to be provided by FNMA ("Fannie Mae") under their M.TEB Program (Mortgage Backed Securities ("MBS") as Tax Exempt Bond Collateral).

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
Wells Fargo	\$5,896,230	\$0.97		\$5,793,078	\$0.97	34%	
Oaks on Clark Developer, LLC	\$1,282,725		62%	\$1,047,174		6%	56%
Total	\$7,178,955			\$6,840,252			
				\$16,920,252	Total Sources		

Credit Price Sensitivity based on current capital structure	
\$1.125	Maximum Credit Price before the Development is oversourced and allocation is limited
\$0.819	Minimum Credit Price below which the Development would be characterized as infeasible

Comments:

Revisions to Sources Schedule:	0
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CONCLUSIONS

Recommended Financing Structure:

Gap Analysis:	
Total Development Cost	\$16,920,252
Permanent Sources (debt + non-HTC equity)	\$10,080,000
Gap in Permanent Financing	\$6,840,252

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$5,793,078	\$597,284
Needed to Balance Sources & Uses	\$6,840,252	\$705,251
Requested by Applicant	\$5,896,235	\$607,920

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
Tax Credit Allocation	\$5,793,078	\$597,284

	Amount	Interest Rate	Amort	Term	Lien
TDHCA-Issued Bonds	\$12,000,000	3.70%	35	16	1

Deferred Developer Fee	\$1,047,174	(56% deferred)
Repayable in	8 years	

Comments:

Recommended tax credit allocation is \$597,284 as determined by Eligible Basis.

Underwriter:	<u>Duc Nguyen</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

UNIT MIX/RENT SCHEDULE
Oaks on Clark, San Antonio, TDHCA Bonds/4% HTC #20600

LOCATION DATA	
CITY:	San Antonio
COUNTY:	Bexar
Area Median Income	\$71,000
PROGRAM REGION:	9

UNIT DISTRIBUTION							
# Beds	# Units	% Total	Assisted	MDL	Income	# Units	% Total
Eff	-	0.0%	0	0	20%	-	0.0%
1	20	25.0%	20	0	30%	-	0.0%
2	32	40.0%	32	0	40%	-	0.0%
3	20	25.0%	20	0	50%	-	0.0%
4	8	10.0%	8	0	60%	80	100.0%
5	-	0.0%	0	0	70%	-	0.0%
						80%	- 0.0%
						MR	- 0.0%
TOTAL	80	100.0%	80	-	TOTAL	80	100.0%

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	3.34%
APP % Construction	3.34%
Average Unit Size	843 sf

UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC		RENT ASSISTED UNIT		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst		
TC 60%	\$798	Sec 8 HAP	\$925	20	1	1	643	\$986	\$61	\$925	\$0	\$1.44	\$925	\$18,500	\$18,500	\$925	\$1.44	\$0	\$925	\$1.44	\$925	
TC 60%	\$958	Sec 8 HAP	\$1,080	32	2	1	792	\$1,157	\$77	\$1,080	\$0	\$1.36	\$1,080	\$34,560	\$34,560	\$1,080	\$1.36	\$0	\$1,080	\$1.36	\$1,080	
TC 60%	\$1,107	Sec 8 HAP	\$1,275	20	3	2	1,002	\$1,385	\$110	\$1,275	\$0	\$1.27	\$1,275	\$25,500	\$25,500	\$1,275	\$1.27	\$0	\$1,275	\$1.27	\$1,275	
TC 60%	\$1,236	Sec 8 HAP	\$1,415	8	4	2	1,152	\$1,531	\$116	\$1,415	\$0	\$1.23	\$1,415	\$11,320	\$11,320	\$1,415	\$1.23	\$0	\$1,415	\$1.23	\$1,415	
TOTALS/AVERAGES:				80				67,460				\$0	\$1.33	\$1,124	\$89,880	\$89,880	\$1,124	\$1.33	\$0	\$1,124	\$1.33	\$1,124

ANNUAL POTENTIAL GROSS RENT:	\$1,078,560	\$1,078,560
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STABILIZED PRO FORMA

Oaks on Clark, San Antonio, TDHCA Bonds/4% HTC #20600

STABILIZED FIRST YEAR PRO FORMA												
COMPARABLES			APPLICANT				TDHCA				VARIANCE	
Database	Previous Year Actuals		% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT	\$848,904			\$1.33	\$1,124	\$1,078,560	\$1,078,560	\$1,124	\$1.33		0.0%	\$0
Laundry Income	\$11,522				\$7.88	\$7,560						
Tenant Charges (late, application fees)	\$7,680				\$13.67	\$13,125						
0					\$0.00	\$0						
Total Secondary Income	\$19,202				\$21.55		\$19,200	\$20.00			7.7%	\$1,485
POTENTIAL GROSS INCOME	\$868,106					\$1,099,245	\$1,097,760				0.1%	\$1,485
Vacancy & Collection Loss	(\$2,463)				5.0% PGI	(54,962)	(54,888)	5.0% PGI			0.1%	(74)
Rental Concessions	(\$41,751)					-	-				0.0%	-
EFFECTIVE GROSS INCOME	\$823,892					\$1,044,283	\$1,042,872				0.1%	\$1,411

General & Administrative	\$41,960	\$524/Unit	61,939	\$774	3.99%	\$0.62	\$521	\$41,700	\$41,960	\$524	\$0.62	4.02%	-0.6%	(260)
Management	\$45,174	5.0% EGI	40,068	\$501	4.14%	\$0.64	\$540	\$43,200	\$41,040	\$513	\$0.61	3.94%	5.3%	2,160
Payroll & Payroll Tax	\$98,501	\$1,231/Unit	130,431	\$1,630	12.59%	\$1.95	\$1,644	\$131,512	\$130,431	\$1,630	\$1.93	12.51%	0.8%	1,081
Repairs & Maintenance	\$57,121	\$714/Unit	64,849	\$811	5.13%	\$0.79	\$670	\$53,570	\$52,000	\$650	\$0.77	4.99%	3.0%	1,570
Electric/Gas	\$23,048	\$288/Unit	7,383	\$92	0.74%	\$0.11	\$97	\$7,750	\$7,383	\$92	\$0.11	0.71%	5.0%	367
Water, Sewer, & Trash	\$50,066	\$626/Unit	46,703	\$584	4.51%	\$0.70	\$589	\$47,107	\$46,703	\$584	\$0.69	4.48%	0.9%	404
Property Insurance	\$22,769	\$0.34 /sf	13,088	\$164	1.53%	\$0.24	\$200	\$16,000	13,088	\$164	\$0.19	1.25%	22.2%	2,912
Property Tax (@ 0%) 2.8343	\$46,332	\$579/Unit	90,857	\$1,136	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Reserve for Replacements	\$22,965	\$287/Unit	-	\$0	2.30%	\$0.36	\$300	\$24,000	\$24,000	\$300	\$0.36	2.30%	0.0%	-
Cable TV			-	\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Supportive Services			-	\$0	3.83%	\$0.59	\$500	\$40,000	\$40,000	\$500	\$0.59	3.84%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)			-	\$0	0.31%	\$0.05	\$40	\$3,200	\$3,200	\$40	\$0.05	0.31%	0.0%	-
TDHCA Bond Compliance Fee			-	\$0	0.19%	\$0.03	\$25	\$2,000	\$2,000	\$25	\$0.03	0.19%	0.0%	-
Bond Trustee Fees			-	\$0	0.24%	\$0.04	\$31	\$2,500	\$2,500	\$31	\$0.04	0.24%	0.0%	-
TOTAL EXPENSES			\$ 455,318		39.50%	\$6.12	\$5,157	\$ 412,539	\$404,305	\$5,054	\$5.99	38.77%	2.0%	\$ 8,234
NET OPERATING INCOME ("NOI")					60.50%	\$9.36	\$7,897	\$631,744	\$638,567	\$7,982	\$9.47	61.23%	-1.1%	\$ (6,823)

CONTROLLABLE EXPENSES		\$3,520/Unit		\$3,481/Unit
-----------------------	--	--------------	--	--------------

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Oaks on Clark, San Antonio, TDHCA Bonds/4% HTC #20600

DEBT / GRANT SOURCES															
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE					
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App											DCR	LTC
Wells Fargo Multifamily Capital	0.10%	1.21	1.20	527,030	3.70%	35	16	\$10,000,000	\$10,000,000	16	35	3.70%	\$519,954	1.21	59.1%
CASH FLOW DEBT / GRANTS															
Existing Reserves		1.21	1.20		0.00%	0	0	\$80,000	\$80,000	0	0	0.00%		1.21	0.5%
				\$527,030	TOTAL DEBT / GRANT SOURCES			\$10,080,000	\$10,080,000	TOTAL DEBT SERVICE			\$519,954	1.21	59.6%
NET CASH FLOW		\$111,537	\$104,713					APPLICANT NET OPERATING INCOME		\$631,744	\$111,790	NET CASH FLOW			

EQUITY SOURCES													
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE							
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method		
												Wells Fargo	LIHTC Equity
Oaks on Clark Developer, LLC	Deferred Developer Fees	7.6%	(61% Deferred)		\$1,282,725	\$1,047,174	(56% Deferred)		6.2%	Total Developer Fee: \$1,863,606			
Additional (Excess) Funds Req'd		0.0%				\$0			0.0%				
TOTAL EQUITY SOURCES		42.4%			\$7,178,955	\$6,840,252			40.4%				
TOTAL CAPITALIZATION						\$17,258,955	\$16,920,252					15-Yr Cash Flow after Deferred Fee:	\$1,614,039

DEVELOPMENT COST / ITEMIZED BASIS												
APPLICANT COST / BASIS ITEMS				TDHCA COST / BASIS ITEMS				COST VARIANCE				
Acquisition	New Const. Rehab	Total Costs		Total Costs		Eligible Basis		%	\$			
						New Const. Rehab	Acquisition					
Land Acquisition		\$3,125 / Unit	\$250,000	\$245,000	\$3,063 / Unit			2.0%	\$5,000			
Building Acquisition	\$7,550,000	\$94,375 / Unit	\$7,550,000	\$7,555,000	\$94,438 / Unit	\$7,550,000		-0.1%	(\$5,000)			
Off-Sites		\$ / Unit	\$0	\$0	\$ / Unit			0.0%	\$0			
Site Work	\$165,000	\$2,063 / Unit	\$165,000	\$310,000	\$3,875 / Unit	\$165,000		-46.8%	(\$145,000)			
Site Amenities	\$167,000	\$2,088 / Unit	\$167,000	\$47,000	\$588 / Unit	\$167,000		255.3%	\$120,000			
Building Cost	\$3,410,880	\$50.56 /sf	\$42,636/Unit	\$3,410,880	\$3,359,716	\$41,996/Unit	\$49.80 /sf	1.5%	\$51,164			
Contingency	\$374,288	10.00%	10.00%	\$374,288	\$371,672	10.00%	10.00%	0.7%	\$2,616			
Contractor Fees	\$576,404	14.00%	14.00%	\$576,404	\$572,374	14.00%	14.00%	0.7%	\$4,030			
Soft Costs	25,000	\$761,500	\$11,519 / Unit	\$921,500	\$921,500	\$11,519 / Unit	\$761,500	0.0%	\$0			
Financing	25,000	\$868,683	\$16,918 / Unit	\$1,353,417	\$1,353,417	\$16,918 / Unit	\$868,683	0.0%	\$0			
Developer Fee	\$1,140,935	\$948,563	15.01%	15.06%	\$2,089,498	\$1,863,606	13.47%	13.45%	\$938,939			
Reserves			4 Months	\$320,967	\$320,967	4 Months		0.0%	\$0			
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)		\$8,740,935	\$7,272,318	\$214,737 / Unit	\$17,178,955	\$16,920,252	\$211,503 / Unit		\$7,198,534	\$8,524,667	1.5%	\$258,703
Acquisition Cost	\$0			\$0								
Contingency		(\$0)		(\$0)								
Contractor's Fee		(\$0)		(\$0)								
Financing Cost		\$0										
Developer Fee	(\$216,268)	\$50,000		(\$8,435)								
Reserves				\$0								
ADJUSTED BASIS / COST		\$8,524,667	\$7,272,318	\$214,631/unit	\$17,170,520	\$16,920,252	\$211,503/unit		\$7,198,534	\$8,524,667	1.5%	\$250,267
TOTAL HOUSING DEVELOPMENT COSTS BASED ON 3RD PARTY PCA/CNA						\$16,920,252						

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Oaks on Clark, San Antonio, TDHCA Bonds/4% HTC #20600

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$8,524,667	\$7,272,318	\$8,524,667	\$7,198,534
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$8,524,667	\$7,272,318	\$8,524,667	\$7,198,534
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$8,524,667	\$9,454,013	\$8,524,667	\$9,358,094
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
TOTAL QUALIFIED BASIS	\$8,524,667	\$9,454,013	\$8,524,667	\$9,358,094
Applicable Percentage	3.34%	3.34%	3.34%	3.34%
ANNUAL CREDIT ON BASIS	\$284,724	\$315,764	\$284,724	\$312,560
CREDITS ON QUALIFIED BASIS	\$600,488		\$597,284	

Method	ANNUAL CREDIT CALCULATION BASED ON TDHCA BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.9699	Variance to Request	
			Credit Allocation	Credits	Proceeds
Eligible Basis	\$597,284	\$5,793,078	\$597,284	(\$10,636)	(\$103,157)
Needed to Fill Gap	\$705,251	\$6,840,252	----	----	----
Applicant Request	\$607,920	\$5,896,235	----	----	----

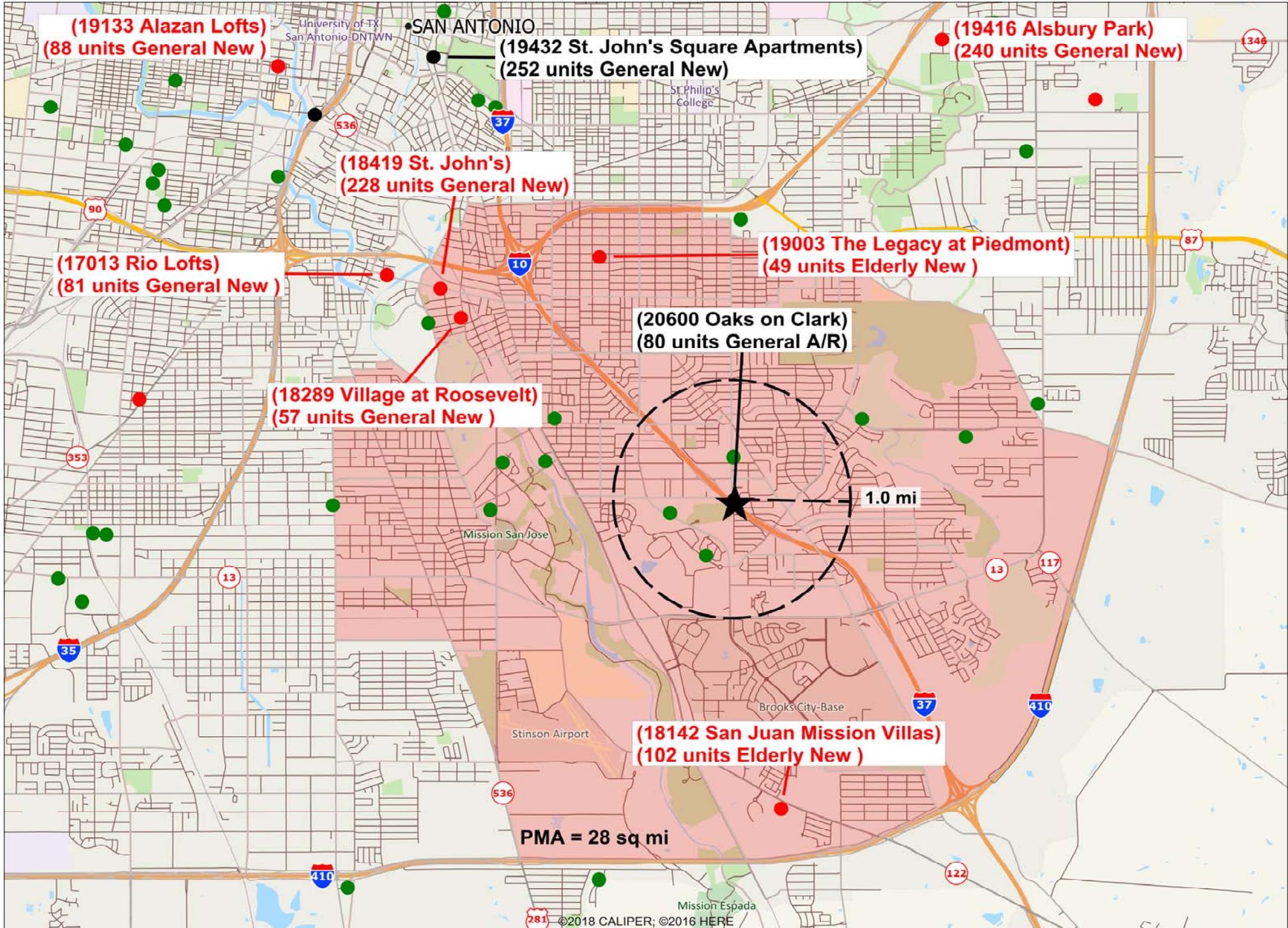
50% Test for Bond Financing for 4% Tax Credits					
Tax-Exempt Bond Amount	\$10,000,000		Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
Aggregate Basis Limit for 50% Test	\$20,000,000			69.9%	70.0%
	Applicant	TDHCA	amount aggregate basis can increase before 50% test fails		
Land Cost	\$250,000	\$245,000			
Depreciable Bldg Cost	\$14,058,755	\$14,030,945		39.8%	40.1%
Aggregate Basis for 50% Test	\$14,308,755	\$14,275,945			

Long-Term Pro Forma

Oaks on Clark, San Antonio, TDHCA Bonds/4% HTC #20600

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$1,044,283	\$1,065,168	\$1,086,472	\$1,108,201	\$1,130,365	\$1,248,015	\$1,377,909	\$1,521,323	\$1,679,663	\$1,854,484	\$2,047,500
TOTAL EXPENSES	3.00%	\$412,539	\$424,483	\$436,777	\$449,431	\$462,455	\$533,532	\$615,660	\$710,572	\$820,275	\$947,088	\$1,093,700
NET OPERATING INCOME ("NOI")		\$631,744	\$640,685	\$649,695	\$658,770	\$667,910	\$714,483	\$762,249	\$810,750	\$859,389	\$907,396	\$953,800
EXPENSE/INCOME RATIO		39.5%	39.9%	40.2%	40.6%	40.9%	42.8%	44.7%	46.7%	48.8%	51.1%	53.4%
MUST -PAY DEBT SERVICE												
TOTAL DEBT SERVICE		\$519,954	\$519,811	\$519,664	\$519,510	\$519,351	\$518,462	\$517,392	\$516,105	\$514,556	\$512,694	\$510,454
DEBT COVERAGE RATIO		1.21	1.23	1.25	1.27	1.29	1.38	1.47	1.57	1.67	1.77	1.87
ANNUAL CASH FLOW												
ANNUAL CASH FLOW		\$111,790	\$120,874	\$130,031	\$139,260	\$148,558	\$196,021	\$244,857	\$294,646	\$344,832	\$394,702	\$443,346
Deferred Developer Fee Balance		\$935,384	\$814,511	\$684,480	\$545,220	\$396,661	\$0	\$0	\$0	\$0	\$0	\$0
CUMULATIVE NET CASH FLOW		\$0	\$0	\$0	\$0	\$0	\$487,900	\$1,614,039	\$2,987,410	\$4,611,169	\$6,485,233	\$8,605,375

20600 Oaks on Clark PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TEFRA HEARING

OAKS ON CLARK APARTMENTS

San Antonio McCreless Branch Public Library
1023 Ada Street
San Antonio, Texas

Thursday,
March 5, 2020
6:08 p.m.

BEFORE:

TERESA MORALES, Hearing Officer

ON THE RECORD REPORTING
(512) 450-0342

P R O C E E D I N G S

1
2 MS. MORALES: Good evening. My name is Teresa
3 Morales. I would like to proceed with the public hearing.
4 Let the record show that it is 6:08 p.m., Thursday, March
5 5, 2020, and we are at the San Antonio McCreless Branch
6 Public Library, located at 1023 Ada Street, San Antonio,
7 Texas.

8 I'm here to conduct a public hearing on behalf
9 of the Texas Department of Housing and Community Affairs
10 with respect to an issue of tax-exempt multifamily revenue
11 bonds for a residential rental community.

12 This hearing is required by the Internal
13 Revenue Code. The sole purpose of this hearing is to
14 provide a reasonable opportunity for interested
15 individuals to express their views regarding the
16 development and the proposed bond issue.

17 No decisions regarding the development will be
18 made at this hearing. The Department's board is scheduled
19 to meet to consider the transaction on April 23, 2020.

20 In addition to providing your comments at this
21 hearing, the public is also invited to provide comment
22 directly to the board at any of their meetings. The
23 Department's staff will also accept written comments from
24 the public up to 5:00 p.m. on April 14, 2020.

25 The bonds for the Oaks on Clark Apartments will

1 be issued as tax-exempt multifamily revenue bonds in the
2 aggregate principal amount not to exceed \$12 million and
3 taxable bonds, if necessary, in an amount to be determined
4 and issued in one or more series by the Texas Department
5 of Housing and Community Affairs, the Issuer.

6 The proceeds of the bonds will be loaned to THF
7 Oaks on Clark, LP, or a related person or affiliate entity
8 thereof, to finance the acquisition and rehabilitation of
9 a multifamily rental housing development described as
10 follows: an 80-unit multifamily residential rental
11 development to be constructed on approximately 5.42 acres
12 of land located at 4622 Clark Avenue, San Antonio, Bexar
13 County, Texas. The proposed multifamily rental housing
14 community will be initially owned and operated by the
15 borrower, or a related person or affiliate thereof.

16 Let the record show that there are no
17 attendees; the meeting is now adjourned, and the time is
18 now 6:10 p.m.

19 (Whereupon, at 6:10 p.m., the hearing was
20 adjourned.)

C E R T I F I C A T E

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2

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IN RE: Oaks on Clark Apartments

4

LOCATION: San Antonio, Texas

5

DATE: March 5, 2020

6

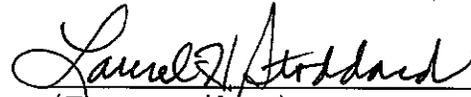
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I do hereby certify that the foregoing pages, numbers 1 through 4, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Latrice Porter before the Texas Department of Housing and Community Affairs.

DATE: March 10, 2020


(Transcriber)

On the Record Reporting &
Transcription, Inc.
7703 N. Lamar Blvd., Ste 515
Austin, Texas 78752

From: [Yolanda Kline](#)
To: [Teresa Morales](#)
Subject: Re: The Proposed New Low Income Housing (aka NO income)
Date: Tuesday, October 01, 2019 7:22:37 PM

Link to project is attached.

https://drive.google.com/file/d/1pc9W4OrF5m63_ypJdmfd5fVxc_rh0KHW/view

On Tue, Oct 1, 2019 at 6:13 PM Teresa Morales <teresa.morales@tdhca.state.tx.us> wrote:

Ms. Kline,

Confirming receipt of your email; however, could you please confirm the name of the proposed development to which you are referring?

Regards,

Teresa Morales

Director of Multifamily Bonds
Texas Department of Housing & Community Affairs
221 E. 11th Street | Austin, TX 78701

Office phone: 512.475.3344

About TDHCA

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit www.tdhca.state.tx.us or the [Learn about Fair Housing in Texas](#) page.

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats.

From: Yolanda Kline <yoliekline631@gmail.com>
Sent: Tuesday, October 01, 2019 9:09 AM
To: Teresa Morales <teresa.morales@tdhca.state.tx.us>
Subject: The Proposed New Low Income Housing (aka NO income)

Dear Ms Morales, I a very upset that the government will be building **no** income housing in

my neighborhood. Our property is the child of Pleasanton Farms corporation. I paid over \$100,000.00 for my two story home in the Esperanza Subdivision located in San Antonio, Texas. I pay property taxes that are so outrageous I end up doing without some groceries just to prevent getting behind on my mortgage payment. I work hard for what I have. Now you're going to crash property values with housing you proposed in my neighborhood. How can the government cry out for fairness yet the government dumps trash in my backyard?

Exactly where within my subdivision will this housing be built? How close to my subdivision to my subdivision will it be built? Are you going to lower my taxes if these home are built?

I'm asking that you buy my house from me at fair price according to appropriate area sales. You can use it for your proposed no income housing. I hope to hear from you very soon.

Mrs Yolanda Centennial

9614 Pleasanton Farms

San Antonio Texas

From: [Molina, Nicole Elizabeth](#)
To: [Teresa Morales](#)
Subject: FW: Emailing - TX Dept Housing Community Affairs - Multifamily Finance Division - Pleasanton Farms.pdf
Date: Thursday, October 03, 2019 2:03:39 PM
Attachments: [TX Dept Housing Community Affairs - Multifamily Finance Division - Pleasanton Farms.pdf](#)

From: Molina, Nicole Elizabeth
Sent: Thursday, October 3, 2019 1:51 PM
To: 'teresa.morales@tdhc.state.tx.us' <teresa.morales@tdhc.state.tx.us>
Subject: Emailing - TX Dept Housing Community Affairs - Multifamily Finance Division - Pleasanton Farms.pdf

Hello My name is Robert and Nicole Ybarra and we are property owners here in the Esperanza subdivision. We are writing to oppose the apartment housing complex you wish to build in our neighborhood.

This will decrease our property value and increase our taxes as well as bring more unwanted traffic to the area.

We already have dealt with speeding traffic on Wahalla where passer by vehicles cut through the subdivision to get the neighborhood in the back.

We have also seen a high amount of theft in the area, items stolen from our yards as well from our vehicles. Building a housing complex is not ideal for any of the homeowners this will bring more traffic and crime to this community.

This is a hard, "NO" from me.

Please let this be stated that I have contacted you regarding this matter.

Thank you,

Robert and Nicole Ybarra
210-380-3230

From: [Jennifer Ramos](#)
To: [Teresa Morales](#)
Subject: Highland Hills Neighborhood Association opposition
Date: Thursday, October 10, 2019 12:49:11 PM

Th Highland Hills Neighborhood Association would like to submit our official opposition to Development Number 19615 Development Name Oaks on Clark. Located at 4622 Clark Avenue. We are opposing this development for several reasons. The developer has not met or reached out to our Association and we are not aware of the type of development he is proposing. Feel free to contact me for any additional comments.

Thank you,
Jennifer Ramos
President, HHNA

Sent from my iPhone

4c

BOARD ACTION REQUEST
BOND FINANCE DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action regarding the Issuance of Governmental Notes (Granada Terrace Apartments) Resolution No. 20-016 and a Determination Notice of Housing Tax Credits

RECOMMENDED ACTION

WHEREAS, the Board adopted an inducement resolution for Granada Terrace at the Board meeting of October 10, 2019;

WHEREAS, a 4% Housing Tax Credit application for the Granada Terrace Apartments, sponsored by Granada Terrace Apartments GP, LLC, which includes BLVD Capital, LLC as principal was submitted to the Department on December 13, 2019;

WHEREAS, a Certification of Reservation (Reservation) was issued in the amount of \$16,000,000 on April 15, 2020, with a bond delivery deadline of October 12, 2020; and

WHEREAS, the Executive Award and Review Advisory Committee (EARAC) recommends the issuance of Governmental Notes for Granada Terrace and the issuance of a Determination Notice;

NOW, therefore, it is hereby

RESOLVED, that the issuance of unrated Governmental Notes (Granada Terrace) for \$16,000,000, Resolution No. 20-016 is hereby approved in the form presented to this meeting;

FURTHER RESOLVED, the issuance of a Determination Notice of \$882,061 in 4% Housing Tax Credits for Granada Terrace, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The Bonds will be issued in accordance with Tex. Gov't Code §2306.352 *et seq.*, which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. Tex. Gov't Code §2306.472 provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

Development Information: Granada Terrace is located at 1301 Avenue A in South Houston, Harris County, and proposes the acquisition and rehabilitation of 156 units that will continue to serve the general population. The development was built in 1962 and was rehabilitated with Low Income Housing Tax Credits in 1991, but has since sustained damage due to Hurricane Harvey in 2017 and the financing includes disaster relief funds (CDBG-DR) from Harris County. The Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served. Thirteen of the units will be rent and income restricted at 30% of AMFI, 18 of the units will be rent and income restricted at 50% of AMFI, and the remaining 125 units will be rent and income restricted at 60% of AMFI. The existing Section 8 HAP contract is expected to continue for all of the units. Rehabilitation costs (includes building costs and site work) are approximately \$42k per unit.

Organizational Structure and Previous Participation: The Borrower is Granada Terrace Apartments, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 1 and the previous participation was deemed acceptable by EARAC after further review and discussion.

Public Hearing/Public Comment: A public hearing for the proposed development was conducted by staff on February 24, 2020, and there were no attendees. A copy of the hearing transcript is included herein. The Department received letters of support from Joe Soto, Mayor of the City of South Houston, Cathy Danna, Principal of the LF Smith Elementary School, Benito Alqueman, Pastor for New Beginnings Global Fellowship, and Luisa Flores, Owner of the Xtreme Fitness Studio. These letters are included herein.

Summary of Financial Structure

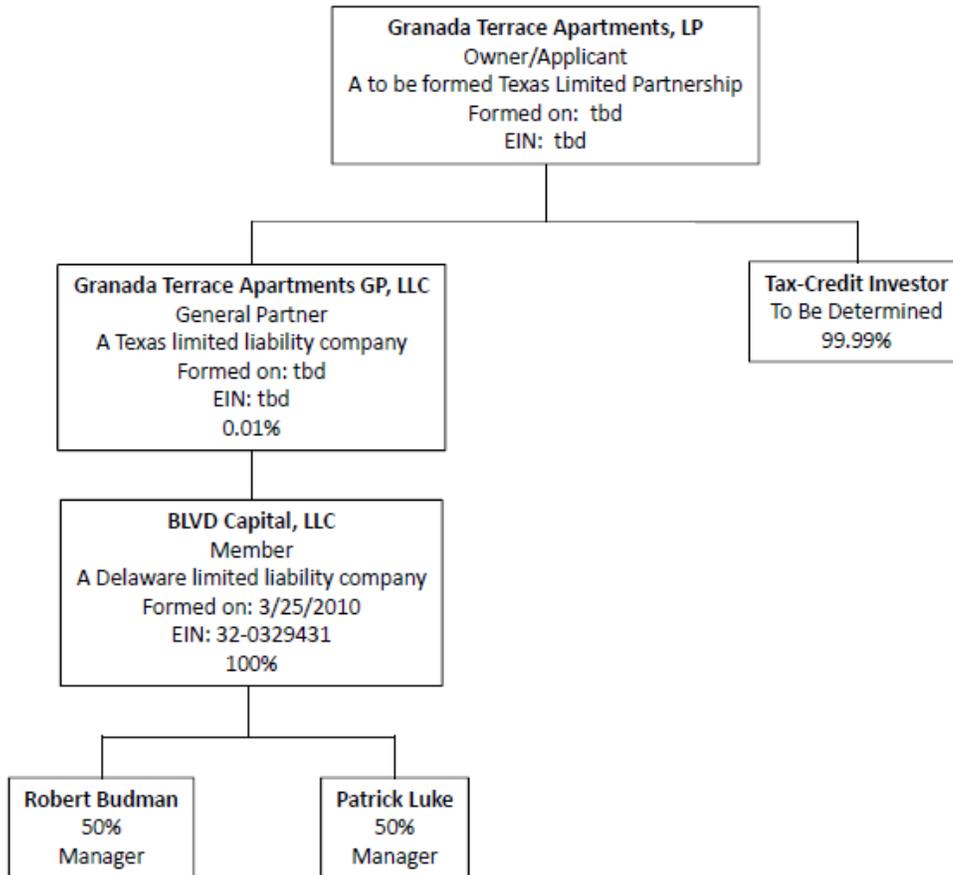
Under the proposed structure, the Department will issue an unrated tax-exempt fixed rate multifamily note (similar to fixed rate bond in other structures) in the amount of \$16,000,000 that will be initially purchased by Citibank Community Capital, who will be serving as construction and permanent lender. Citibank Community Capital will acquire the loan and the Department's related multifamily note at closing which will be used to fund the construction phase of the loan. The tax-exempt note will have two tranches, both of which will be fully funded at closing. Tranche A (Series 2020A) will be in the amount of \$12,100,000, will provide construction and permanent phase financing, and will have a final maturity date of January 1, 2053. Tranche B (Series 2020B) will be in the amount of \$3,900,000, will be utilized only for construction phase financing, and will have a final maturity date of January 1, 2023.

The interest rate for Tranche A will be a fixed rate equal the sum of the 18 year LIBOR swap index plus a spread of 1.95%, while the interest rate for Tranche B will be a fixed rate equal the sum of the 2 year LIBOR swap index plus a spread of 2.05%; for purposes of TDHCA's underwriting, a rate of 3.67% was used.

The term of the bonds will be 30 years. Tranche A (Series 2020A) will have a 35-year amortization, while Tranche B (Series 2020B) payments will be interest only. Also, Harris County has committed \$7,200,000 in the form of CDBG-DR funds through the General Land Office.

A copy of the Exhibits recommended to be approved by the Board as referenced in Resolution No. 20-016 can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.

Exhibit A



RESOLUTION NO. 20-016

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS GOVERNMENTAL LENDER NOTES (GRANADA TERRACE APARTMENTS) SERIES 2020; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; 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 (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 individuals and families of low, very low and extremely 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 "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds (including notes), for the purpose, among others, of obtaining funds to make such loans and provide financing, 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 multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Governmental Note (Granada Terrace Apartments) Series 2020A (the "Series 2020A Governmental Lender Note") and Texas Department of Housing and Community Affairs Multifamily Housing Governmental Note (Granada Terrace Apartments) Series 2020B (the "Series 2020B Governmental Lender Note", and together with the Series 2020A Governmental Lender Note, the "Governmental Lender Notes") pursuant to and in accordance with the terms of a Funding Loan Agreement (the "Funding Loan Agreement") among the Department, Citibank, N.A., as funding lender (the "Funding Lender"), and Wilmington Trust, National Association, as fiscal agent (the "Fiscal Agent"), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Governmental Lender Notes to fund a mortgage loan to Granada Terrace Apartments, LP, a Texas limited partnership (the "Borrower") in order to finance the cost of acquisition, rehabilitation and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on October 10, 2019, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas; and

WHEREAS, it is anticipated that the Department and the Borrower will execute and deliver a Borrower Loan Agreement (the "Borrower Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Governmental Lender Notes (the "Borrower Loan") to the Borrower to enable the Borrower to finance the cost of acquisition, rehabilitation and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department (x) a multifamily note in an original principal amount equal to the original aggregate principal amount of the Series 2020A Governmental Lender Note (the "Series 2020A Borrower Note") and (y) a multifamily note in an original principal amount equal to the original aggregate principal amount of the Series 2020B Governmental Lender Note (the "Series 2020B Borrower Note", and together with the Series 2020A Borrower Note, the "Borrower Notes"), and providing for payment of interest on such principal amount equal to the interest on the Governmental Lender Notes and to pay other costs described in the Borrower Loan Agreement; and

WHEREAS, it is anticipated that the Borrower Notes will be secured by a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Texas) (the "Security Instrument") from the Borrower for the benefit of the Department and assigned to the Fiscal Agent; and

WHEREAS, the Department's rights (except for certain reserved rights) under the Borrower Loan Agreement, the Borrower Notes and the Security Instrument will be assigned to the Fiscal Agent pursuant to an Assignment of Deed of Trust and Loan Documents (the "Assignment") from the Department to the Fiscal Agent; and

WHEREAS, in order to assure compliance with Section 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, the Board has determined that the Department, the Fiscal Agent and the Borrower will execute a Tax Exemption Agreement (the "Tax Exemption Agreement"), in connection with the Governmental Lender Notes, pursuant to which the Department and the Borrower will make certifications, representations and covenants relating to the treatment of the interest on the Governmental Lender Notes as tax exempt from gross income for federal income tax purposes; and

WHEREAS, the Board has determined that the Department, the Fiscal Agent, and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Harris County, Texas; and

WHEREAS, the Board has further determined that Citibank, N.A. (the "Purchaser") will purchase the Governmental Lender Notes from the Department; and

WHEREAS, the Board has examined proposed forms of (a) the Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement, the Assignment and the Tax Exemption Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Security Instrument and the Borrower Notes; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Governmental Lender Notes, the execution and delivery of the Issuer Documents, the acceptance of the Security Instrument and the Borrower Notes and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1

ISSUANCE OF GOVERNMENTAL LENDER NOTES; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Governmental Lender Notes. That the issuance of the Governmental Lender Notes is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Funding Loan Agreement, and that, upon execution and delivery of the Funding Loan Agreement, the Authorized Representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department's seal to the Governmental Lender Notes and to deliver the Governmental Lender Notes to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Fiscal Agent for authentication (to the extent required in the Funding Loan Agreement), and thereafter to deliver the Governmental Lender Notes to or upon the order of the Purchaser.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price of the Series 2020A Governmental Lender Note. That (i) the Series 2020A Governmental Lender Note shall bear interest at a fixed rate as described in the Series 2020A Borrower Note subject to adjustment as provided in the Funding Loan Agreement; provided that, in no event shall the interest rate (including any default rate) on the Series 2020A Governmental Lender Note exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Series 2020A Governmental Lender Note shall be \$12,100,000; (iii) the final maturity of the

Series 2020A Governmental Lender Note shall occur on January 1, 2053; and (iv) the price at which the Series 2020A Governmental Lender Note is sold to the Purchaser shall be the principal amount thereof.

Section 1.3 Interest Rate, Principal Amount, Maturity and Price of the Series 2020B Governmental Lender Note. That (i) the Series 2020B Governmental Lender Note shall bear interest at a fixed rate as described in the Series 2020B Borrower Note subject to adjustment as provided in the Funding Loan Agreement; provided that, in no event shall the interest rate (including any default rate) on the Series 2020B Governmental Lender Note exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Series 2020B Governmental Lender Note shall be \$3,900,000; (iii) the final maturity of the Series 2020B Governmental Lender Note shall occur on January 1, 2023; and (iv) the price at which the Series 2020B Governmental Lender Note is sold to the Purchaser shall be the principal amount thereof.

Section 1.4 Approval, Execution and Delivery of the Funding Loan Agreement. That the form and substance of the Funding Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Funding Loan Agreement, and to deliver the Funding Loan Agreement to the Fiscal Agent and the Purchaser.

Section 1.5 Approval, Execution and Delivery of the Borrower Loan Agreement. That the form and substance of the Borrower Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Borrower Loan Agreement, and to deliver the Borrower Loan Agreement to the Borrower.

Section 1.6 Approval, Execution and Delivery of the Tax Exemption Agreement. The form and substance of the Tax Exemption Agreement relating to the Governmental Lender Notes are hereby approved and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement and to deliver the Tax Exemption Agreement to the Borrower and the Fiscal Agent.

Section 1.7 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Fiscal Agent and to cause the Regulatory Agreement to be filed of record in the real property records of Harris County, Texas.

Section 1.8 Sale of the Governmental Lender Notes. That the sale of the Governmental Lender Notes to the Purchaser is hereby authorized and approved.

Section 1.9 Acceptance of the Borrower Notes and the Security Instrument. That the form and substance of the Borrower Notes and the Security Instrument are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Borrower Notes to the order of the Fiscal Agent without recourse.

Section 1.10 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Fiscal Agent.

Section 1.11 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives each are hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.12 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives each are hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department ("Bond Counsel"), may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.13 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit B - Funding Loan Agreement
- Exhibit C - Borrower Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E-1 - Series 2020A Borrower Note
- Exhibit E-2 - Series 2020B Borrower Note
- Exhibit F - Security Instrument
- Exhibit G - Assignment
- Exhibit H - Tax Exemption Agreement

Section 1.14 Authorized Representatives. That the following persons are 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 Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership of the Department, and the Secretary or any Assistant Secretary to the 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

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Governmental Lender Notes in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Governmental Lender Notes.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Governmental Lender Notes and all other Department activities.

Section 2.4 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Governmental Lender Notes and the fees and revenues to be received in connection with the financing of the Development in accordance with the Funding Loan Agreement and to enter into any agreements relating thereto only to the extent permitted by the Funding Loan Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Governmental Lender Notes and the financing of the Development are hereby ratified and confirmed.

ARTICLE 3

CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Borrower Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Borrower Loan Agreement, the Tax Exemption Agreement and the Regulatory

Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Governmental Lender Notes to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Borrower Loan established pursuant to the Borrower Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Governmental Lender Notes and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Governmental Lender Notes.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase the Governmental Lender Notes in the secondary open market for municipal securities.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Governmental Lender Notes and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Funding Loan Agreement, including the revenues and funds of the Department pledged under the Funding Loan Agreement to secure payment of the Governmental Lender Notes, and under no circumstances shall the Governmental Lender Notes be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Governmental Lender Notes shall not be and does not create or constitute in any way an obligation, a debt or a liability of

the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. The Governmental Lender Notes shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 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, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act, regarding meetings of the Governing Board.

PASSED AND APPROVED this 23rd day of April, 2020.

EXHIBIT A

Description of Development

Borrower: Granada Terrace Apartments, LP, a Texas limited partnership

Development: The Development is a 156-unit affordable multifamily community to be known as Granada Terrace Apartments, and to be located at 1301 Avenue A, South Houston, Harris County, TX 77587. It will consist of 16 residential buildings with approximately 127,827 net rentable square feet. The unit mix will consist of:

66	one-bedroom/one-bath units
90	two-bedroom/one-and-a-half-bath units
156	<u>Total Units</u>

Unit sizes will range from approximately 697 square feet to approximately 901 square feet.

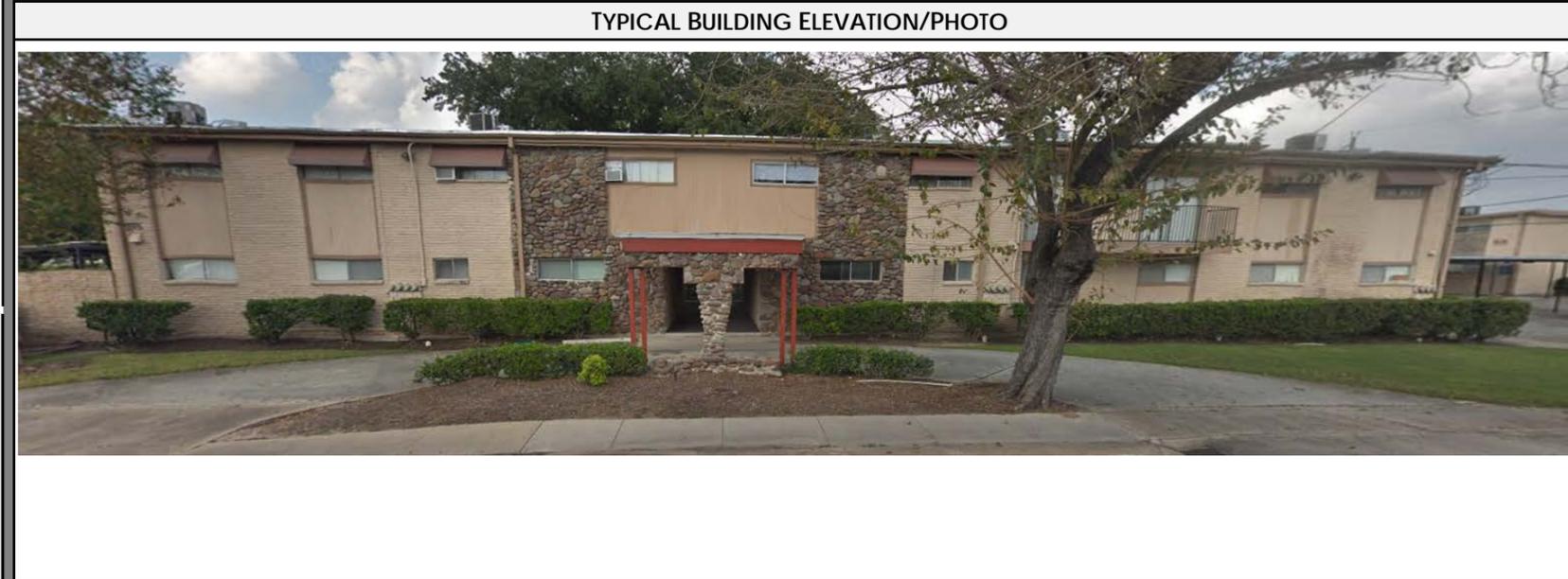
20601 Granada Terrace - Application Summary

REAL ESTATE ANALYSIS DIVISION

April 15, 2020

PROPERTY IDENTIFICATION		RECOMMENDATION				
Application #	20601	TDHCA Program		Request		
Development	Granada Terrace	LIHTC (4% Credit)	\$882,061	\$882,061	\$5,654/Unit	\$0.96
City / County	Houston / Harris					
Region/Area	6 / Urban					
Population	General					
Set-Aside	General					
Activity	Acquisition/Rehab (Built in 1962)	Private Activity Bonds	\$16,000,000	3.67%	35	30
					1	

KEY PRINCIPAL / SPONSOR		
Blvd Capital: Robert Budman Patrick Luke George Saad Sarah Andre - Consultant		
Related Parties	Contractor - TBD	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	13	8%
1	66	42%	40%	-	0%
2	90	58%	50%	18	12%
3	-	0%	60%	125	80%
4	-	0%	MR	-	0%
TOTAL	156	100%	TOTAL	156	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	✓ 1.32	Expense Ratio	✓ 53.6%
Breakeven Occ.	✓ 84.4%	Breakeven Rent	\$904
Average Rent	\$1,018	B/E Rent Margin	✓ \$115
Property Taxes	\$1,378/unit	Exemption/PILOT	0%
Total Expense	\$6,268/unit	Controllable	\$3,294/unit



MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)	✓ 0.0%
Highest Unit Capture Rate	✓ 7% 1 BR/50% 60
Dominant Unit Cap. Rate	✓ 4% 2 BR/50% 83
Premiums (↑60% Rents)	N/A N/A
Rent Assisted Units	156 100% Total Units

DEVELOPMENT COST SUMMARY

Costs Underwritten	TDHCA's Costs - Based on PCA	
Avg. Unit Size	819 SF	Density 32.4/acre
Acquisition	\$81K/unit	\$12,563K
Building Cost	\$48.97/SF	\$40K/unit \$6,260K
Hard Cost		\$46K/unit \$7,147K
Total Cost		\$179K/unit \$27,875K
Developer Fee	\$3,242K (3% Deferred)	Paid Year: 1
Contractor Fee	\$874K	30% Boost Yes

REHABILITATION COSTS / UNIT

Site Work	\$K	0%	Finishes/Fixtures	\$10K	22%
Building Shell	\$23K	50%	Amenities	\$2K	4%
HVAC	\$6K	12%	Total Exterior	\$25K	59%
Appliances	\$1K	3%	Total Interior	\$17K	41%

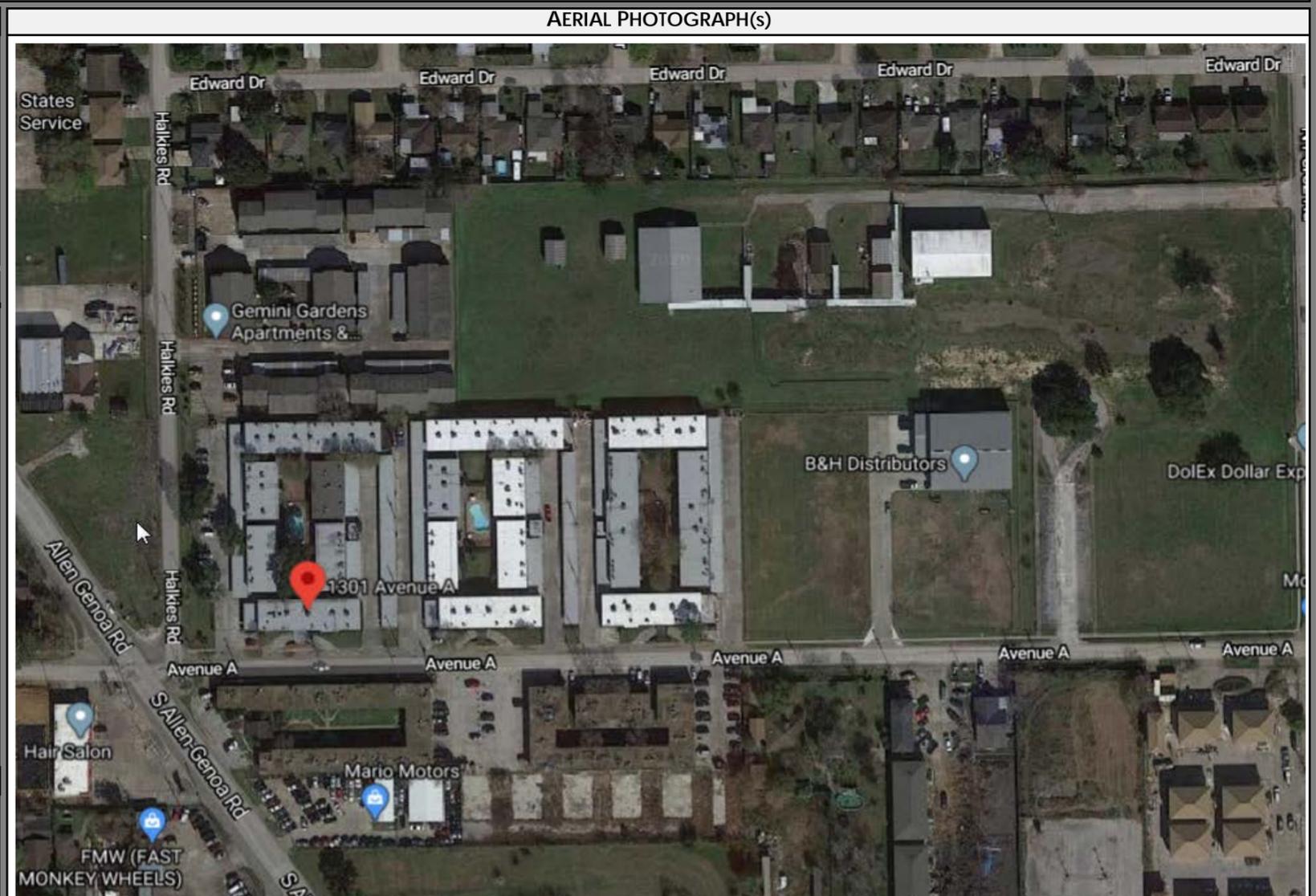
DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Citi Bank Tranche A	30/35	3.67%	\$12,100,000	1.35	Loan Star Housing	20/	0.15%	\$7,200,000	1.32	Enterprise	\$8,466,937
										BLVD Capital	\$108,498
TOTAL DEBT (Must Pay)			\$12,100,000		CASH FLOW DEBT / GRANTS			\$7,200,000		TOTAL EQUITY SOURCES	\$8,575,435
TOTAL DEBT SOURCES											\$19,300,000
TOTAL CAPITALIZATION											\$27,875,435

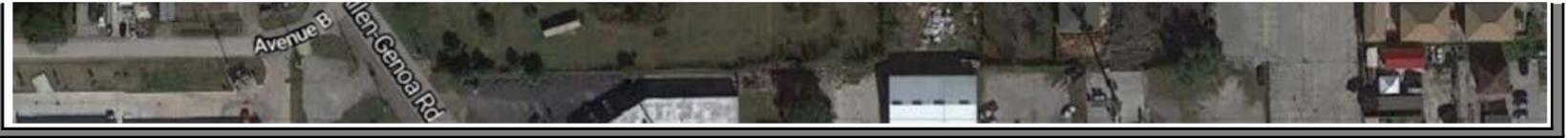
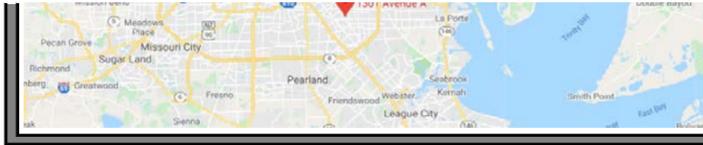
CONDITIONS

- 1 Receipt and acceptance before Determination Notice:
 - a: Confirmation of final HUD approval of an increase in the HAP rents as proposed.
 - b: Revised Scope and Cost Review (SCR) that is fully compliant with §11.306, including a revised SCR Supplement schedule, fully itemizing/describing the \$57,270 in "miscellaneous".
 - c: A formal LOI from the non-profit, Lone Star, for the CDBG funds that includes a provision for an extension of at least five years if not fully repaid at the 20-year maturity.
- 2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
 - a: Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
 - b: Certification of comprehensive testing for mold, and that any appropriate abatement procedures were implemented by a qualified abatement company.
 - c: Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not be deducted from eligible basis.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	TDHCA
Expiration Date	10/12/2020
Bond Amount	\$16,000,000
BRB Priority	Priority 3
Bond Structure	Citibank Tax Exempt Loan
% Financed with Tax-Exempt Bonds	69.3%
RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
<ul style="list-style-type: none"> ▫ Minimal lease up risk ▫ feasibility indicators ▫ Pro forma based on historical expenses ▫ 100% rental assistance 	
WEAKNESSES/RISKS	
<ul style="list-style-type: none"> ▫ Potential cost overruns associated with rehab 	
AREA MAP	







DEVELOPMENT IDENTIFICATION

TDHCA Application #: 20601 Program(s): TDHCA Bonds/4% HTC

Granada Terrace

Address/Location: 1301 Avenue A

City: Houston County: Harris Zip: 77587

Population: General Program Set-Aside: General Area: Urban

Activity: Acquisition/Rehab Building Type: Garden (Up to 4-story) Region: 6

Analysis Purpose: New Application - Initial Underwriting

ALLOCATION

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
Private Activity Bonds	\$16,000,000	3.76%	35	15	\$16,000,000	3.67%	35	30	1
LIHTC (4% Credit)	\$882,061				\$882,061				

CONDITIONS

- 1 Receipt and acceptance before Determination Notice:
 - a: Confirmation of final HUD approval of an increase in the HAP rents as proposed.
 - b: Revised Scope and Cost Review (SCR) that is fully compliant with §11.306, including a revised SCR Supplement schedule, fully itemizing/describing the \$57,270 in "miscellaneous".
 - c: A formal LOI from the non-profit, Lone Star, for the CDBG funds that includes a provision for an extension of at least five years if not fully repaid at the 20-year maturity.
- 2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
 - a: Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
 - b: Certification of comprehensive testing for mold, and that any appropriate abatement procedures were implemented by a qualified abatement company.
 - c: Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not be deducted from eligible basis.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

SET-ASIDES

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	13
50% of AMI	50% of AMI	18
60% of AMI	60% of AMI	125

DEVELOPMENT SUMMARY

Granada Terrace is a 156-unit multifamily development located in South Houston, Harris County, Texas. Granada Terrace was rehabilitated with HTC funds in 1991. The development sustained damage from Hurricane Harvey in 2017. The application includes \$7.2M of Harris County CDBG Disaster Recovery Funds. A HAP contract covering all 156 units was provided.

RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	Minimal lease up risk
▫	feasibility indicators
▫	Pro forma based on historical expenses
▫	100% rental assistance

WEAKNESSES/RISKS	
▫	Potential cost overruns associated with rehab projects
▫	
▫	
▫	

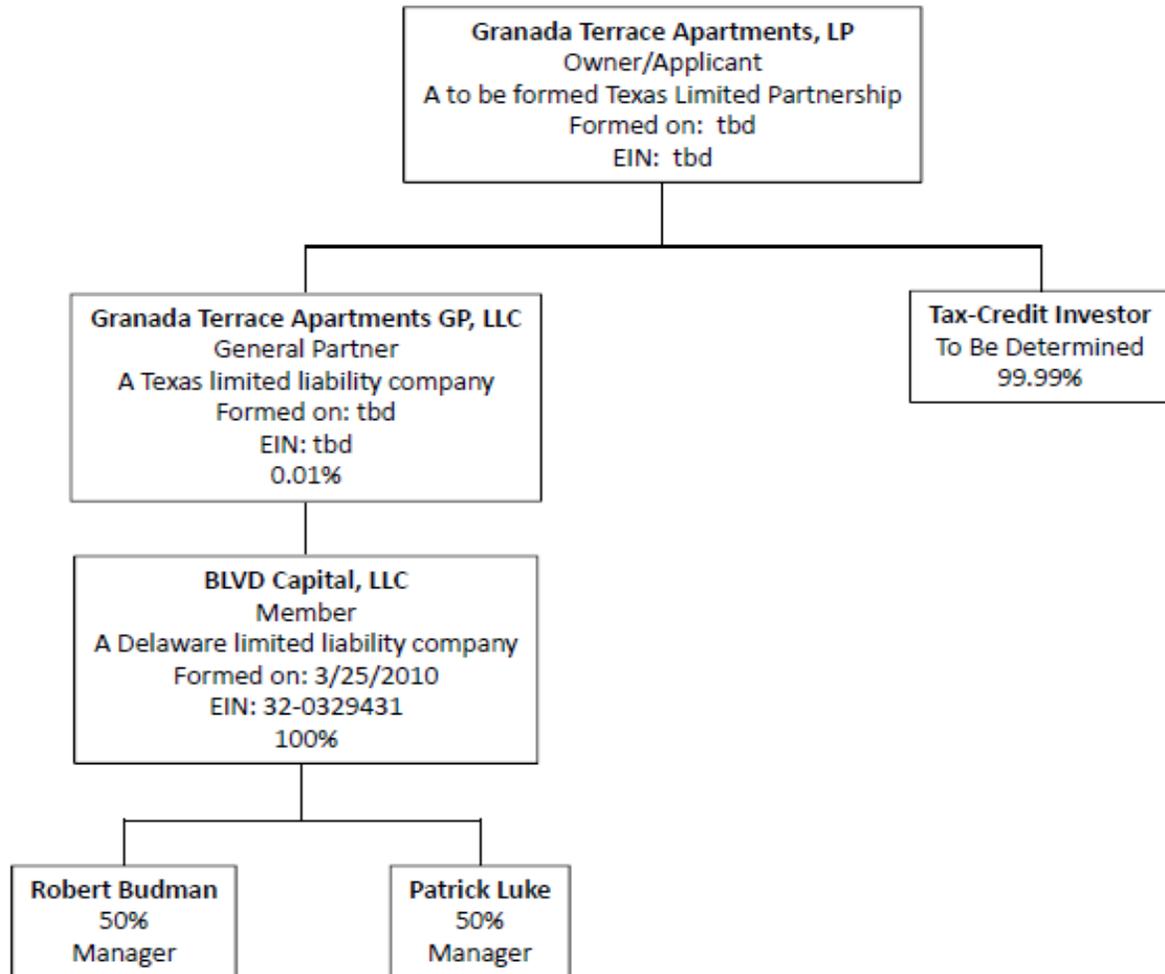
DEVELOPMENT TEAM

PRIMARY CONTACTS

Name: Robert Budman
Phone: (323) 302-9610
Relationship: Developer/GP

Name: George Saad
Phone: (323) 302-9610
Relationship: Developer

OWNERSHIP STRUCTURE



- BLVD Capital (<https://www.blvdcapitalinvestment.com/>) is a privately held real estate investment company based in Los Angeles, Ca. Their company typically targets underperforming properties that often require significant renovations and hands-on management. Sarah Andre is the consultant working with the Applicant and Developer.

DEVELOPMENT SUMMARY

SITE PLAN



Comments:

156 total parking spaces required, 201 total carports will be provided.

BUILDING ELEVATION



BUILDING CONFIGURATION

Building Type	A	B	C	D	E	F	G	H	I				Total Buildings
Floors/Stories	2	2	2	2	2	2	2	2	2				
Number of Bldgs	1	4	4	2	1	1	1	1	1				16
Units per Bldg	10	8	6	14	10	10	16	10	16				
Total Units	10	32	24	28	10	10	16	10	16				156
Avg. Unit Size (SF)	819 sf			Total NRA (SF)				127,837		Common Area (SF)			647

SITE AND ACQUISITION

Site Acreage: Development Site: 4.82 acres Density: 32.4 units/acre
Site Control: 4.821 **Site Plan:** 4.821 **Appraisal:** na **ESA:** 4.82

Control Type: Purchase and Sale Agreement Contract Expiration: 6/30/2020
 Development Site: 4.82 acres Cost: \$12,500,000 \$80,128 per unit
 Seller: Chateau Sera SPE, LLC and The Pad on 30th Street SPE, LLC
 Buyer: BLVD Capital, LLC
 Related-Party Seller/Identity of Interest: No

APPRAISED VALUE

Appraiser: Clarity Valuation Date: 4/10/2020
 Land as Vacant: 4.82 acres \$800,000 Per Unit: \$5,128
 Existing Buildings: (as-is) \$12,700,000 Per Unit: \$81,410
Total Development: (as-is) \$13,500,000 Per Unit: \$86,538

Comments:
 The originally submitted Appraisal excluded a valuation of the land in conformance with §11.304(10)(A) of the REA rules. A revised appraisal was submitted on April 10, 2020, allowing the Underwriter to allocate \$800K in land in accordance with §11.302(e)(1)(C). As a result, the eligible basis on the acquisition of the buildings is determined to be \$11.7M.

GENERAL INFORMATION

Flood Zone:	<u>X, AE</u>	Scattered Site?	<u>No</u>
Zoning:	<u>C1</u>	Within 100-yr floodplain?	<u>No</u>
Re-Zoning Required?	<u>No</u>	Utilities at Site?	<u>Yes</u>
Year Constructed:	<u>1962</u>	Title Issues?	<u>No</u>

Surrounding Uses:
North: Edward Dr, Gemini Gardens Apts, residential
East: Commercial
South: Avenue A, Multifamily residential
West: Halkies Rd, Single-family residential

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: Consulting Solutions Inc (CSI) Date: 11/18/2019

Recognized Environmental Conditions (RECs) and Other Concerns:

- CSI's onsite inspection of the subject identified suspect asbestos containing materials. Based on laboratory analysis no asbestos has been identified in the samples collected by CSI. However, based on Freddie Mac guidelines CSI recommends that management implement an Asbestos Operations and Maintenance (O&M) Program.
- Given the age (1963, 56 years) of the subject, Consulting Solutions determined that it was possible that LBP may be present. CSI is of the opinion the in place Lead Based Paint (LBP) Operations and Maintenance Program is sufficient and recommends management continue its implementation.
- Property Manager, reported past water intrusion and moisture/mold problems at the subject, and a site survey (visual and olfactory) revealed visual evidence of mold growth, water damage, and water intrusion. CSI recommends the removal of observed areas of mold growth, and repair to water damaged areas. CSI is of the opinion the in-place Mold Management Plan is sufficient, and recommends management continue its implementation.

MARKET ANALYSIS

Provider: Kinetic Valuation Group, Inc. Date: 12/11/2019
 Contact: Jay Wortmann Phone: 402-202-0771

Primary Market Area (PMA): 12 sq. miles 2 mile equivalent radius
 The PMA for this development is generally defined as 14 census tracts in South Houston.

ELIGIBLE HOUSEHOLDS BY INCOME								
Harris County Income Limits								
HH Size		1	2	3	4	5	6	7+
50% AMGI	Min	\$1	\$1	\$1	\$1	---	---	---
	Max	\$26,750	\$30,550	\$34,350	\$38,150	---	---	---

AFFORDABLE HOUSING INVENTORY								
Competitive Supply (Proposed, Under Construction, and Unstabilized)								
File #	Development			In PMA?	Type	Target Population	Comp Units	Total Units
	None							
Other Affordable Developments in PMA since 2015								
	None							
Stabilized Affordable Developments in PMA (pre-2015)						Total Units	1,387	
						Total Developments	6	

OVERALL DEMAND ANALYSIS				
	Market Analyst		Underwriter	
	HTC	Assisted	HTC	Assisted
Total Households in the Primary Market Area		21,651		22,057
Potential Demand from the Primary Market Area		3,963		4,399
10% External Demand		396		440
Potential Demand from Other Sources		0		0
GROSS DEMAND		4,359		4,839
Subject Affordable Units		156		156
Unstabilized Competitive Units				
RELEVANT SUPPLY		156		156
Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE		3.6%		3.2%
Population:	General	Market Area:	Urban	Maximum Gross Capture Rate: 10%

UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND

N/A due to all units qualifying from \$1 up.

Demand Analysis:

Capture rate limits do not apply to existing affordable housing that is at least 50% occupied and that provides a leasing preference to existing tenants. The Subject property is covered by a Housing Assistance Program contract, meaning that all households below the maximum income level are eligible and incomes are limited to 50% AMI and below.

Subject is currently fully occupied and will extend leasing preference to current tenants. Underwriter has not included competitive units in the capture rate calculations as tenants are expected to return and Subject units will not compete for qualified demand in the PMA.

Market Analyst qualifies households from \$1 to the maximum 60% HTC rent.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE										
Unit Type	Market Analyst					Underwriter				
	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate
1 BR/30%	137	14	6	0	4%	271	27	6	0	2%
1 BR/50%	428	43	8	0	2%	795	80	60	0	7%
1 BR/60%	191	19	52	0	25%					
2 BR/30%	644	64	7	0	1%	555	56	7	0	1%
2 BR/50%	226	23	10	0	4%	2,051	205	83	0	4%
2 BR/60%	680	68	73	0	10%					

Market Analyst Comments:

"The Subject is presently stabilized with a waiting list; its renovation is not expected to hinder existing affordable properties' ability to maintain full occupancy." (p. 19)

"The demand estimate, existing supply of housing, and interviews with real estate professionals demonstrate an ongoing need for good quality affordable housing in the PMA over the foreseeable term." (p. 42)

Underwriter Comments:

Affordable properties still monitored in the PMA average 95% occupancy.

Revisions to Market Study:	2
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OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)					
NOI:	\$846,257	Avg. Rent:	\$1,018	Expense Ratio:	53.6%
Debt Service:	\$642,387	B/E Rent:	\$904	Controllable Expenses:	\$3,294
Net Cash Flow:	\$203,870	UW Occupancy:	95.0%	Property Taxes/Unit:	\$1,378
Aggregate DCR:	1.32	B/E Occupancy:	84.4%	Program Rent Year:	2019

All 156 unit will be covered by a HAP contract. HAP rents underwritten based on a Mark-Up-to-Market (MUTM) with HUD under the existing HAP Contract which will allow for the post-rehab rents to go into effect immediately at closing. Rents will be subject to final HUD approval. The underwritten average HAP rents are 11% higher on average than achievable market rents as determined by the Market Analyst. Without the HAP contract, DCR falls to 0.81 and project becomes infeasible.

Assumed 5% vacancy [permitted for developments with 100% project-based rental assistance per 2020 Multifamily Uniform Rules(\$11.302(d)(1)(C))].

Operating expenses generally estimated based on historical operating expenses of the property.

The underwriting analysis of the expected repairs over time presented in the submitted SCR were revised as of April 10, 2020 to evaluate the capital needs over the course of the next 30 years, and indicates a need for the initial reserve for replacement requirement to be set at \$400 per unit.

Healthy expense ratio and DCR indicate long-term feasibility for the overall pro forma. Proforma DCR improves to 1.38 times debt coverage by year 35. Development breaks even with 20 vacant units, underwritten at 7 (of 156 total). Lease up risk mitigated by current occupancy and 100% project-based rental assistance.

Related-Party Property Management Company: No

Revisions to Rent Schedule:	2
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Revisions to Annual Operating Expenses:	1
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DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (TDHCA's Costs- Based on PCA)					
Acquisition	\$165,944/ac	\$80,529/unit	\$12,562,500	Contractor Fee	\$873,600
Off-site + Site Work		\$1,897/unit	\$295,933	Soft Cost + Financing	\$3,203,293
Building Cost	\$48.97/sf	\$40,126/unit	\$6,259,676	Developer Fee	\$3,241,573
Contingency	9.02%	\$3,792/unit	\$591,551	Reserves	\$847,309
Total Development Cost		\$178,689/unit	\$27,875,435	Rehabilitation Cost	
				\$42,023/unit	
Qualified for 30% Basis Boost?		Located in OCT with < 20% HTC units/HH			

Acquisition:

As discussed previously, the originally submitted Appraisal excluded a valuation of the land in conformance with §11.304(10)(A) of the REA rules. A revised appraisal was submitted on April 10, 2020, allowing the Underwriter to allocate \$800K in land in accordance with §11.302(e)(1)(C). As a result, the eligible basis on the acquisition of the buildings is determined to be \$11.7M.

Site Work:

Subject will receive updated landscaping and pool and decking. According to the Applicant, there will also be re-grading to improve on-site drainage. A revised Scope and Cost Review (SCR) Supplement specifies costs for on-site concrete and on-site electrical work; however, these costs are not reflected in the Applicant's cost schedule.

Building Cost:

Scope of renovation will include windows, roofing, siding and all building materials will be brought up to current standards. Areas that took on water during Hurricane Harvey will be repaired so that future weather events will not result in water damage. Currently a unit is being used as the management office (for a total of 155 active units). This space will be returned to use as a unit and a separate building will be erected on the site for management and common functions.

The originally submitted SCR only identified \$77K of immediate repairs. The Underwriter requested a revised SCR analysis to support the proposed rehabilitation. Revised SCR identified Direct Construction costs consistent with the Applicant's estimate. Receipt and acceptance of a revised Scope and Cost Review (SCR) that is fully compliant with §11.306, and including a revised SCR Supplement schedule, fully itemizing/describing the \$57,270 in "miscellaneous" costs is required before issuance of the Determination Notice.

Applicant's interior and exterior costs consistent with those determined by the revised Third Party SCR. Breakdown as a percentage of Building Cost plus Site Work:

REHABILITATION COSTS / UNIT / % HARD COST							
Site Work	\$15,710	\$101/unit	0%	Finishes/Fixtures	\$1,571,621	\$10,074/unit	22%
Building Shell	\$3,594,507	\$23,042/unit	50%	HVAC	\$874,761	\$5,607/unit	12%
Amenities	\$280,223	\$1,796/unit	4%	Appliances	\$221,988	\$1,423/unit	3%
Total Exterior	\$3,890,440	\$24,939/unit	59%	Total Interior	\$2,668,369	\$17,105/unit	41%

Contingency:

Contingency understated at 9%. \$3.1M of repayable developer fee is available for deferral as additional contingency for any cost overruns.

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$27,875,435	\$24,852,062	\$944,257

Related-Party Contractor: TBD

Related-Party Cost Estimator: TBD

Revisions to Development Cost Schedule:	1
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UNDERWRITTEN CAPITALIZATION

BOND RESERVATION			
Issuer	Amount	Reservation Date	Priority
TDHCA	\$16,000,000	4/15/2020	Priority 3
Closing Deadline		Bond Structure	
10/12/2020		Citibank Tax Exempt Loan	

Percent of Cost Financed by Tax-Exempt Bonds	69.3%
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INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
Citi Bank Tranche A	Tax Ex Bonds	\$12,100,000	3.67%	44%
Citi Bank Tranche B	Conventional Loan	\$3,900,000	3.54%	14%
Enterprise	HTC	\$2,116,734	\$0.96	8%
Loan Star Housing	Grant	\$7,200,000	0.15%	26%
BLVD Capital	Deferred Fee	\$2,466,257	0.00%	9%
		\$27,782,991	Total Sources	

Comments:

TDHCA will issue \$16M in tax-exempt bonds during the construction period. The bonds will be privately placed with Citi as the construction period lender and proceeds will be provided in two tranches. Tranche A will be funded first and will provide \$12.1M in construction-to permanent phase financing. Tranche B will be for \$3.9M in additional, construction phase only financing.

PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
Citi Bank Tranche A	\$12,100,000	3.67%	35	30	\$12,100,000	3.67%	35	30	43%
Loan Star Housing	\$7,200,000	0.15%	N/A	20	\$7,200,000	0.15%	N/A	20	26%
Total	\$19,300,000				\$19,300,000				

Comments:

The capital structure includes \$7.2M of federally sourced disaster recovery funds (CDBG/DR funds). According to Harris County, the funds will be loaned with a 20 year term accruing interest only with hard payments totaling \$10,800 annually. In order to satisfy valid debt requirements, the Partnership will utilize a conduit structure with the non-profit Lone Star Housing. Harris County will issue the forgivable CDBG-DR loan to Lone Star Housing on the terms described above, and will include a Buyback Provision, giving BLVD Capital the option to purchase the note from Lone Star Housing at its market value at any point after Year 10 and the obligation to buy the note at Year 20 if not previously purchased beforehand.

Additionally, the Partnership will make payments annually to Lone Star Housing in the amount of \$10,800 plus \$5,000 for a total of \$15,800 payment each year.

Generally, federally-sourced funds must be loaned to a LIHTC entity and determined to be valid or true debt. If not, the funds are determined to be a grant. Proceeds from a federal grant must be deducted from the tax credit eligible basis to prevent federal subsidy from being spent on the same costs. The testing for true debt includes a number of factors including review of the loan documents to determine repayment requirements (are there any forgiveness provisions), the relationship between the lender and borrower and ability of the lender to foreclose in event of default and the economic considerations and incentives of such a foreclosure, cash flow projections generated by the property to determine its ability to repay the debt over its term and many other factors.

The Underwriter's analysis shows insufficient cash flow to repay the \$7.2M loan by maturity in year 20; however, the loan can be repaid by year 25. Receipt and acceptance before issuance of Determination Notice of a formal LOI from the non-profit, Lone Star, for the CDBG funds that includes a provision for an extension of at least five years if not fully repaid at the 20-year maturity, is a condition of this report.

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
Enterprise	\$8,466,937	\$0.96		\$8,466,937	\$0.96	30%	
BLVD Capital	\$108,498		3%	\$108,498		0%	3%
Total	\$8,575,435			\$8,575,435			
				\$27,875,435		Total Sources	

Credit Price Sensitivity based on current capital structure	
\$0.972	Maximum Credit Price before the Development is oversourced and allocation is limited
\$0.605	Minimum Credit Price below which the Development would be characterized as infeasible

Revisions to Sources Schedule:	1
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CONCLUSIONS

Recommended Financing Structure:

Gap Analysis:	
Total Development Cost	\$27,875,435
Permanent Sources (debt + non-HTC equity)	\$19,300,000
Gap in Permanent Financing	\$8,575,435

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$9,063,963	\$944,257
Needed to Balance Sources & Uses	\$8,575,435	\$893,364
Requested by Applicant	\$8,466,937	\$882,061

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
Tax Credit Allocation	\$8,466,937	\$882,061

	Amount	Interest Rate	Amort	Term	Lien
TDHCA-Issued Bonds	\$16,000,000	3.67%	35	30	1

Deferred Developer Fee	\$108,498	(3% deferred)
Repayable in	1 years	

Comments:

Allocation limited to \$882,061 based on the Applicant's revised request.

Underwriter:	<u>Diamond Unique Thompson</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

UNIT MIX/RENT SCHEDULE
Granada Terrace, Houston, TDHCA Bonds/4% HTC #20601

LOCATION DATA	
CITY:	Houston
COUNTY:	Harris
Area Median Income	\$76,300
PROGRAM REGION:	6

UNIT DISTRIBUTION							
# Beds	# Units	% Total	Assisted	CDBG	Income	# Units	% Total
Eff	-	0.0%	0	0	20%	-	0.0%
1	66	42.3%	66	35	30%	13	8.3%
2	90	57.7%	90	45	40%	-	0.0%
3	-	0.0%	0	0	50%	18	11.5%
4	-	0.0%	0	0	60%	125	80.1%
5	-	0.0%	0	0	70%	-	0.0%
					80%	-	0.0%
					MR	-	0.0%
TOTAL	156	100.0%	156	80	TOTAL	156	100.0%

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	3.34%
APP % Construction	3.34%
Average Unit Size	819 sf

UNIT MIX / MONTHLY RENT SCHEDULE																								
HTC		MRB			HAP		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS			MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	CDBG	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst	
TC 30%	\$429	MRB 30%	\$429	CDBG-DR	HAP	\$971	4	1	1.0	708	\$971	\$71	\$900	\$0	\$1.27	\$900	\$3,600	\$3,600	\$900	\$1.27	\$0	\$810	\$1.14	\$810
TC 50%	\$716	MRB 50%	\$716	CDBG-DR	HAP	\$971	4	1	1.0	708	\$971	\$71	\$900	\$0	\$1.27	\$900	\$3,600	\$3,600	\$900	\$1.27	\$0	\$810	\$1.14	\$810
TC 60%	\$859	MRB 60%	\$859	CDBG-DR	HAP	\$971	21	1	1.0	708	\$971	\$71	\$900	\$0	\$1.27	\$900	\$18,900	\$18,900	\$900	\$1.27	\$0	\$810	\$1.14	\$810
TC 60%	\$859	MRB 60%	\$859	\$0	HAP	\$971	15	1	1.0	708	\$971	\$71	\$900	\$0	\$1.27	\$900	\$13,500	\$13,500	\$900	\$1.27	\$0	\$810	\$1.14	\$810
TC 30%	\$429	MRB 30%	\$429	CDBG-DR	HAP	\$971	2	1	1.0	697	\$971	\$71	\$900	\$0	\$1.29	\$900	\$1,800	\$1,800	\$900	\$1.29	\$0	\$810	\$1.16	\$810
TC 50%	\$716	MRB 50%	\$716	CDBG-DR	HAP	\$971	4	1	1.0	697	\$971	\$71	\$900	\$0	\$1.29	\$900	\$3,600	\$3,600	\$900	\$1.29	\$0	\$810	\$1.16	\$810
TC 60%	\$859	MRB 60%	\$859	\$0	HAP	\$971	10	1	1.0	697	\$971	\$71	\$900	\$0	\$1.29	\$900	\$9,000	\$9,000	\$900	\$1.29	\$0	\$810	\$1.16	\$810
TC 60%	\$859	MRB 60%	\$859	\$0	HAP	\$971	3	1	1.0	729	\$971	\$71	\$900	\$0	\$1.23	\$900	\$2,700	\$2,700	\$900	\$1.23	\$0	\$810	\$1.11	\$810
TC 60%	\$859	MRB 60%	\$859	\$0	HAP	\$971	3	1	1.0	752	\$971	\$71	\$900	\$0	\$1.20	\$900	\$2,700	\$2,700	\$900	\$1.20	\$0	\$810	\$1.08	\$810
TC 30%	\$515	MRB 30%	\$515	CDBG-DR	HAP	\$1,209	7	2	1.5	901	\$1,209	\$104	\$1,105	\$0	\$1.23	\$1,105	\$7,735	\$7,735	\$1,105	\$1.23	\$0	\$990	\$1.10	\$990
TC 50%	\$858	MRB 50%	\$858	CDBG-DR	HAP	\$1,209	10	2	1.5	901	\$1,209	\$104	\$1,105	\$0	\$1.23	\$1,105	\$11,050	\$11,050	\$1,105	\$1.23	\$0	\$990	\$1.10	\$990
TC 60%	\$1,030	MRB 60%	\$1,030	CDBG-DR	HAP	\$1,209	28	2	1.5	901	\$1,209	\$104	\$1,105	\$0	\$1.23	\$1,105	\$30,940	\$30,940	\$1,105	\$1.23	\$0	\$990	\$1.10	\$990
TC 60%	\$1,030	MRB 60%	\$1,030	\$0	HAP	\$1,209	45	2	1.5	901	\$1,209	\$104	\$1,105	\$0	\$1.23	\$1,105	\$49,725	\$49,725	\$1,105	\$1.23	\$0	\$990	\$1.10	\$990
TOTALS/AVERAGES:							156			127,837				\$0	\$1.24	\$1,018	\$158,850	\$158,850	\$1,018	\$1.24	\$0	\$914	\$1.12	\$914

ANNUAL POTENTIAL GROSS RENT:	\$1,906,200	\$1,906,200
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STABILIZED PRO FORMA

Granada Terrace, Houston, TDHCA Bonds/4% HTC #20601

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	12m YTD	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
	POTENTIAL GROSS RENT				\$1.24	\$1,018	\$1,906,200	\$1,906,200	\$1,018	\$1.24		0.0%
Laundry, Late Fees					\$7.45	\$13,944						
Total Secondary Income					\$7.45		\$13,944	\$7.45			0.0%	\$0
POTENTIAL GROSS INCOME						\$1,920,144	\$1,920,144				0.0%	\$0
Vacancy & Collection Loss					5.0% PGI	(96,007)	(96,007)	5.0% PGI			0.0%	-
Rental Concessions						-	-				0.0%	-
EFFECTIVE GROSS INCOME						\$1,824,137	\$1,824,137				0.0%	\$0

General & Administrative	\$58,318	\$374/Unit	41,709	\$267	2.14%	\$0.31	\$250	\$39,000	\$41,709	\$267	\$0.33	2.29%	-6.5%	(2,709)
Management	\$61,689	5.2% EGI	58,416	\$374	4.62%	\$0.66	\$540	\$84,240	\$91,207	\$585	\$0.71	5.00%	-7.6%	(6,967)
Payroll & Payroll Tax	\$201,636	\$1,293/Unit	213,168	\$1,366	12.83%	\$1.83	\$1,500	\$234,000	\$234,000	\$1,500	\$1.83	12.83%	0.0%	-
Repairs & Maintenance	\$115,046	\$737/Unit	167,770	\$1,075	5.96%	\$0.85	\$697	\$108,760	\$101,400	\$650	\$0.79	5.56%	7.3%	7,360
Electric/Gas	\$28,735	\$184/Unit	44,656	\$286	2.63%	\$0.38	\$307	\$47,959	\$44,656	\$286	\$0.35	2.45%	7.4%	3,303
Water, Sewer, & Trash	\$101,090	\$648/Unit	87,432	\$560	4.61%	\$0.66	\$540	\$84,181	\$87,432	\$560	\$0.68	4.79%	-3.7%	(3,251)
Property Insurance	\$58,518	\$0.46 /sf	35,135	\$225	3.85%	\$0.55	\$450	\$70,200	\$70,200	\$450	\$0.55	3.85%	0.0%	-
Property Tax (@ 100%) 2.8732	\$113,977	\$731/Unit	178,385	\$1,143	11.79%	\$1.68	\$1,378	\$215,000	\$178,385	\$1,143	\$1.40	9.78%	20.5%	36,615
Reserve for Replacements	\$44,323	\$284/Unit	-	\$0	3.42%	\$0.49	\$400	\$62,400	\$62,400	\$400	\$0.49	3.42%	0.0%	-
Supportive Services			-	\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)			-	\$0	0.34%	\$0.05	\$40	\$6,240	\$6,240	\$40	\$0.05	0.34%	0.0%	-
TDHCA Bond Compliance Fee			-	\$0	0.21%	\$0.03	\$25	\$3,900	\$3,900	\$25	\$0.03	0.21%	0.0%	-
Bond Trustee Fees			-	\$0	0.27%	\$0.04	\$32	\$5,000	\$5,000	\$32	\$0.04	0.27%	0.0%	-
Security			12,000	\$77	0.71%	\$0.10	\$83	\$13,000	\$13,000	\$83	\$0.10	0.71%	0.0%	-
Harris County Compliance Fees, \$50 per unit			-	\$0	0.22%	\$0.03	\$26	\$4,000	\$4,000	\$26	\$0.03	0.22%	0.0%	-
TOTAL EXPENSES					53.61%	\$7.65	\$6,268	\$ 977,880	\$943,527	\$6,048	\$7.38	51.72%	3.6%	\$ 34,353
NET OPERATING INCOME ("NOI")					46.39%	\$6.62	\$5,425	\$846,257	\$880,609	\$5,645	\$6.89	48.28%	-3.9%	\$ (34,353)

CONTROLLABLE EXPENSES	\$3,294/Unit	\$3,264/Unit
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CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Granada Terrace, Houston, TDHCA Bonds/4% HTC #20601

DEBT / GRANT SOURCES															
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App											DCR	LTC
Citi Bank Tranche A	0.10%	1.41	1.35	626,587	3.67%	35	30	\$12,100,000	\$12,100,000	30	35	3.67%	\$626,587	1.35	43.4%
CASH FLOW DEBT / GRANTS															
Loan Star Housing		1.37	1.32	\$15,800	0.15%	0	20	\$7,200,000	\$7,200,000	20		0.15%	\$15,800	1.32	25.8%
				\$642,387	TOTAL DEBT / GRANT SOURCES			\$19,300,000	\$19,300,000	TOTAL DEBT SERVICE			\$642,387	1.32	69.2%
NET CASH FLOW	\$238,222	\$203,870				APPLICANT	NET OPERATING INCOME	\$846,257	\$203,870	NET CASH FLOW					

EQUITY SOURCES											
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE					
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method
Enterprise	LIHTC Equity	30.4%	\$882,061	0.96	\$8,466,937	\$8,466,937	\$0.96	\$882,061	30.4%	\$5,654	Applicant Request
BLVD Capital	Deferred Developer Fees	0.4%	(3% Deferred)		\$108,498	\$108,498	(3% Deferred)		0.4%	Total Developer Fee: \$3,241,573	
Additional (Excess) Funds Req'd		0.0%			\$0				0.0%		
TOTAL EQUITY SOURCES		30.8%			\$8,575,435	\$8,575,435			30.8%		
TOTAL CAPITALIZATION						\$27,875,435	\$27,875,435				15-Yr Cash Flow after Deferred Fee: \$3,982,225

DEVELOPMENT COST / ITEMIZED BASIS												
APPLICANT COST / BASIS ITEMS						TDHCA COST / BASIS ITEMS				COST VARIANCE		
	Eligible Basis		Total Costs		Total Costs	Eligible Basis				%	\$	
	Acquisition	New Const. Rehab				New Const. Rehab	Acquisition					
Land Acquisition			\$ / Unit	\$0	\$800,000	\$5,128 / Unit				-100.0%	(\$800,000)	
Building Acquisition	\$11,700,000		\$80,128 / Unit	\$12,500,000	\$11,700,000	\$75,000 / Unit		\$11,700,000		6.8%	\$800,000	
Closing costs & acq. legal fees				\$62,500	\$62,500						\$0	
Off-Sites			\$ / Unit	\$0	\$0	\$ / Unit				0.0%	\$0	
Site Work		\$0	\$ / Unit	\$0	\$15,710	\$101 / Unit	\$15,710			-100.0%	(\$15,710)	
Site Amenities		\$295,933	\$1,897 / Unit	\$295,933	\$280,223	\$1,796 / Unit	\$280,223			5.6%	\$15,710	
Building Cost		\$6,259,676	\$48.97 /sf	\$40,126/Unit	\$6,259,676	\$40,126/Unit	\$48.97 /sf	\$6,259,676		0.0%	\$0	
Contingency		\$591,551	9.02%	9.02%	\$591,551	\$591,551	9.02%	9.02%	\$591,551	0.0%	\$0	
Contractor Fees		\$873,600	12.22%	12.22%	\$873,600	\$873,600	12.22%	12.22%	\$873,600	0.0%	\$0	
Soft Costs	0	\$1,370,980		\$13,048 / Unit	\$2,035,417	\$2,035,417	\$13,048 / Unit	\$1,370,980	\$0	0.0%	\$0	
Financing	0	\$518,749		\$7,486 / Unit	\$1,167,876	\$1,167,876	\$7,486 / Unit	\$518,749	\$0	0.0%	\$0	
Developer Fee	\$1,755,000	\$1,486,573	15.00%	15.00%	\$3,241,573	\$3,241,573	15.00%	15.00%	\$1,486,573	\$1,755,000	0.0%	\$0
Reserves				6 Months	\$847,309	\$847,309	6 Months			0.0%	\$0	
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)	\$13,455,000	\$11,397,062		\$178,689 / Unit	\$27,875,435	\$27,875,435	\$178,689 / Unit	\$11,397,063	\$13,455,000	0.0%	\$0	
Acquisition Cost	\$0				\$0							
Contingency		\$0			\$0							
Contractor's Fee		\$0			\$0							
Financing Cost		\$0			\$0							
Developer Fee	(\$0)	\$0			\$0							
Reserves		\$0			\$0							
ADJUSTED BASIS / COST	\$13,455,000	\$11,397,062		\$178,689/unit	\$27,875,435	\$27,875,435	\$178,689/unit	\$11,397,063	\$13,455,000	0.0%	\$0	
TOTAL HOUSING DEVELOPMENT COSTS BASED ON 3RD PARTY SCR/CNA						\$27,875,435						

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Granada Terrace, Houston, TDHCA Bonds/4% HTC #20601

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$13,455,000	\$11,397,062	\$13,455,000	\$11,397,063
Deduction of Federal Grants	\$0		\$0	\$0
TOTAL ELIGIBLE BASIS	\$13,455,000	\$11,397,062	\$13,455,000	\$11,397,063
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$13,455,000	\$14,816,181	\$13,455,000	\$14,816,181
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
TOTAL QUALIFIED BASIS	\$13,455,000	\$14,816,181	\$13,455,000	\$14,816,181
Applicable Percentage	3.34%	3.34%	3.34%	3.34%
ANNUAL CREDIT ON BASIS	\$449,397	\$494,860	\$449,397	\$494,860
CREDITS ON QUALIFIED BASIS	\$944,257		\$944,257	

Method	ANNUAL CREDIT CALCULATION BASED ON TDHCA BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.9599	Variance to Request	
			Credit Allocation	Credits	Proceeds
Eligible Basis	\$944,257	\$9,063,963	----	----	----
Needed to Fill Gap	\$893,364	\$8,575,435	----	----	----
Applicant Request	\$882,061	\$8,466,937	\$882,061	\$0	\$0

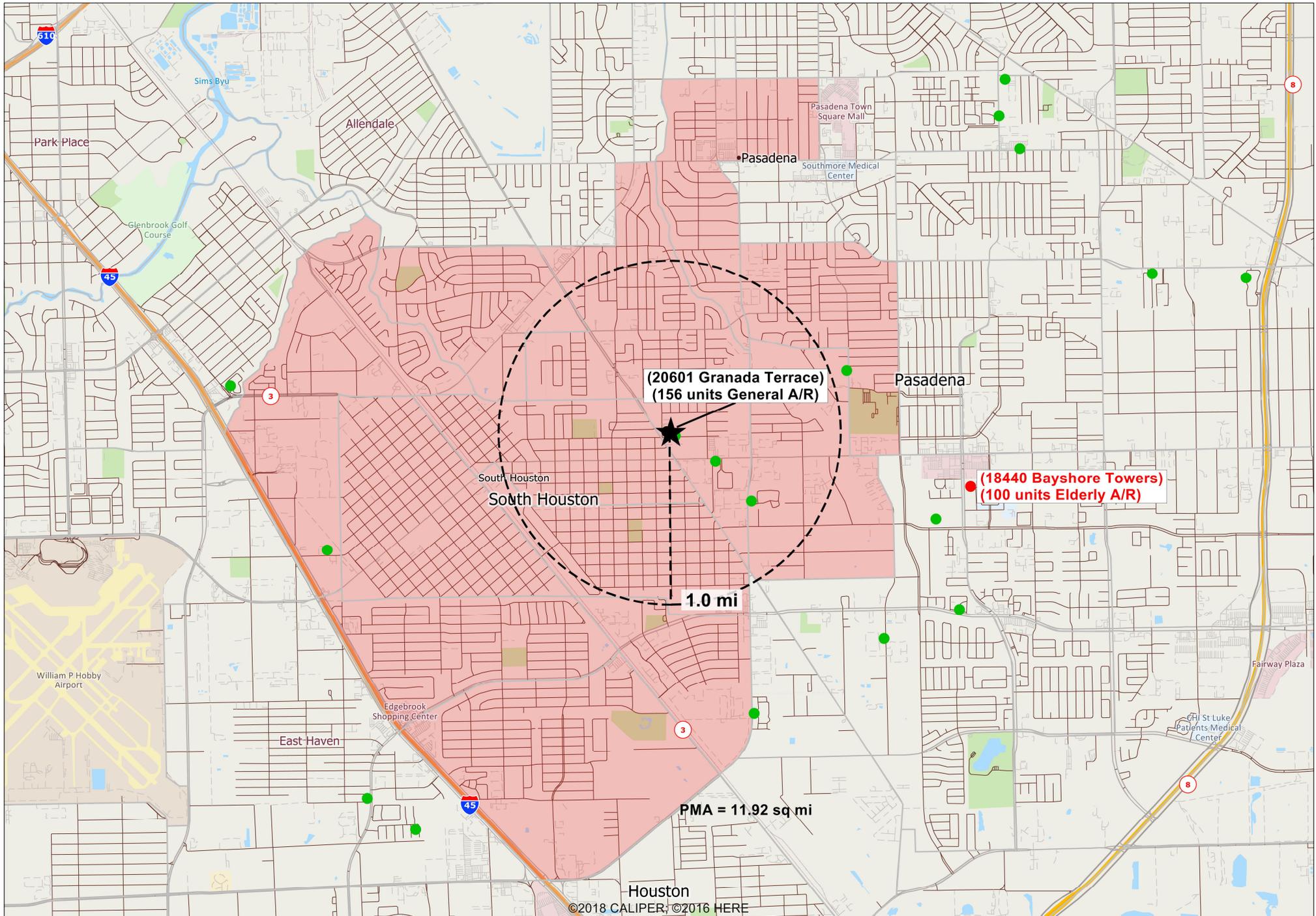
50% Test for Bond Financing for 4% Tax Credits					
Tax-Exempt Bond Amount	\$16,000,000		Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
Aggregate Basis Limit for 50% Test	\$32,000,000				
	Applicant	TDHCA			
Land Cost	\$0	\$800,000			
Depreciable Bldg Cost	\$23,074,926	\$22,274,926			
Aggregate Basis for 50% Test	\$23,074,926	\$23,074,926			
			amount aggregate basis can increase before 50% test fails	\$8,925,074 38.7%	\$8,925,074 38.7%

Long-Term Pro Forma

Granada Terrace, Houston, TDHCA Bonds/4% HTC #20601

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$1,824,137	\$1,860,620	\$1,897,832	\$1,935,789	\$1,974,504	\$2,180,012	\$2,406,910	\$2,657,423	\$2,934,010	\$3,239,384	\$3,576,541
TOTAL EXPENSES	3.00%	\$977,880	\$1,006,374	\$1,035,706	\$1,065,901	\$1,096,984	\$1,266,672	\$1,462,864	\$1,689,725	\$1,952,081	\$2,255,518	\$2,606,507
NET OPERATING INCOME ("NOI")		\$846,257	\$854,246	\$862,126	\$869,888	\$877,521	\$913,340	\$944,046	\$967,698	\$981,929	\$983,865	\$970,034
EXPENSE/INCOME RATIO		53.6%	54.1%	54.6%	55.1%	55.6%	58.1%	60.8%	63.6%	66.5%	69.6%	72.9%
MUST -PAY DEBT SERVICE												
TOTAL DEBT SERVICE		\$626,587	\$626,414	\$626,234	\$626,047	\$625,854	\$624,773	\$623,474	\$621,915	\$620,041	\$617,792	\$615,089
DEBT COVERAGE RATIO		1.35	1.36	1.38	1.39	1.40	1.46	1.51	1.56	1.58	1.59	1.58
ANNUAL CASH FLOW		\$219,670	\$227,832	\$235,892	\$243,841	\$251,667	\$288,567	\$320,572	\$345,783	\$361,887	\$366,074	\$354,945
Deferred Developer Fee Balance		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CUMULATIVE NET CASH FLOW		\$111,172	\$339,003	\$574,896	\$818,736	\$1,070,403	\$2,441,064	\$3,982,225	\$5,663,865	\$7,445,259	\$9,272,654	\$11,076,525
Fee pays in Year	1	0	0	0	0	0	0	0	0	0	0	0
BEGINNING RESERVE BALANCE		62,400	94,722	128,972	107,573	91,130	217,301	566,677	1,082,816	1,681,163	2,374,811	\$3,178,939
LESS: DEFERRED MAINTENANCE PER PC		31,950	31,950	89,585	86,675	88,175	31,950	0	0	0	0	0
ENDING RESERVE BALANCE	400	30,450	62,772	39,387	20,898	2,955	185,351	566,677	1,082,816	1,681,163	2,374,811	\$3,178,939

20601 Granada Terrace - PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TEFRA HEARING

GRANADA TERRACE APARTMENTS

South Houston Branch Library
607 Avenue A
South Houston, Texas

Monday,
February 24, 2020
6:10 p.m.

BEFORE:

SHANNON ROTH, Hearing Officer

ON THE RECORD REPORTING
(512) 450-0342

P R O C E E D I N G S

1
2 MS. ROTH: Good evening. My name is Shannon
3 Roth. I'm going to proceed with the public hearing. Let
4 the record show that it is 6:10 p.m., Monday, February 24,
5 2020. We are at the South Houston Branch Library, located
6 at 607 Avenue A, South Houston, Texas.

7 I'm here to conduct a public hearing on behalf
8 of the Texas Department of Housing and Community Affairs
9 with respect to an issue of tax-exempt multifamily revenue
10 bonds for a residential rental community.

11 This hearing is required by the Internal
12 Revenue Code. The sole purpose of this hearing is to
13 provide a reasonable opportunity for interested
14 individuals to express their views regarding the
15 development and the proposed bond issue.

16 No decisions regarding the development will be
17 made at this hearing. The Department's board is scheduled
18 to meet to consider the transaction on March 19, 2020.

19 In addition to providing your comments at this
20 hearing, the public is also invited to provide comment
21 directly to the board at any of their meetings. The
22 Department's staff will also accept written comments from
23 the public up to 5:00 p.m. on March 10, 2020.

24 The bonds for the Granada Terrace Apartments
25 will be issued as tax-exempt multifamily revenue bonds in

1 the aggregate principal amount not to exceed \$16 million
2 and taxable bonds, if necessary, in an amount to be
3 determined and issued in one or more series by the Texas
4 Department of Housing and Community Affairs, the Issuer.

5 The proceeds of the bonds will be loaned to
6 Granada Terrace Apartments, LP, or a related person or
7 affiliate entity thereof, to finance the acquisition and
8 rehabilitation of a multifamily housing development
9 described as follows: a 156-unit multifamily residential
10 rental development to be constructed on approximately 4.82
11 acres of land located at 1301 Avenue A, South Houston,
12 Harris County, Texas. The proposed multifamily rental
13 housing community will be initially owned and operated by
14 the borrower, or a related person or affiliate thereof.

15 I'll open the floor for public comment.

16 Let the record show there are no attendees;
17 therefore, the meeting is now adjourned, and the time is
18 now 6:12 p.m.

19 (Whereupon, at 6:12 p.m., the hearing was
20 adjourned.)

C E R T I F I C A T E

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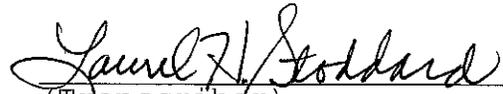
IN RE: Granada Terrace Apartments

LOCATION: South Houston, Texas

DATE: February 24, 2020

I do hereby certify that the foregoing pages, numbers 1 through 4, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Leslie Berridge before the Texas Department of Housing and Community Affairs.

DATE: February 26, 2020


(Transcriber)

On the Record Reporting &
Transcription, Inc.
7703 N. Lamar Blvd., Ste 515
Austin, Texas 78752



City of South Houston

1018 Dallas • P.O. Box 238 • South Houston, TX 77587-0238 • 713-947-7700

August 13, 2019

LETTER OF SUPPORT GRANADA TERRACE APARTMENTS

To Whom It May Concern:

As Mayor of the City of South Houston, I am always happy to support any project which will provide the residents of South Houston a better lifestyle. Therefore, I am happy to add my complete support, along with that of the South Houston City Council, of the proposed development for affordable housing submitted by Granada Terrace Apartments, LP, at 1301 Avenue A. Many of the City's residents will benefit greatly from this affordable housing. Consequently, I, as well as my Council Members, will be more than happy to wholeheartedly endorse this venture.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Soto", is written over the word "Sincerely,".

Joe Soto
Mayor

JS/pdl

**New Beginnings Global Fellowship
201 Allen Genoa Rd. South Houston, TX 77587
(832) 496-7903**

To whom it may concern, Granada Terrace Apartments has been our neighbor for many years already. Some of the residents that live there attend our mass every Wednesday and Sunday. We helped out many in needs when Harvey happened with necessities and furniture. The residents from Granada Terrace volunteered to help in this occasion even when they had damages of their own. Granting this property anything will benefit the community as well as the resident itself. We are happy to volunteer if they ever need us. I hope I am able to help this community with this letter.

Pastor

Benito Alqueman

A handwritten signature in black ink, appearing to read 'Benito Alqueman', is written over the printed name.



LF Smith Elementary School
2703 Perez / Pasadena, Texas 77502
(713)740-0720

December 21, 2018

To Whom It May Concern:

On behalf of LF Smith Elementary and our school community, I would like to request that you consider granting the Granada Terrace Apartments assistance in rehabilitating their apartment complex. We have about 20 students that live in this apartment complex, and the complex suffered serious damage with Hurricane Harvey. Any assistance in improving living conditions for our students and the other residents would be greatly appreciated.

Thank you for considering making this positive change for our community.

Sincerely,

A handwritten signature in cursive script that reads "Mrs. Danna".

Cathy Danna
Principal

XTREME FITNESS STUDIO

528 Kentucky St.

South Houston TX, 77587

My name is Luisa Flores, I am the owner of Xtreme Fitness Studio I have lived in South Houston Texas for 25 years already and its really hard to find a city like South Houston. When I was asked to contribute into helping out Granada Terrace apartments I did not hesitate. I have passed by Granada Terrace Apartments my whole life. A few of the people that live in those apartments attend my Zumba class, they have told me about their situations and I'm glad something is finally being done with those apartments. Making anything better in South Houston benefits everyone, making an apartment complex better benefits the people that live there and everyone deserves a safe home.

Luisa Flores

Owner

4d

BOARD ACTION REQUEST

BOND FINANCE DIVISION

APRIL 23, 2020

Presentation, discussion, and possible action on Resolution No. 20-017 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2020 Series A and Single Family Mortgage Revenue Refunding Bonds, 2020 Series B (Taxable), approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject

RECOMMENDED ACTION

Adopt attached resolution.

BACKGROUND

At the Board meeting of February 27, 2020, the Board granted approval to begin the process of issuing single family mortgage revenue bonds (SFMRBs) for origination of mortgage loans to low, very low, and moderate income homebuyers. At this time, staff is seeking approval for the issuance of Texas Department of Housing and Community Affairs, Single Family Mortgage Revenue Bonds, 2020 Series A (the 2020A Bonds). Staff is also seeking approval for the issuance of Texas Department of Housing and Community Affairs, Single Family Mortgage Revenue Refunding Bonds, 2020 Series B (Taxable) (the 2020B Bonds and, together with the 2020A Bonds, the Bonds) to refund the Department's outstanding 2013 Series A Bonds (the 2013A Bonds).

2020A Bonds

The 2020A Bonds will be fixed rate, tax-exempt bonds. Total proceeds (par amount plus premium) will not exceed \$185 million, and will be used to purchase Ginnie Mae mortgage-backed securities (MBS) backed by tax-exempt eligible mortgage loans, to pay a portion of the costs of issuance related to the Bonds, and to finance a portion of the down payment assistance, lender compensation, and second loan servicing fees related to the underlying mortgage loans. The 2020A Bonds are expected to be offered as traditional SFMRBs, with serial bonds, term bonds, and Planned Amortization Class (PAC) bonds. The PAC bonds and a portion of the term bonds are expected to be issued at a premium. Proceeds of the 2020A Bonds are expected to be invested in a Guaranteed Investment Contract (GIC) until expended. MBS can be purchased with Bond proceeds for approximately seven months, with the unexpended proceeds redemption expected to be approximately eight months after bond closing. The Department currently purchases approximately \$58 million per month in tax-exempt bond eligible loans. As such, bond proceeds are expected to be fully utilized well in advance of the unexpended proceeds redemption.

Mortgage Loans

Mortgage loans will be 30-year, fixed rate loans guaranteed by FHA, VA, or USDA and pooled into Ginnie Mae MBS. Borrowers are expected to have the choice of two, three, or four points of down payment assistance, evidenced by a 0% interest, non-amortizing, 30-year second mortgage loan that is due on sale or refinance of the first loan. The issuance of \$175 million of par amount of 2020A Bonds would provide for \$175 million in par amount of mortgage loans to be originated. The associated down payment assistance, lender compensation, and servicing fees for the second loans is expected to be approximately \$11 million.

2020B Bonds

The 2020B Bonds will be fixed rate, taxable bonds. Total proceeds (par amount plus premium) will not exceed \$13,330,000, and will be used to refund the 2013A Bonds. The 2013A Bonds were issued May 28, 2013, to refund the Department's 2002 Single Family Mortgage Revenue Bonds, 2002 Series A, and Single Family Mortgage Revenue Refunding Bonds, 2002 Series B and 2002 Series C. The 2013A Bonds bear interest at 2.80% and are subject to optional redemption at par on September 1, 2020. Based on a bond rate of 2.25%, this refunding is expected to generate present value savings, net of related costs, of approximately \$300,000.

Department Contribution

The contribution by the Department will not exceed \$12 million, which will be used to fund a portion of the down payment and closing cost assistance and costs related to the acquisition of qualifying mortgage loans (including the payment of lender compensation and servicing fees for second mortgage loans) and to pay all or a portion of the costs of issuance of the Bonds. The contribution will be funded from amounts on deposit in the SFMRB indenture. Capitalized interest of up to \$4 million may be paid from the SFMRB indenture as necessary. As with prior transactions, these amounts are maximums; the actual contribution and capitalized interest expense are expected to be less than that approved by the Board.

Underwriting Team

RBC Capital Markets will serve as senior manager; Barclays, Jefferies, and JP Morgan are co-senior managers, and Morgan Stanley, Piper Sandler, and Ramirez & Co. are co-managers for this transaction.

Summary

In the current volatile market environment, the financing team is moving forward with preparing the Bonds for pricing mid-May, but will not proceed with pricing until market conditions are conducive to a successful transaction. That could happen in May, or it may not occur for several months. Staff and the financing team will continue to monitor market conditions, and if a window of opportunity for a successful pricing presents itself, will move forward with pricing and closing. Depending on market conditions and other factors, the amount of bonds issued may be reduced, and it is possible that one series of the Bonds may be viable and the other not, in which case, we would move forward with the series that makes sense, most likely the 2020A Bonds.

Exhibits

The Exhibits for Resolution 20-017 can be found online at the Department's Board Meeting Information Center website: <http://www.tdhca.state.tx.us/board/meetings.htm>.

RESOLUTION NO. 20-017

RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS SINGLE FAMILY MORTGAGE REVENUE BONDS, 2020 SERIES A AND SINGLE FAMILY MORTGAGE REVENUE REFUNDING BONDS, 2020 SERIES B (TAXABLE); APPROVING THE FORM AND SUBSTANCE OF RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; 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 (the "Act"), as amended from time to time, for the purpose of providing for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to issue revenue bonds, to provide money to (i) make and acquire mortgage loans or participations therein, (ii) fund or increase the Department's reserves or funds (iii) pay the costs and expenses of issuing the bonds and (iv) pay interest on the bonds; and (b) to pledge all or part of the revenues, income or resources of the Department, including the revenues to be received by the Department from the mortgage loans or participations therein, to secure the payment of the principal, interest or redemption premium on the bonds; and

WHEREAS, the Act further authorizes the Department to issue its revenue bonds for the purpose of refunding any Department bonds or other general or special obligations; and

WHEREAS, the Department and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), have executed and delivered that certain Amended and Restated Single Family Mortgage Revenue Bond Trust Indenture dated as of June 1, 2017 (as amended and supplemented from time to time, the "Single Family Indenture"); and

WHEREAS, the Department has, pursuant to and in accordance with the provisions of the Act and the Single Family Indenture, issued, sold and delivered its Single Family Mortgage Revenue Refunding Bonds, 2013 Series A (Taxable) (the "Refunded Bonds"); and

WHEREAS, the Department has a single family mortgage purchase program (the "Program") to fund all or a portion of the Department's single family loan production; and

WHEREAS, pursuant to Resolution No. 17-003, the Board approved Program Guidelines setting forth the general terms of the mortgage loans to be originated under the Program (the "Mortgage Loans") and authorized execution and delivery of (i) a Mortgage Acquisition, Pooling

and Servicing Agreement setting forth the terms under which Idaho Housing and Finance Association (the "Servicer"), will review, acquire, package and service the Mortgage Loans, and (ii) a Master Mortgage Origination Agreement in connection with the acceptance of new lenders in the Program; and

WHEREAS, Section 302 of the Single Family Indenture authorizes the issuance of additional Bonds for the purposes of acquiring Mortgage Loans or participations therein, payment of costs of issuance, funding of reserves, payments of certain Department expenses and refunding bonds; and

WHEREAS, the Board has determined to authorize the issuance of the Department's Single Family Mortgage Revenue Bonds, to be known as its Single Family Mortgage Revenue Bonds, 2020 Series A (the "2020 Series A Bonds") pursuant to the Single Family Indenture for the purpose of providing funds to make and acquire qualifying mortgage loans through the purchase of mortgage backed securities ("Mortgage Certificates"), to provide down payment and closing cost assistance and to pay a portion of the costs of issuance related thereto; and

WHEREAS, the Board desires to authorize the execution and delivery of the Sixty-Eighth Supplemental Single Family Mortgage Revenue Bond Trust Indenture (the "Sixty-Eighth Supplemental Indenture") in substantially the form attached hereto relating to the 2020 Series A Bonds; and

WHEREAS, the Board has determined to authorize the issuance of the Department's Single Family Mortgage Revenue Bonds, to be known as its Single Family Mortgage Revenue Refunding Bonds, 2020 Series B (Taxable) (the "2020 Series B Bonds," and together with the 2020 Series A Bonds, the "Bonds") pursuant to the Single Family Indenture for the purpose of providing funds to refund the Refunded Bonds and to pay a portion of the costs of issuance related thereto; and

WHEREAS, the Board desires to authorize the execution and delivery of the Sixty-Ninth Supplemental Single Family Mortgage Revenue Bond Trust Indenture (the "Sixty-Ninth Supplemental Indenture," and together with the Sixty-Eighth Supplemental Indenture, the "Supplemental Indentures") in substantially the form attached hereto relating to the 2020 Series B Bonds; and

WHEREAS, the Board has further determined that the Department should enter into a Bond Purchase Agreement relating to the sale of the Bonds (the "Bond Purchase Agreement") with RBC Capital Markets, LLC, as representative of the group of underwriters listed in the Bond Purchase Agreement (the "Underwriters"), in substantially the form attached hereto setting forth certain terms and conditions upon which the Underwriters will purchase the Bonds from the Department and the Department will sell the Bonds to the Underwriters; and

WHEREAS, the Board has determined to authorize the execution and delivery of a 2020 A/B Supplement to Depository Agreement relating to the Bonds (the "Depository Agreement"), by and among the Department, the Trustee and the Texas Treasury Safekeeping Trust Company,

in substantially the form attached hereto to provide for the holding, administering and investing of certain moneys and securities relating to the Bonds; and

WHEREAS, the Board has been presented with a draft of a preliminary official statement to be used in the public offering of the Bonds (the "Official Statement") and the Board desires to approve such Official Statement in substantially the form attached hereto; and

WHEREAS, the Board desires to authorize the execution and delivery of a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") relating to the Bonds in substantially the form attached hereto between the Department and the Trustee; and

WHEREAS, the Board has determined to authorize the investment of a portion of the proceeds of the 2020 Series A Bonds and any other amounts held under the Single Family Indenture with respect to the 2020 Series A Bonds in one or more guaranteed investment contracts (the "GICs") on or after the closing date or in such other investments as the authorized representatives named herein may approve; and

WHEREAS, the Board desires to approve the use of an amount not to exceed \$12,000,000 of Department funds for any purpose authorized under the Act and the Single Family Indenture, including to provide down payment and closing cost assistance, to make and acquire qualifying mortgage loans, including payment of lender compensation, through the purchase of Mortgage Certificates and to pay a portion of the costs of issuance; and

WHEREAS, the Board desires to authorize the use of an amount not to exceed \$4,000,000 of funds on deposit under the Single Family Indenture to fund capitalized interest on the 2020 Series A Bonds; and

WHEREAS, Chapter 1371, Texas Government Code, as amended ("Chapter 1371") and Chapter 1207, Texas Government Code, as amended ("Chapter 1207"), authorize the Department to take certain actions described in this Resolution related to the issuance of the Bonds; and

WHEREAS, the Board desires to approve the forms of the Supplemental Indentures, the Bond Purchase Agreement, the Depository Agreement, the Official Statement and the Continuing Disclosure Agreement and find the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined to further its programs in accordance with such documents by authorizing the issuance of the Bonds, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1
ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of any or all of the Bonds is hereby authorized, all under and in accordance with the Single Family Indenture, and that, upon execution and delivery of the Supplemental Indentures, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of Texas (the "Attorney General") for approval, the Comptroller of Public Accounts of the State of Texas (the "Comptroller") for registration and the Trustee for authentication, and thereafter to deliver the Bonds to or upon the order of the Underwriters.

Section 1.2 Authority to Determine Interest Rates, Principal Amounts, Maturities and Prices. That the Authorized Representatives of the Department are hereby authorized and empowered, in accordance with Chapter 1371, in the case of the 2020 Series A Bonds, and in accordance with Chapter 1207, in the case or the 2020 Series B Bonds, to fix and determine the interest rates, principal amounts and maturities of the Bonds, and the prices at which the Department will sell the Bonds to the Underwriters, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative of the Bond Purchase Agreement; provided, however, that: (a) the interest rate on each series of the Bonds shall not exceed 6.00% per annum; (b) the aggregate principal amount of the 2020 Series A Bonds shall not exceed \$175,000,000; (c) the aggregate principal amount of the 2020 Series B Bonds shall not exceed \$13,300,000; (d) the final maturity of the 2020 Series A Bonds shall occur not later than March 1, 2052; (e) the final maturity of the 2020 Series B Bonds shall occur not later than September 1, 2040; (f) the price at which the Bonds are sold to the Underwriters shall not exceed 108% of the aggregate principal amount thereof; (e) the 2020 Series A Bonds shall be rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for a long-term debt instrument, and (f) the aggregate amount of payments to be made under the 2020 Series B Bonds shall be less than the aggregate amount of payments that would have been made under the terms of the Refunded Bonds.. In no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law.

Section 1.3 Approval, Execution and Delivery of the Supplemental Indentures. That the form and substance of the Supplemental Indentures are hereby approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Supplemental Indentures, and to deliver the Supplemental Indentures to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriters pursuant to the Bond Purchase Agreement is hereby approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Underwriters.

Section 1.5 Official Statement. That the Official Statement, in substantially the form presented to the Board, is hereby approved; that prior to the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf of the Board, are hereby authorized and directed to finalize the Official Statement for distribution by the Underwriters to prospective purchasers of the Bonds, with such changes therein as an Authorized Representative may approve in order to permit such Authorized Representative, for and on behalf of the Board, to deem the Official Statement final as of its date, except for such omissions as are permitted by Rule 15c2-12 of the Securities and Exchange Commission ("Rule 15c2-12"), such approval to be conclusively evidenced by the distribution of such Official Statement; and that within seven business days after the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf of the Board, shall cause the final Official Statement, in substantially the form of the Official Statement attached hereto, with such changes as an Authorized Representative may approve, such approval to be conclusively evidenced by such Authorized Representative's execution thereof, to be provided to the Underwriters in compliance with Rule 15c2-12.

Section 1.6 Approval of Depository Agreement. That the form and substance of the Depository Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Depository Agreement and to deliver the Depository Agreement to the Trustee and to the Texas Treasury Safekeeping Trust Company.

Section 1.7 Approval of Continuing Disclosure Agreement. That the form and substance of the Continuing Disclosure Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Continuing Disclosure Agreement and to deliver the Continuing Disclosure Agreement to the Trustee.

Section 1.8 Redemption of Refunded Bonds. That the Executive Director or the Director of Bond Finance is hereby authorized and directed: (i) to instruct the Trustee to give notice of redemption and to redeem the outstanding Refunded Bonds with the proceeds of the 2020 Series B Bonds, and (ii) to take all other actions necessary to cause such redemption and refunding to occur.

Section 1.9 Approval of GIC Broker; Approval of Investment in GICs. That the Executive Director, the Acting Director or the Director of Bond Finance and Chief Investment Officer of the Department is hereby authorized to select a GIC broker, if any, and that the investment of funds held under the Single Family Indenture in connection with the 2020 Series A Bonds in GICs is hereby approved and that the Executive Director, the Acting Director or the Director of Bond Finance and Chief Investment Officer of the Department is hereby authorized to complete arrangements for such investment in GICs or such other investments as the Authorized Representatives may approve.

Section 1.10 Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to execute, attest, affix the Department's seal to and

deliver such other agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, and to take such other acts, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the Single Family Indenture, the Bonds, the Supplemental Indentures, the Bond Purchase Agreement, the Depository Agreement and the Continuing Disclosure Agreement.

Section 1.11 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, or in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.12 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A – Supplemental Indentures
- Exhibit B – Bond Purchase Agreement
- Exhibit C – Official Statement
- Exhibit D – Depository Agreement
- Exhibit E – Continuing Disclosure Agreement

Section 1.13 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 Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or Assistant Secretary to the 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.

Section 1.14 Department Contribution. That the contribution of Department funds in an amount not to exceed \$12,000,000 to be used for any purpose authorized under the Act, including to provide funds for the refunding of the Refunded Bonds, to provide down payment and closing cost assistance, to make and acquire qualifying mortgage loans, including payment of lender compensation, through the purchase of Mortgage Certificates and to pay all or a portion of the costs of issuance of the Bonds is hereby authorized.

Section 1.15 Use of Single Family Indenture Funds. That the use of an amount not to exceed \$4,000,000 of funds on deposit under the Single Family Indenture to fund capitalized interest on the 2020 Series A Bonds is hereby authorized.

ARTICLE 2 APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Submission to the Attorney General of Texas. That the Board hereby approves the submission by the Department's Bond Counsel to the Attorney General of Texas, for his approval, of a transcript of the legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.2 Engagement of Other Professionals. That the Executive Director, the Acting Director or the Director of Bond Finance and Chief Investment Officer is authorized to engage an accounting firm or firms to perform such functions, audits, yield calculations, verifications and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of the purchasers of the Bonds and Bond Counsel to the Department, provided such engagement is done in accordance with applicable State law.

Section 2.3 Certification of the Minutes and Records. That the Secretary and any Assistant Secretary to the Board are hereby authorized to certify and authenticate minutes and other records on behalf of the Department for its single family mortgage revenue bond program, the issuance of the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agencies. That the Executive Director, the Acting Director, the Director of Bond Finance and Chief Investment Officer and the Department's consultants are authorized to seek ratings from Moody's Investors Service, Inc. and S&P Global Ratings, a division of Standard & Poor's Financial Services LLC.

Section 2.5 Ratifying Other Actions. That all other actions taken or to be taken by the Executive Director, the Acting Director and the Department's staff in connection with the issuance of the Bonds are hereby ratified and confirmed.

Section 2.6 Authorized to Invest Funds. That pursuant to Section 1371.102 and the Act, the Executive Director, the Acting Director or the Director of Bond Finance and Chief Investment Officer is hereby authorized to undertake all appropriate actions required under the Single Family Indenture and the Depository Agreement and to provide for investment and reinvestment of all funds held under the Single Family Indenture in accordance with the Single Family Indenture.

ARTICLE 3
CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Purpose of 2020 Series A Bonds. That the Board hereby determines that the purpose for which the Department may issue the 2020 Series A Bonds constitutes “public works” as contemplated by Chapter 1371.

ARTICLE 4
GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be limited obligations of the Department payable solely from the trust estate pledged under the Single Family Indenture to secure payment of the bonds issued under the Single Family Indenture and payment of the Department’s costs and expenses for its single family mortgage revenue bond program thereunder and under the Single Family Indenture, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State.

Section 4.3 Purposes of Resolution. That the Board has expressly determined and hereby confirms that the issuance of the Bonds and the furtherance of the purposes contemplated by this Resolution accomplish a valid public purpose of the Department by providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State.

Section 4.4 Notice of Meeting. That this Resolution was considered and adopted at a meeting of the 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, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act, regarding meetings of the Board.

Section 4.5 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 23rd day of April, 2020.

EXHIBITS

ALL DOCUMENTS REFERRED TO IN THE FOREGOING RESOLUTION ARE ATTACHED TO THE ORIGINAL COPY OF SAID RESOLUTION, WHICH IS ON FILE IN THE OFFICIAL RECORDS OF THE DEPARTMENT, AND EXECUTED COUNTERPARTS OF SUCH EXHIBITS ARE INCLUDED IN THE OFFICIAL TRANSCRIPT OF PROCEEDINGS RELATING TO THE BONDS.

5a

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

5b

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

5c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 23, 2020

Presentation, discussion, and possible action on the process of staff determinations regarding points awarded under 10 TAC §11.9(d)(4) related to Quantifiable Community Participation

RECOMMENDED ACTION

WHEREAS, 10 TAC §11.9(d)(4) of the 2020 Qualified Allocation Plan (QAP) related to scoring under Quantifiable Community Participation (QCP) identifies the requirements for scoring;

WHEREAS, per the rule, an Application qualifies for four points if a Neighborhood Organization submits a statement of neutrality or provides no statement at all, or if there is no Neighborhood Organization;

WHEREAS, this year, in a change from prior years, the application form included a self-score box for QCP points despite QCP not being a self-scoring item, the addition having been made to facilitate data-gathering, but which created uncertainty among Applicants on whether the self-score box did or did not have to be completed;

WHEREAS, consistent with how QCP points have been historically determined and given the fact that 2020 QAP was not changed on this particular matter from the prior QAP, Departmental staff proceeded with evaluating this scoring item in the same manner as in the prior four years;

WHEREAS, in the case of the 35 applications noted in the agenda for this item, Applicants did not select the self-score box claiming four points, but each Applicant provided a Certification of Notifications at Tab 16, and for each of these applications, either a Neighborhood Organization was identified but did not provide any statement regarding the Application, or no Neighborhood Organization was identified;

WHEREAS, per 10 TAC §11.9(d)(4)(C)(iv) or (v), the 35 Applications were eligible for and were therefore assigned the four points by staff using this methodology; and

WHEREAS, multiple parties have since raised concerns on the staff decision to have handled the scoring in the same manner as in the past, relaying concern that the presence of the self-scoring item check-box should have prompted a different handling of the scoring process for this item;

NOW, therefore, it is hereby

RESOLVED, that the Board shall determine regarding these applications: whether the process utilized by staff of awarding QCP points under 10 TAC §11.9(d)(4)(C)(iv) and (v) was appropriate, even if an Applicant did not enter a value in the self-score box on the application form, or alternatively whether staff should be directed to reconsider its process of scoring these QCP points.

BACKGROUND

10 TAC §11.9 of the 2020 QAP, related to Competitive HTC Selection Criteria, identifies the scoring criteria used in evaluating and ranking Applications. 10 TAC §11.9(d)(4) identifies criteria for scoring points for QCP. Per the rule:

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

This year's 9% competitive application form included a self-score box for QCP despite QCP not being an item that Applicants are expected to self-score. The box was added to facilitate staff data-gathering. However, its presence created uncertainty among Applicants on whether the self-score box did or did not have to be completed to earn the points. Ultimately, some applicants chose to self-score for their QCP points and some did not.

On March 10, 2020, staff posted a revised Application Log indicating scores from applications received on February 28, 2020. As stated on the log, the data was compiled using information submitted by each applicant. The data had not yet been reviewed or verified by the Department and noted that errors may be present in the log. Those reviewing the log were advised to use caution in reaching any definitive conclusions based on this information alone. On March 13, 2020, after further review of application data, staff posted a revised Application Log; for Applicants that had identified a score in the self-score box for this item, their point election was reflected in the log. On that log, staff had not yet taken the step of indicating all applicants' scores for QCP, including those that had not chosen to identify points in the self-score box but were eligible for the item. A subsequent revised log was posted on that same day indicating scoring for all applicant's QCP under §11.9(d)(4)(C)(iv) and (C)(v) – regardless of whether the self-score box was used.

Soon after that posting staff received "appeals" from nine Applicants questioning staff's actions and requesting that the QCP points be removed from the 36 affected application scores (note that one of the applications has since withdrawn). The Applicants were informed that determinations by the Department regarding the level of Quantifiable Community Participation are addressed under Tex. Gov't Code §2306.6710(b), and §2306.6715(b) is clear that "[a]n applicant may not appeal a decision made under Section 2306.6710 regarding an application filed by another applicant." Staff also received letters from affected Applicants expressing their opinions on the process. All of the letters are attached.

In recognition that several parties have questioned the process utilized by staff in their initial review of applications regarding QCP points, and the novel presence of a self-score box on the application form , staff is bringing this item to the Board to determine if staff has handled the issue appropriately by treating these points in the same manner it historically has in spite of the new check-box, and considering that there has been no change to the QAP and no direction was given from staff to Applicants to treat this scoring item any differently than in at least the four previous years.

“Appeal” Letters



March 20, 2020

Via Electronical Mail

Ms. Marni Holloway
Director of Multifamily Production
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Ella Grand, TDHCA #20205

Dear Ms. Holloway:

By submission of this letter, DMA Development Company, LLC is appealing the treatment of the above-mentioned application in the application log posted on Friday, March 13th, pursuant to sections 11.201(5) ("Evaluation Process") and Section 11.902 ("Appeals"). The basis for this appeal is that TDHCA staff violated several rules regarding the evaluation process and the deficiency process in posting the log on March 13th. In doing so, Application #20205, a competitively ranked application, is prejudiced by its de-prioritization vis a vis the following two applications in Region 6--Dian Street Villas, #20116 and Heritage Senior Residences, #20204. Both applications failed to claim 4 points in their applications and yet those points are now reflected in the application log posted on March 13, 2020. Staff's award of 4 points that these two applicants did not claim completely changed the competitive landscape in Region 6 within a three-day period, which is highly unusual given that the evaluation and review process typically takes months. The harm to our application by this violation of the rules is that Ella Grand will not be a priority application and will not be reviewed at this time, while two applications that failed to claim 4 points have been awarded the 4 points and will enjoy the benefit of being reviewed as priority applications.

I personally, in my role with DMA, have submitted applications in the last eighteen 9% application rounds. I am very familiar with how the process has worked over that long period of time. And while the point categories have changed dramatically, the process has primarily remained the same in terms of how mistakes and inconsistencies are handled throughout the competitive process. As the rules state repeatedly, for example in Section 11.1(c), "[a]pplying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly." This process is fraught with pitfalls, in terms of missing a box to check or missing a dropdown point item, but the rules are very clear that none of the processes contemplated in the rules allows a change in an application score once submitted in a full application. For instance, Section 11.1(g) ("Documentation to Substantiate Items and Representations in the Application") clearly states "[a]pplicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development." Section 11.201(7) ("Deficiency Process") states the very same thing--"Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development."

Because the rules are so clear that there is no administrative mechanism to change an application's score after it is submitted, it is puzzling why the application log on March 13th is so different from the one posted on March 10th in terms of which applications are competitively ranked in Region 6, due to the award of 4 points on two applications that did not select those points. By doing so, TDHCA violated Section 11.201(5) which outlines the evaluation process and specifically states:

“Applications believed likely to be competitive will undergo a program review In general, Application reviews by the Department shall be conducted based on the likelihood that an Application will be competitive for an award based upon the region, set aside, self-score, received date, or other ranking factors. Thus, non-competitive or lower scoring applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applicants, but no application with a competitive ranking shall be skipped or otherwise overlooked.” (emphasis added).

Essentially, by awarding 4 points on two applications that did not elect those 4 points, TDHCA has violated this provision because the result will be that two non-competitive applications will be reviewed, and a competitively ranked application (Ella Grand) will be skipped. This statement is true because there is no process outlined in the QAP, and especially not the Administrative Deficiency Process as outlined in Section 11.207(7)), that allows these two applications to receive points that they did not request. Moreover, the administrative deficiency process is for *non-material* deficiencies, and rules are very clear that scoring changes are not non-material. Indeed, the clear language of the Deficiency Process states: “this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development.”

So, if there is no allowable regulatory process to increase an application's score after full application submittal, and not even during the deficiency process, why did TDHCA restore these points to raise the priority of these applications and to skip over Ella Grand, which had competitive ranking as of March 10th? I pose this question herein, and am simultaneously submitting an open records request on all applications that were prioritized to a competitive status between the posting of the two logs on March 10th and March 13th, because I want to better understand what triggered this departure from past practice in terms of TDHCA staff awarding points that were not requested.

My knowledge of past practice in this regard is direct. In the 2015 round, I made a similar mistake in not selecting points on a competitive 9% application, Azul 620 # 15308. I realized my mistake the moment the first full application log was posted, and I immediately reached out to staff because I failed to request points related to income targeting due to a confusing section of the excel file. The response I received was the following, from Jean Latsha on March 5, 2015:

“Janine, I understand you claimed less points in your self-score for the application than you had intended. There is no remedy for this situation at this time. The only way to adjust your score is by specific request from staff via an Administrative Deficiency. Section 10.201(9) of the Rules, which related to Limited Priority Review, explicitly states that, “If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative

Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. [Emphasis added by Jean]

While my issue related to something that was included within the self-score, the “Limited Review” provision is NOT limited to those items included in the self-score. The rule is very, very clear—If after submission, an applicant may request limited review, *but not if it relates to score*. In my case, like in these cases, I was eligible for the points by rule because I had the correct number of 30% and 50% AMI units in my rent schedule; however, I was denied the points simply because I did not elect the points on the excel file. Based on this experience, I am puzzled as to why the March 10th log reflects that these 4 points were not selected, but the March 13th log reflects that these points were awarded in a way that violates the rules.

When another applicant asked staff why the points not selected by the applicants are now reflected on the March 13th log, Sharon Gamble responded as such: “The four points added are awarded by rule, not by request.” First, why would staff award points not claimed by the applicant in the full application, if the applicant did not point out the error upon posting of the March 10th log and request the change? But more troubling than that, why did TDHCA staff depart from its rules and past practice to award points that were not requested in the original application before even starting the application review process? To the best of my knowledge, TDHCA has never awarded points when the applicant does not request them, regardless of whether the points required back-up documentation or not. Staff’s explanation in this respect is inconsistent with how applications are reviewed—that is, an applicant selects points and provides documentation where necessary. If an application does not either select points or provide documentation, TDHCA staff cannot award the points. That has been the golden rule of this program for as long as I can remember. If Sharon’s response is read on face value, it suggests that the new practice is that an application can be awarded points, even when it doesn’t claim them or doesn’t provide documentation. If this is the case, it represents a radical departure not only from past practice, but from the QAP itself and the ASPM which specifically states that the “Department staff cannot and will not take responsibility for completing an Application package or any portion thereof.” (Page 4 of ASPM). Finally, it sets a really bad precedent in that now, any applicant can simply overcome a critical scoring mistake by citing this particular instance where TDHCA staff voluntarily rectified applicant error not through the proper process, but through the hurried posting of an early March scoring log.

I understand that there were problems with the excel file this year that required staff to re-issue and applicants to re-key the excel multiple times. I understand that this particular worksheet of the excel workbook was different than in previous years. But I did not find the form confusing; it was straight-forward in my opinion. Additionally, while I understand this mistake was made on approximately 30 application, only a handful of people made the mistake given that a consultant was responsible for 16 of the errors. Trust me when I say that I understand how devastating it is to make a mistake like this. I have made similar mistakes and have lost deals over my mistakes. But it is how this highly competitive program has always worked—for better or worse—and is the reason why it requires a 150-page document to manage. Everyone who applies for 9% tax credits know this, accepts the risk, and allows ample time to prepare their application so that they have time to check the critical items. After learning these lessons the hard way, when DMA does its final check of applications, we now check two things and two things only: 1) Have we selected all the points, and 2) have we provide documentation when required? If we can’t confirm both, we correct and submit. If we don’t catch it, we understand that we

lose the points and do not have basis for appeal. There has been more than one occasion where we failed to select the points, and then did not even consider appealing, because the rules offer no way to correct a failure to select point at any time during the review process.

It is for that reason that we decided to appeal this particular issue. In this case, we submitted very clean applications with all the points selected and with all the back-up. Other applications that we are competing against did not. We therefore request that TDHCA revise the application log to reflect the points select by these two competing applications for the QCP—which is 0—therefore restoring Ella Grand’s rank as a competitive application

We appreciate your time and consideration of this request. Please do not hesitate to contact me directly should you have any questions or concerns.

Sincerely,

DMA DEVELOPMENT COMPANY, LLC

A handwritten signature in blue ink, appearing to read "Janine Sisak". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

Janine Sisak
Senior Vice President/General Counsel

cc:

Diana McIver, DMA Development Company, LLC

RIVA SWITZERLAND, INC.

Via Electronical Mail

March 20, 2020

Mr. Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: TDHCA #20024 - Dallas Stemmons

Dear Director Wilkinson:

This letter serves as our formal appeal to the application log posted on Friday, March 13, 2020 pursuant to sections 11.201(5) ("Evaluation Process") and 11.902 ("Appeals"). It is our contention that TDHCA staff violated the rules regarding the evaluation process and the deficiency process in posting a log on March 13th in which TDHCA Staff added additional scoring points not requested by the Applicants for TDHCA Application # 20154 – San Vito; #20155 – Gala at Premier; #20063 – Azalea West; and #20115 – Avenue at Sycamore Park. At their own discretion, the Applicants listed chose not to claim 4 points in their Final Application Submissions under Section 11.9(d)(4) – Quantifiable Community Participation.

The 2020 QAP rules are very clear that regarding selecting points which will either require evidence to support the points or where no evidence is required. In every case, the Rules required the Applicant to request the points the Applicant believes is deserved and/or earned. There is no rule or guidance that allows TDHCA staff to change an Applicant's score once final applications are submitted because an Applicant either failed to claim the points or made an error in not claiming the points. Scores only change once Staff has reviewed Applications and issues an Administrative Deficiency for the Applicant to either clarify or defend points questioned by Staff. In every case, there is simply no opportunity to "increase" an Applicant's score once the full application has been submitted. The Due Diligence and Applicant Responsibility section of the QAP rules states that an applicant is responsible for the accuracy of their application and for understanding and the rules of the QAP.

The QAP rules do not provide to TDHCA Staff the authority to grant selection points to an applicant that did not request such points in their applications. To the contrary, when information is missing or the TDHCA Staff needs further information to clarify an applicant's intent the normal course of action is to issue an Administrative Deficiency, which would give the Applicant the ability to supply more information to substantiate their claim for points. The Administrative Deficiency process is further expounded upon in §11.201(7) of the QAP rules which states:

Riva Switzerland, Inc.

13455 Noel Road
Suite 400
Dallas, TX 75240
Tel: (765) 274-8885

“(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. **Applicants are reminded that this process may not be used to increase a scoring item's points** or to change any aspect of the proposed Development, financing structure, or other element of the Application. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date.”

In addition to the Administrative Deficiency process, Limited Review as defined in §11.201(8) of the QAP rules allows TDHCA Staff to review an application “if the applicant identifies an error in the application that could likely be the subject of a deficiency”. However, Limited Review may only be initiated to review certain issues with regards to the application and the “...issue may not relate to the score of an Application.” Further, if the limited review results in the identification of an issue that requires correction or clarification, then staff will request such “...through the Deficiency process as stated in paragraph (7) of this section, if deemed appropriate.” The Limited Review is intended to address certain issues that ultimately are resolved through the administrative deficiency process.

Based on the QAP there is currently no mechanism that allows TDHCA Staff to grant more points than were claimed by the Applicant on their submitted uniform application.

The Staff's action has harmed TDHCA #20024-Dallas Stemmons as a priority project. Staff creates a scoring log for the purpose of identifying “priority projects” based on the Applicant's Self-Score. As such, “priority projects” are the first applications to be reviewed by Staff for award. Because Staff added 4 points to these applications previously mentioned, the Staff, not the Applicants, increased their scores and effectively positioned the applications as “priority projects” above #20024 Dallas Stemmons. In the past this action has never been done or allowed by Staff nor is it allowed now under any circumstances.

We respectfully request your thoughtful consideration of this appeal and find Applications #20154 – San Vito; #20155 – Gala at Premier; #20063 – Azalea West; and #20115 – Avenue at Sycamore Park scores were incorrectly changed above the Applicant's requested points and direct their scores be lowered to reflect the Applicant's score as requested in their final application submissions.

Riva Switzerland, Inc.

13455 Noel Road

Suite 400

Dallas, TX 75240

Tel: (765) 274-8885

Sincerely,



Cody Hunt
Authorized Representative
Riva Switzerland, Inc.

Cc: Marni Holloway, Director of Multifamily Finance
Sharon Gamble, Administrator 9% Competitive Housing Tax Credit Program
Sara Reidy, Casa Linda Development Corporation

Riva Switzerland, Inc.

13455 Noel Road
Suite 400
Dallas, TX 75240
Tel: (765) 274-8885



Via Electronical Mail

March 20, 2020

Mr. Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: TDHCA #20025 – Palladium Fain Street

Dear Director Wilkinson:

This letter serves as our formal appeal to the application log posted on Friday, March 13, 2020 pursuant to sections 11.201(5) (“Evaluation Process”) and 11.902 (“Appeals”). It is our contention that TDHCA staff violated the rules regarding the evaluation process and the deficiency process in posting a log on March 13th in which TDHCA Staff added additional scoring points not requested by the Applicants for TDHCA Application # 20154 – San Vito; #20155 – Gala at Premier; #20063 – Azalea West; and #20115 – Avenue at Sycamore Park. At their own discretion, the Applicants listed chose not to claim 4 points in their Final Application Submissions under Section 11.9(d)(4) – Quantifiable Community Participation.

The 2020 QAP rules are very clear that regarding selecting points which will either require evidence to support the points or where no evidence is required. In every case, the Rules required the Applicant to request the points the Applicant believes is deserved and/or earned. There is no rule or guidance that allows TDHCA staff to change an Applicant’s score once final applications are submitted because an Applicant either failed to claim the points or made an error in not claiming the points. Scores only change once Staff has reviewed Applications and issues an Administrative Deficiency for the Applicant to either clarify or defend points questioned by Staff. In every case, there is simply no opportunity to “increase” an Applicant’s score once the full application has been submitted. The Due Diligence and Applicant Responsibility section of the QAP rules states that an applicant is responsible for the accuracy of their application and for understanding and the rules of the QAP.

The QAP rules do not provide to TDHCA Staff the authority to grant selection points to an applicant that did not request such points in their applications. To the contrary, when information is missing or the TDHCA Staff needs further information to clarify an applicant’s intent the normal course of action is to issue an Administrative Deficiency, which would give the Applicant the ability to supply more information to substantiate their claim for points. The Administrative Deficiency process is further expounded upon in §11.201(7) of the QAP rules which states:

“(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. **Applicants are reminded that this process may not be used to increase a scoring item's points** or to change any aspect of the proposed Development, financing structure, or other element of the Application. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date.”

In addition to the Administrative Deficiency process, Limited Review as defined in §11.201(8) of the QAP rules allows TDHCA Staff to review an application “if the applicant identifies an error in the application that could likely be the subject of a deficiency”. However, Limited Review may only be initiated to review certain issues with regards to the application and the “...issue may not relate to the score of an Application.” Further, if the limited review results in the identification of an issue that requires correction or clarification, then staff will request such “...through the Deficiency process as stated in paragraph (7) of this section, if deemed appropriate.” The Limited Review is intended to address certain issues that ultimately are resolved through the administrative deficiency process.

Based on the QAP there is currently no mechanism that allows TDHCA Staff to grant more points than were claimed by the Applicant on their submitted uniform application.

The Staff's action has harmed TDHCA #20025-Palladium Fain Street as a priority project. Staff creates a scoring log for the purpose of identifying “priority projects” based on the Applicant's Self-Score. As such, “priority projects” are the first applications to be reviewed by Staff for award. Because Staff added 4 points to these applications previously mentioned, the Staff, not the Applicants, increased their scores and effectively positioned the applications as “priority projects” above #20025 Palladium Fain Street. In the past this action has never been done or allowed by Staff nor is it allowed now under any circumstances.

We respectfully request your thoughtful consideration of this appeal and find Applications #20154 – San Vito; #20155 – Gala at Premier; #20063 – Azalea West; and #20115 – Avenue at Sycamore Park scores were incorrectly changed above the Applicant's requested points and direct their scores be lowered to reflect the Applicant's score as requested in their final application submissions.

Sincerely,



Thomas E. Huth
President and CEO
Palladium USA International, Inc.
Phone: 972-774-4400
Fax: 972-774-4484
Email: thuth@palladiumusa.com

Cc: Marni Holloway, Director of Multifamily Finance
Sharon Gamble, Administrator 9% Competitive Housing Tax Credit Program
Sara Reidy, Casa Linda Development Corporation



March 18, 2020

Via Electronic Mail

Ms. Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas

Re: 20006 Western Star Estates and 20008 Trailside Creek

Dear Ms. Holloway:

Western Star Estates, LP. and Trailside Creek, LP. (the "**Applicants**"), have applied for housing tax credits for the Developments referenced above. This letter responds to the publication of the Application Log on March 13, 2020.

General Notes

The Department staff published an updated Application Log on March 10, 2020 that showed revised scores from the first Application Log published on March 5, 2020 and indicated a reduction in points for Applicants that had not requested points for Quantifiable Community Participation ("QCP"). On March 13, 2020 a revised Application Log was published that indicated four points had been added back to some Applications for QCP that had not actually requested points in the Applications. This action by staff is unprecedented and appears to be a clear violation to the Rules.

The Rules

Section 11.1(g) of the Qualified Allocation Plan states:

Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or

determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

Section 11.201(7) of the Qualified Allocation Plan states:

(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date.

Grounds for Appeal

There was clearly not a "Deficiency Process" followed for any of the Applicants and Applicants' scores were increased in violation with the Rules.

In accordance with §11.902(a)(2) Appeals Process, the Applicant requests to appeal the Application Log that was published March 13, 2020. Applications 20154 San Vito, 20155 Gala at Premier, 20063 Azalea West, 20115 Avenue at Sycamore Park, 20153 Provision at Bomber Road, 20145 Gala at Ridgmar, 20149 Provision at Fort Worth, and 20143 The Magenta in urban region 3 and Applications 20069 Vista at Interpark and 20066 Vista at Everest in urban region 9, did not request four points for the QCP and should not be awarded the points.

It is the Applicant's responsibility to request the points in the Application that the proposed development qualifies. In addition to a drop down box to select the points requested for QCP points, Tab 46 includes point categories with same style drop down boxes for local resolution of support, state representative support and input from community organizations. The Applicants selected scoring from those drop downs while

skipping over the QCP scoring dropdown box. There is no grey area regarding the QCP point request. There is a dropdown allowing applicants to select from a menu of points values of 0, 9, 8, 6, or 4 (see below snip) and this is very clearly the same format of the other categories in Tab 46. The Applicants did not request any QCP points and we do not believe staff can award points to an Application in which the Applicant did not request points at the time of Application submission.

10 Name of Local Government Body (if applicable)
11 ** Note that resolutions are due February 28, 2020

13 2 Quantifiable Community Participation - §11.9(d)(4)

15 Application expects to receive QCP points. Points Requested

16 ** Note that QCP Packets are due February 28, 2020 and MAY NOT be submitted by the Applicant. Packets MUST be received
17 from Neighborhood Organization!

19 3 Input from State Representative - §11.9(d)(5)

21 Letter of either support, neutrality, or opposition is included behind this tab.** Points Requested

22 OR

23 Letter stating that no letter expressing support, neutrality, or opposition will be provided is
24 included behind this tab.**

26 No letter from a State Representative is included behind this tab. Points Requested

27 ** Note that if there is no Representative, both items will be scored as neutral. Letters are due February 28, 2020.

30 4 Input from Community Organizations - §11.9(d)(6)

32 Applicant has included one or more letters of support or opposition behind this tab. Points Requested

The applicants did not select from the options in the drop down box for points but selected other points on this page from the same type drop down boxes. Clearly a point total needed to be selected to be able to claim the points. We do not believe TDHCA can give the applicants points they did not select here.

Request for Approval on Appeal

With the above information, we respectfully request that you grant the appeal and remove the points that were awarded and not requested by the Applicant. If additional information is required, please let us know. We appreciate your consideration of this presentation.

The Applicant wishes to reserve the right to appeal to the TDHCA Board, pending a decision by the Executive Director.

Sincerely,



Jim Markel
JES Dev Co, Inc.

March 18, 2020

Via Electronic Mail

Ms. Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 20261 Sunset Vista Seniors

Dear Ms. Holloway:

The Sunset Vista Seniors, Ltd. ("**Applicant**"), has applied for housing tax credits for the Development referenced above. This letter responds to the publication of the Application Log on March 13, 2020.

General Notes

The Department staff published an updated Application Log on March 10, 2020 that showed revised scores from the first Application Log published on March 5, 2020 and indicated a reduction in points for Applicants that had not requested points for Quantifiable Community Participation ("QCP"). On March 13, 2020 a revised Application Log was published that indicated four points had been added back to some Applications for QCP that had not actually requested points in the Applications. This action by staff is unprecedented and appears to be a clear violation to the Rules.

The Rules

Section 11.1(g) of the Qualified Allocation Plan states:

Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

Ms. Marni Holloway
March 18, 2020
Page 2

Grounds for Appeal

There was clearly not a “Deficiency Process” followed for any of the Applicants and an Applicant’s score was randomly increased with no documentation.

In accordance with §11.902(a)(2) Appeals Process, the Applicant requests to appeal the Application Log that was published March 13, 2020. Application 20190 Nuestra Senora, did not request four points for the QCP and should not be awarded the points.

Tab six in the Application is the Self Score Form and should have all the scores the Applicant elects to populate into this form; however, it does not. It is the Applicant’s responsibility to request the other points provided in the Application that the proposed development qualifies. Tab forty-six where the QCP points request is located also has other important points that this Applicant did request points for such as local resolution of support, state representative support and community input. The Applicant just failed to request the points for QCP. We do not believe staff has the ability to award points to an Application that were not requested by the Applicant at the time of submission.

Request for Approval on Appeal

With the above information, we respectfully request that you grant the appeal and remove the points that were awarded and not requested by the Applicant. If additional information is required, please let us know. We appreciate your consideration of this presentation.

The Applicant wishes to reserve the right to appeal to the TDHCA Board, pending a decision by the Executive Director.

Sincerely,


Ike Monty

DWR DEVELOPMENT GROUP, LLC

6300 West Loop South, Ste. 670

Bellaire, Texas 77401

(713) 940-9940 – p

(713) 583-8858 – f

Donna@DWRDevelopment.com

March 19, 2020

Ms. Marni Holloway – via email – marni.holloway@tdhca.state.tx.us

Director of Multifamily Finance

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, Texas 78701

Re: Appeal of Application Log Posted March 13, 2020

Dear Ms. Holloway,

DWR Regency 20, LP (the “Applicant”) submits this formal appeal pursuant to §11.902 of the 2020 Qualified Allocation Plan (the “QAP”) rules of the Competitive Housing Tax Credit Program Application Submission Log posted March 13, 2020 (the “Revised Log”) and the scoring adjustments made by TDHCA Staff that adversely impacted Application #20097-Regency Lofts (the “DWR Application”) located in Region 6-Urban. The basis for our appeal is TDHCA Staff’s evaluation process pursuant to §11.201 of the QAP rules which states:

“The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log **may** trigger appeal rights and corresponding deadlines pursuant to Tex. Gov’t. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process).”

On March 10, 2020, TDHCA posted a Competitive Housing Tax Credit Program Application Submission Log (the “Initial Log”). The Initial Log reflected that of the 16 applications submitted in Region 6, 2 did not claim points for Quantifiable Community Participation (“QCP”) pursuant to §11.9(d)(4) of the QAP rules. In the Initial Log, TDHCA Staff correctly reflected the points requested by each applicant in the QCP scoring category of their application and ranked the DWR Application in a priority scoring position. Three (3) days later, TDHCA Staff posted the Revised Log showing that TDHCA Staff had reevaluated the scoring of each application and granted QCP points to several applicants that had not claimed these points in their application. The rescoring of the applications placed the DWR Application in a non-priority position in Region 6 on the Revised Log. TDHCA Staff’s election to grant the QCP points to those applicants that did not claim the points disregards the QAP rules and has harmed the Applicant and the possible award of housing tax credit (HTCs) to the DWR Application.

The Scoring Item:

§11.9(d)(4) of the QAP is a scoring category that allows an applicant to qualify for up to nine (9) points. An application may receive points based on values identified in Subparagraph (C) clauses (i)-(vi) that includes the following values:

“(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection; or

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section.”

The QCP scoring category in the Uniform Application has a check box for those expecting to receive QCP points pursuant to §11.9(d)(4) of the QAP rules and like all other scoring categories a drop down box for the applicant to select the number of points requested. The Initial Log correctly revealed that 2 applicants in Region 6 either selected “0” or no points in the drop down box of this scoring item. In one instance, the applicant put “N/A” in the check box indicating that QCP was not applicable to their application. However, as reflected in the QCP column of the Revised Log TDHCA Staff granted 4 points to each of these applicants. TDHCA Staff’s scoring adjustment was done without any further evaluation of these applications or clarification through the administrative deficiency process. The Revised Log also recognizes that TDHCA Staff rescored these applications without a scoring appeal going before the Governing Board directly contradicting multiple sections of the QAP rules.

No Process to Correct Scoring Errors

On March 10, 2020, TDHCA notified all applicants of the posting of the Initial Log and asked that any errors identified by an applicant be submitted to TDHCA. The election of points (or lack thereof) by an applicant in a scoring category is not an error that can be corrected by TDHCA Staff through revisions to a scoring log, but one that is resolved through an appeal or corrected through the formal administrative deficiency process as defined in §11.1(d)(2) of the QAP rules. In the same email from TDHCA, and in the March 13, 2020 email notifying applicants of the posting of the Revised Log, TDHCA Staff included the following statement:

“All data was compiled using information submitted by each applicant. This data has not yet been reviewed or verified by the Department and errors may be present. Those reviewing the documents are advised to use caution in reaching any definitive conclusions based on this information alone. Applicants are encouraged to review 10 TAC §11.1(b) concerning Due Diligence and Applicant Responsibility.”

10 TAC §11.1(b) of the QAP rules states:

“(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP, or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature, and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual is not a rule and is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.”

The Due Diligence and Applicant Responsibility section of the QAP rules is very clear that an applicant is responsible for the accuracy of their application and that the rules of the QAP should be applied to the submitted Uniform Application to guide decisions based on staff’s evaluation of the Uniform Application and the scoring of the application.

§11.9(d)(4) of the QAP provides very specific ways to qualify for QCP points if requested by the applicant in their application. Further, 10 TAC §11.1(c) of the QAP rules recognizes the competitive nature of the program and states that “Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly.”

The QAP rules do not provide to TDHCA Staff the authority to grant selection points to an applicant that did not request such points in their applications. To the contrary, when information is missing or the TDHCA Staff needs further information to clarify an applicant’s intent the normal course of action is to issue an Administrative Deficiency, which would give the Applicant the ability to supply more information to substantiate their claim for points. The Administrative Deficiency process is further expounded upon in §11.201(7) of the QAP rules which states:

“(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective

review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. **Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application.** Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date."

In addition to the Administrative Deficiency process, Limited Review as defined in §11.201(8) of the QAP rules allows TDHCA Staff to review an application "if the applicant identifies an error in the application that could likely be the subject of a deficiency". However, Limited Review may only be initiated to review certain issues with regards to the application and the "**...issue may not relate to the score of an Application.**" Further, if the limited review results in the identification of an issue that requires correction or clarification, then staff will request such "**...through the Deficiency process as stated in paragraph (7) of this section, if deemed appropriate.**" The Limited Review is intended to address certain issues that ultimately are resolved through the administrative deficiency process.

Again, there is currently no mechanism in the QAP rules that allows TDHCA Staff to grant more points than were claimed on the submitted Uniform Application. In order to change the score of the submitted Uniform Application, the applicant would be required to seek a waiver of the rules and this was not requested by the applicant nor would the applicant seek such a waiver given that they did not request the points and such waiver provision would not apply in this instance.

No Back-Up Documentation Required

All of the scoring criteria used in evaluating and ranking an application as defined in §11.9 subsections (b)-(e) of the QAP rules are items included in the Uniform Application and in all instances require the applicant to claim the applicable points associated with such scoring item including in instances where no backup documentation is required, including points claimed for having a development site located in a Declared Disaster Area pursuant to §11.9(d)(3) of the QAP rules. In this instance, the applicant is not required to submit any evidence but is required to request these points in the drop down box applicable to this scoring item. These points are not automatically granted by TDHCA Staff. Tab 46-Part 3 of the Uniform Application allows an applicant to claim 8 points for Input from the State Representative in accordance with §11.9(d)(5) of the QAP rules. This item also does not require any supporting evidence

Marni Holloway
TDHCA-Appeal of Revised Log
March 19, 2020
Page -5-

but it does once again require the applicant to claim the points using the applicable drop down box provided for in this scoring item.

An applicant's failure to correctly claim the corresponding points should not be corrected by TDHCA Staff simply because no supporting documentation is required to support the points especially in instances where an applicant indicates that the scoring item is not applicable and/or where the applicant made a conscious decision and selected "0" points.

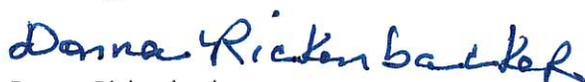
Fewer Parties Erred

The Applicant understands that several applications in other regions made the same error and that TDHCA Staff adjusted their scores as well on the Revised Log. However, when reviewing these other applications, only nine unique parties failed to request the QCP points if the applications are evaluated by the applicant and the consultant. It appears that one consultant did not claim these points on 16 applications, while three other groups failed to claim points on three applications each. It is clear that the vast majority of the applicants correctly checked the QCP box in their application and requested the associated points in the drop down box. As such these applicants including the DWR Applicant should not be penalized by those that did not follow the clear and unambiguous language of the QAP rules applicable to the QCP scoring criteria.

The 9% HTC program is a very competitive process and all applicants and their consultants understand that TDHCA Staff will follow the rules and the rules do not allow TDHCA Staff to award points to an applicant that did not request the points in their application.

The Applicant respectfully requests consideration of this appeal of TDHCA Staff's evaluation process and the rescore of applications as reflected in the Revised Log.

Sincerely,



Donna Rickenbacker
Principal

cc: Brooke Boston – brooke.boston@tdhca.state.tx.us
Director of Programs
Beau Eccles – beau.eccles@tdhca.state.tx.us
General Counsel
Sharon Gamble – sharon.gamble@tdhca.state.tx.us
9% HTC Program Administrator
Cheryl Lawson – clawson@walipp.org



March 20, 2020

Marni Holloway
Director, Multifamily Finance
Texas Dept. of Housing & Community Affairs
221 E. 11th Street
Austin, TX 78701
Via Email: marni.holloway@tdhca.state.tx.us

Re: Appeal of Competitive Housing Tax Credit Log dated March 13, 2020
HTG Jacksboro, LLC – The Park Tower (TDHCA# 20018)

Dear Ms. Holloway,

HTG Jacksboro, LLC in accordance with 10 TAC §11.201(5) (“Evaluation Process”) and §11.902(c) (“Appeals”) of the Qualified Allocation Plan, submits this letter as formal Appeal of the Competitive Housing Tax Credit Full Application Log, posted on March 13, 2020.

On March 10, 2020 TDHCA posted a competitive housing tax credit log (the “March 10 Log” as further described on TDHCA’s website) which included all Self-Score and non-Self-Score point totals for the application round. The March 10 Log showed that thirty-two (32) applications did not select points for §11.9(d)(4), Quantifiable Community Participation (“QCP”). The results of this preliminary log indicated that The Park Tower, TDHCA# 20018 would be in line for a priority review and likely an award of housing tax credits in Urban Region 3, pending review by TDHCA staff. Should TDHCA staff claim these points for the applicants on the appropriate application forms required, The Park Tower, TDHCA# 20018 shall be adversely impacted.

On March 13, 2020 TDHCA posted a revised competitive housing tax credit log (the “March 13 Log”) which included all Self-Score and non-Self-score point totals for the application round. The updated Mar 13 Log showed that all thirty-two (32) applications that did not select points for QCP on the previous log now had an adjusted score to show points had been selected for QCP. On March 13th, TDHCA also published the full PDF applications for all competitive housing tax credit applications. We have downloaded and reviewed the 32 applications which did not claim the QCP points and verified that they had not selected any points for QCP.

The intent stated in 10 TAC §11.1(g) regarding Documentation and Representation concisely points out “... ***Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points...***” As pointed out in this section, Application form item “46. Community Input” is where the applicant would represent and claim those points. Further in §11.1(g) it points out that during staff review...***Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development.***

Additionally, 10 TAC §11.9 Competitive HTC Selection Criteria clearly states ...***Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.*** If the applicant failed to “elect” QCP points than how would TDHCA staff be empowered to make the election and representative claim for the applicant?

Therefore, it is unclear how TDHCA staff determined that all 32 applications in question should have their QCP points reinstated without having reviewed the applications and/or issued an administrative deficiency. Pursuant to §11.201(7) of the QAP, Deficiency Process “...***Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application.***”

We understand the posted application logs to this point are preliminary in nature, and that TDHCA staff has not had the opportunity to review applications for Threshold and/or Selection eligibility. However, it is also our understanding that the revised application log dated March 13th could potentially deem The Park Tower a non-priority review in future applications logs, and thus jeopardize the likelihood The Park Tower receives an award of Housing Tax Credits.

In closing, §11.1(c) of the QAP (“Competitive Nature of Program”) clearly states that “Applying for Housing Tax Credits is a technical process that must be followed completely and correctly.” Tab 46. Community Input, of the Uniform Multifamily Application gives several point selection options for QCP, including 0, 4, 6, 8, or 9. Not claiming QCP points does not automatically default to four points. Every scoring item in the application requires that a point claim be made by the applicant as stated in §11.1(g). Applicants that did not make representative point claims should not be granted a priority review or the ability to have TDHCA staff make §11.1(g) representations on the applicant’s behalf.

Thank you for your consideration. If you have any questions or need any additional information, please feel free to contact Val DeLeon at 512-417-0985 or valentind@htgf.com.

Sincerely,
HTG Jacksboro, LLC


Matthew Rieger
Manager of Managing Member,



March 18, 2020

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Mr. Bobby Wilkinson, Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: Changes to TDHCA March 13, 2020 Application Log - Quantifiable
Community Participation (QCP) points- Section 11.9(d)(4) of the Qualified
Allocation Plan (QAP)

Dear Mr. Wilkinson:

This letter is a formal request for the Governing Board to reverse changes made by the Department to the Application log posted on March 13, 2020. We would like to appeal the Department's decision to grant four (4) additional QCP points to applications that did not claim them.

In the Application Log posted on March 10, 2020, there were 38 Applications showing 0 (zero) points under QCP 11.9(d)(4). Two of those 38 Applications actually claimed 4 (four) points. On the Application Log posted March 13, 2020, those two Applications were correctly granted 4 (four) points, but the other 36 Applications that did not claim points also received 4 (four) points. It should be noted that the Department's listserv sent a notice to subscribers on March 13, 2020, that referenced QCP points, as well as other point categories, but did not explain the changes made to the QCP points between March 10th and March 13th. This led to confusion and further review of the Applications in question.

Of the 138 Applications submitted, 102 Applications requested points under 11.9(d)(4). Those 102 Applications represent approximately 50 groups submitting Applications and 74% of the Applications submitted. The 36 Applications that did not claim points represent only 11 groups and 26% of the Applications submitted. The 36 Applications that did not request points under 11.9(d)(4) should still show 0 (zero) points for this point category.

It is unclear as to why these 36 Applications have now received 4 (four) points under 11.9(d)(4) when they originally did not claim any points. Granting 4 (four) points to Applicants that did not claim them does harm to all the Applicants that properly requested the points at Application submission. Further, the dropdown box in 11.9(d)(4) provides Applicants with the following point options: 9, 8, 6, 4, and 0 points. If the Applicant selected 0 (zero) points, how does the Department know to award 4 (four) points versus 9, 8, or 6 points? Four points are awarded if no Neighborhood Organization exists in the vicinity of the development or if a Neighborhood Organization submits a statement of neutrality. But an application can also receive 6 (six) points if it receives a statement of neutrality from a

Neighborhood Organization. If the Department gave the Applicants 4 (four) points, how does it know that it may not have qualified for 6 points?

As a Supportive Housing Development, we are acutely aware of QAP's mandatory requirement to select points from the provided dropdown boxes due to Section 11.9(b)(1) where the QAP states "Points for this item (unit size) will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums ***only if requested in the Self Scoring Form.***" If we did not select points from the provided dropdown box, we would not receive the 16 points for unit size even though our Supportive Housing Development was not required to meet the minimum requirements.

In addition to the QAP explicitly stating that points are awarded "only if requested in the Self Scoring Form", the QAP also prohibits awarding points to Applications that did not request them. In fact, the rules, in three different places, remind Applicants that Applications cannot be awarded more points than were originally claimed—11.1(g), 11.201(7), and 11.9(e)(4)(B). Here are the sections of the rules cited:

11.1(g):

*(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. **Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.***

11.201(7):

(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate

*support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. **Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application.***

11.9(e)(4)(B):

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

On Tuesday, March 17, an email was sent to the Department requesting clarification of this issue. Staff responded that “QCP points are outside the points ‘requested’ in the self-score,” and, “they are awarded by rule, not request.” Neither of these answers adequately address the issue. QCP points are not counted in the self-score, but neither are Community Support Letters, State Representative Letters, Readiness to Proceed, and Concerted Revitalization Plans. None of these items are listed in the self-score, but the Application still has sections where the Applicant must claim those points. Also, if it were true that points are awarded by rule, not request, Supportive Housing Developments would not need to request points under 11.9(b)(1), as by rule Supportive Housing Developments are not required to meet the minimum unit sizes.

Nowhere in the rules is the Department authorized to increase the score of an application. The Department may only award the points claimed or a lesser amount. If the Department amends application scores outside the delineated process, it will set an unfortunate precedent.

The Department must score each Application consistently. If the Department is going to modify the score of an Application after it has been published, it must do so in a manner laid out in the QAP and not in a way that benefits some Applicants and not others. It should also be done in front of the board, where all parties have the opportunity to have a voice—in a transparent and public manner and not behind the scenes where the industry and public have more questions than answers. Even though these changes are to a minority of Applications, they affect all Applicants.

Therefore, we are respectfully requesting that the log be corrected to show the point totals for 11.9(d)(4) as originally listed on March 10, 2020.

If you have any questions, please do not hesitate to contact me via email at dshisler@ugm-tc.org any time.

Sincerely,



Don Shisler
President & CEO

cc: Brooke Boston, TDHCA
Marni Holloway, TDHCA
Sharon Gamble, TDHCA
Ellen Rourke, National Housing Advisors
Lora Myrick, BETCO Consulting, LLC

Zimmerman AH 715 Aero, LLC

1329 East Lark Street
Springfield, MO 65804

March 18, 2020

Mr. Bobby Wilkinson, Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: Changes to TDHCA March 13, 2020 Application Log - Quantifiable Community Participation (QCP) points- Section 11.9(d)(4) of the Qualified Allocation Plan

Dear Mr. Wilkinson,

This letter is a formal request for the Governing Board to reverse changes made by the Department to the Application log posted on March 13, 2020. We would like to appeal the Department's decision to grant four (4) additional QCP points to applications that did not claim them.

In the Application Log posted on March 10, 2020, there were 38 Applications showing 0 (zero) points under QCP 11.9(d)(4). On the Application Log posted March 13, 2020, those same Applications received 4 (four) points under 11.9(d)(4). It should be noted that the Department's listserv sent a notice to subscribers on March 13, 2020 that referenced QCP points, as well as other point categories, but did not explain the changes made to the QCP points between March 10th and March 13th. This led to confusion and further review of the Applications in question.

After careful review, only 2 of the 38 Applications had actually and correctly claimed the 4 (four) points that were given to all 38 Applications. The remaining 36 Applications did not request any points under 11.9(d)(4) and should still show 0 (zero) points for this point category. It is unclear as to why these 36 Applications have now received 4 (four) points under 11.9(d)(4) when they originally had not claimed any points. Granting 4 (four) points to Applicants that did not claim them does harm to all the Applicants that properly requested the points at Application submission.

Of the 138 Applications submitted, 102 Applications requested points. Those 102 Applications represent approx. 50 groups submitting Applications and 74% of the Applications submitted. The 36 Applications represent only 11 groups and 26% of the Applications submitted. Of those 11 groups, five groups submitted Applications that requested points in addition to Applications that did not. It is not reasonable to assume that those five Applicant groups did not understand how to properly fill out the Application, since they were able to also submit Applications that did request points. As for the remaining six groups who only submitted Applications that did not request points, awarding them unclaimed points is unfair and detrimental to the 50 groups who are not receiving additional points. Even if those six Applicant groups profess they did not understand changes made to the spreadsheet, it was still their responsibility to submit the Applications in accordance with the rules. They had resources at their disposal, including Department staff, that could have explained changes to the Application, if needed.

In addition to not treating Applicants equitably, it is also not allowed under the rules to award points to Applications that did not request them. In fact, the rules, in three different places, remind Applicants that Applications cannot be awarded more points than were originally claimed— 11.1(g), 11.201(7), and 11.9(e)(4)(B). Here are the sections of the rules cited:

11.1(g):

(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

11.201(7):

(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application.

11.9(e)(4)(B):

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

On Tuesday, March 17, an email was sent to the Department requesting clarification of this issue. Staff responded that “QCP points are outside the points ‘requested’ in the self-score,” and, “They are awarded by rule, not request.” Neither of these answers adequately address the issue. QCP points are not counted in the self-score, but neither are Community Support Letters, Rep Letters, RTP, and CRP. None of these items are listed in the self-score, but the Application still has sections where the Applicant must claim those points.

Also, points are not awarded by rule, but by request. There is only one place in the QAP that states points will be awarded automatically—Section 11.9(b)(1)(A). It states that points for unit sizes will be “automatically granted.” If QCP points did not need to be claimed, the QAP would say so and there would be no need for the Application to have a place to claim them.

Nowhere in the rules is the Department authorized to increase the score of an application. The Department may only award the points claimed or a lesser amount. If the Department amends application scores outside the delineated process, it will set an unfortunate precedent.

The Department must score each Application consistently. If the Department is going to modify the score of an Application after it has been published, it must do so in a manner laid out in the QAP and not in a way that benefits some Applicants and not others. It should also be done in front of the board, where all parties have the opportunity to have a voice—in a transparent and public manner and not behind the scenes where the industry and public have more questions than answers. Even though these changes are to a minority of Applications, they affect all Applicants.

Therefore, we are respectfully requesting that the log be corrected to show the point totals for 11.9(d)(4) as originally listed in the March 10, 2020.

If you have any questions, please do not hesitate to contact me directly via email at vczdevelop@wilhoitproperties.com any time.

Sincerely,



Vaughn C. Zimmerman, Member

Staff Notification

From: [Sharon Gamble](#)
To: [Sharon Gamble](#)
Cc: [Marni Holloway](#)
Bcc: "[Art Schuldt](#)"; "[mstrange@callhsa.com](#)"; "[tsmith@hokeservices.com](#)"; "[Tracey Fine](#)"; [Eric Walker](#); "[bmenjares@brenhamHousing.org](#)"; "[paul@brazostrace.com](#)"; "[jpollack@streamlineap.com](#)"; "[Valerykedroff@gmail.com](#)"; "[jgarcia@hamiltoncorporation.com](#)"; "[Alyssa Carpenter](#)"; "[tdeloye@hacep.org](#)"; "[lucila@franklindev.net](#)"; [VCZDEVELOP](#); [Jamie McDonald](#); "[april@ovpgroup.com](#)"; "[mfogel@trinityhousingdevelopment.com](#)"; [JMZLANDCO](#); "[Melissa Forster](#)"; "[Ryan Combs](#)"; "[Sally@sgventures.net](#)"; [emcfanning@bromptonchdc.org](#); "[Matt Higgins](#)"; "[lisa@saigebrook.com](#)"; "[Emanuel Glockzin](#)"; "[Betsy Brown](#)"; [Jervon Harris](#); [Dan Wilson](#); [Liz Wong](#); [Sunny K. Phillip](#); [Alma Martinez](#); "[mmayfield@txhf.org](#)"; "[vspicer@statestreethousing.com](#)"; "[Colby Denison](#)"; "[stacyswisher4@gmail.com](#)"; [Roy Lopez](#); "[IBI Housing](#)"; [Robbye Meyer](#)
Subject: Notice Regarding Points Awarded under QCP
Date: Thursday, April 02, 2020 11:07:00 AM
Importance: High

You are receiving this notice because you are the applicant in one or more of 36 applications that the March 13, 2020, application log shows as receiving four QCP points that were not indicated on the previous log. The issue of the process utilized by staff in their preliminary review of applications regarding QCP points, and the novel presence of a self-score box on the application form despite QCP not being a self-scoring item, has been raised by multiple parties. Given how QCP points have been historically determined, the lack of change to the QAP on this particular matter, and the direction from various board decisions on application matters, Departmental staff determined that points for QCP would be awarded the same way as in at least the last four years. In the case of the questioned applications, each provided a Certification of Notifications at Tab 16. For each of these applications, either a Neighborhood Organization was identified but did not provide any statement regarding the Application, or no Neighborhood Organization was identified. In either case, per 10 TAC §11.9(d)(4)(C)(iv) or (v), the Applications were eligible for and were assigned the four points.

It is the Executive Director's intention to place an item before the Board at the April meeting for its determination regarding these applications: was the process utilized by staff of awarding QCP points under 10 TAC §11.9(d)(4)(C)(iv) and (v) appropriate, even if the Applicant did not enter a value in the box on the application form, or should staff be directed to reconsider its process of scoring these QCP points?

All affected applicants are being given notice of this matter being taken before the Board, and will have separate appeal rights should staff be directed by the Board to reconsider its process and points are then deducted. Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Regards,

Sharon D. Gamble MSW, PMP
Competitive (9%) Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
(512) 936-7834
<https://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm>

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there

are important limitations and caveats (Also see 10 TAC §11.2(a)).

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us

Letters From Affected Applicants

April 15, 2020

Sharon D. Gamble MSW, PMP
Competitive (9%) Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711

RE: Notice Regarding Points Awarded under QCP

Dear Ms. Gamble:

Thank you for your email of April 2, 2020, regarding Points Awarded under Quantifiable Community Participation (QCP). I am a consultant who worked on several applications that did not check the box for QCP. I am in agreement with Staff's recommendation to award points for this scoring item as has been done historically. I would like to present several points in support of this position.

QCP Scoring

QCP is not part of an applicant's self score. QCP points are awarded based on the existence of a neighborhood organization and whether that neighborhood organization submits a QCP packet. This scoring item is out of the applicant's control and documentation regarding this item is specifically not allowed to be submitted in the application. The QCP scoring is very specific regarding point values and zero (0) points is for "statements of opposition meeting the requirements of this subsection." The QAP does not state that zero (0) points may be awarded for anything other than a statement of opposition. Because the QAP has a specific requirement for zero (0) points and because the item is based on documentation submitted directly by a third party, there is no way for an applicant to "opt out" or "not participate" in the scoring item. Additionally, an assessment of zero (0) points without a statement of opposition would not comply with the QAP.

2019 versus 2020 Application Form

As shown in the images below, the 2019 and 2020 QCP application forms have the same language except for the 2020 addition of a "points requested" drop down menu.

2019

2 Quantifiable Community Participation - §11.9(d)(4)

Application expects to receive QCP points.

**** Note that QCP Packets are due March 1, 2019 and MAY NOT be submitted by the Applicant. Packets MUST be received from Neighborhood Organization!**

2020

2 Quantifiable Community Participation - §11.9(d)(4)

Application expects to receive QCP points. Points Requested

**** Note that QCP Packets are due February 28, 2020 and MAY NOT be submitted by the Applicant. Packets MUST be received from Neighborhood Organization!**

The section has a checkbox with the word “expects” along with a note that states that QCP Packets “MAY NOT be submitted by the applicant” and must be received from the neighborhood organization. The language and wording here only makes sense if this section refers to the *expectation* of receiving a QCP packet from a Neighborhood Organization. There is no other scoring item that says “expects.” Because it is clear that the “points requested” dropdown menu corresponds to the accompanying “expects” checkbox, and because that checkbox refers to the expectation of a QCP packet from a neighborhood organization, I did not check the box unless I was aware that a neighborhood organization had submitted a QCP packet.

Precedent

We did not check the box in 2019 based on the understanding that the checkbox was only if we *expected* to receive a QCP packet from a neighborhood organization. In 2019, without checking the box, and without question or discussion, an application was granted 4 points if there was no QCP packet. There was no indication in the QAP, application webinar, application procedures manual, FAQ, or other documentation of how the 2020 score form would be handled or that it would be handled differently than 2019. Based on the precedent of 2019 and the same language of the application form, I filled out the form in the same manner. For the past several years, QCP points were awarded to an application based on QCP packets received by the Department. If an application did not receive a QCP packet, the application automatically received 4 points. There has been no indication that there is a different process for 2020.

Impact to the Program

The HTC program is very competitive and the QAP assigns higher point scoring values to higher priorities for the Department. If the applications in question do not receive the 4 QCP points for which they are eligible, the overall impact is that applications that better meet the priorities of the Department by virtue of having a higher self-score will *not* be awarded. The reality here is that the people against staff recommendation have lower scoring--and therefore lower priority--applications. Those people are trying to argue for a “gotcha” by stating that these higher priority applications should somehow be penalized for not checking a box; however, there was no indication to check the box if we did not *expect* a QCP packet. The fact of the matter is that this scoring item is awarded based on documentation submitted directly by a neighborhood organization and not on documentation submitted by the applicant. The decision to award QCP points in the values codified in the QAP is consistent with prior years and does not change any of the supporting documentation, i.e. QCP packets, the Department has to evaluate this scoring item.

Thank you for your time and attention to this issue. Please contact me at 512-789-1295 with any questions.

Regards,

A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a long, sweeping horizontal line that curves slightly upwards at the end.

Alyssa Carpenter
Consultant

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: Notice Regarding Points Awarded under QCP

Executive Director Wilkinson,

I received the notice from Sharon Gamble on April 2, 2020 notifying me that I am among 36 applications that received QCP points according to the rules and that the process staff has used to apply those points is being discussed at this board meeting. I want to voice my support for staff's process in applying these points on the March 13, 2020 Application Log.

As long as I can remember, there have always been self score items that must be claimed by the applicants, as well as community support items that are not self score and are solely based on whether an application is eligible for those points based on what was submitted in the application or by community organizations. In 2019, the QCP scoring item was largely the same as this year and appeared similarly on the application as this year (below) with the addition of a points box this year. Both years, the QAP allocated points for QCP as applications that either turned in QCP Packets as the Note below requires or allocated 4 points for applications where no statements from Neighborhood Organizations were submitted. Our applications in 2019 and 2020 included completed tabs and certifications for Neighborhood Organizations showing that either no neighborhood existed or, if our site was in the boundaries of a Neighborhood Organization, that we notified them according to the rules. Both years, we have received 4 points based on no written statement being submitted, making our applications eligible for those points. Both years, we did not check the box below as it seems to indicate that it requires a QCP packet to be submitted, and our applications are eligible for 4 points without submitting a QCP packet. We were automatically awarded those points in 2019 without checking the box, so we filled out the application exactly the same this year.

2019

2 **Quantifiable Community Participation - §11.9(d)(4)**

Application expects to receive QCP points.

**** Note that QCP Packets are due March 1, 2019 and MAY NOT be submitted by the Applicant. Packets MUST be received from Neighborhood Organization!**

2020

2 **Quantifiable Community Participation - §11.9(d)(4)**

Application expects to receive QCP points. Points Requested

**** Note that QCP Packets are due February 28, 2020 and MAY NOT be submitted by the Applicant. Packets MUST be received from Neighborhood Organization!**

The box reads exactly the same in both years, just with the addition of a points box this year. The addition of the points box does not change the reading of the item from last year. There was no new instructions in the FAQ or any other material to change the meaning of this item or change any direction

given from last year to indicate that this points box was now to be a required self score item, and I think it would be a mistake to assert that it has become a self score item being that there is no direction from staff to indicate that. Points for QCP were awarded based on merit last year, and it would be consistent to be awarded the same this year. The fact is that staff evaluated whether those points were eligible to applications based on the very clear rules and applied those points correctly to applications on the March 13th log.

No competitor can claim that our applications are not eligible for these 4 points. All they can claim is that we did not check the box on an item that read the same as last year without any new instructions to tell us differently. Therefore, we filled out this item in the application consistent with the reading of it last year, and staff has scored it consistently with last year correctly. The fact that I am among 36 applications that did the same thing indicates that there was, at the very least, some ambiguity in the addition of this points box and that this is not a question of whether applications should get those points but a question of how to clarify that item on the application to make it more clear in 2020. In summation, I am in strong support of the process used by staff to score QCP points this year and ask that the Board does the same.

Thank you for your thoughtful consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Combs', with a stylized flourish at the end.

Ryan Combs
Gardner Capital

April 15, 2020

Sharon D. Gamble MSW, PMP
Competitive (9%) Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711

RE: Notice Regarding Points Awarded under QCP

Dear Ms. Gamble:

I am sending this letter in response to your email of April 2, 2020, regarding Points Awarded under Quantifiable Community Participation (QCP). I would first like to thank staff for their thorough review of this scoring item and the issues brought up regarding how it is to be evaluated by staff. I believe that the resulting outcome was correct and followed both precedent with regard to this item and the language of the QAP.

As the Board reviews how the scoring item was addressed by staff, I thought it might be helpful to address the process that led us to filling out the application as we did, and why we believe that we did so correctly.

QCP Scoring History

As alluded to by staff, this is a scoring item that has ALWAYS been determined by staff. This is because it is entirely outside of the control of the Applicant, and documentation is not allowed to be submitted in the application. If a letter of some kind is received by the Department, staff reviews it to make sure it is eligible and then gives it a score based on the opinion expressed. In the absence of a letter and/or neighborhood group, the QAP specifically states that the Applicant receives four points.

There simply is no such thing as being able to “opt out” of this scoring item, whether on purpose or by accident. For example the lack of checking a box doesn’t mean that an Applicant can avoid getting a legitimate negative letter, likewise an Applicant who did not expect a letter and takes four points will ultimately get eight if a support letter is submitted. The final score will never be based on what the Applicant chooses if the documentation received by staff is different – thus the scoring box on this item has no real meaning except to give staff a “heads up” about the type of letter they expect to receive.

I would also note, that this scoring item is unlike any other in that a “zero score” actually means something specifically – that the application has received a letter in opposition to the deal. The default of four points is explicit in the QAP for any application that does not have a neighborhood group or does not receive a letter from a qualifying neighborhood group. Assigning zero points to this item would be in direct conflict with the QAP.

QCP Application History

There has been an evolution of how this was handled in the application which I believe is key to how we addressed it in 2020.

From inception to 2018 this item was not a part of the application in any way – it was solely handled by staff.

In 2019, a box was added that asked if the “Application expects to receive QCP points”. For all of the applications that we filled out in 2019 we took this to mean “did we believe we were going to receive a letter from a neighborhood organization?” All of our applications left this item blank or put NA. We did not receive a single deficiency for this scoring item, which confirmed the intent and requirement of this scoring item.

A review of other 2019 applications (including those done by people now challenging this interpretation) shows that the majority of the 2019 applications are filled in the same way.

In the 2020 application was identical to the 2019, save the addition of the score box.

Below are the excerpts of the 2019 and 2020 application forms for this item.

2019

2 Quantifiable Community Participation - §11.9(d)(4)

Application expects to receive QCP points.

**** Note that QCP Packets are due March 1, 2019 and MAY NOT be submitted by the Applicant. Packets MUST be received from Neighborhood Organization!**

2020

2 Quantifiable Community Participation - §11.9(d)(4)

Application expects to receive QCP points. Points Requested

**** Note that QCP Packets are due February 28, 2020 and MAY NOT be submitted by the Applicant. Packets MUST be received from Neighborhood Organization!**

Absent any change to the QAP, Manual, Application Webinar, FAQ, or Application tab language to indicate that this scoring item was to be treated differently from last year, we completed the application as we did in 2019 by leaving the item blank if we were not expecting a letter from a neighborhood group.

We would note that the drop down box scores correlate to the score of letters – again confirmation to us that it was related solely to the expectation of receiving a QCP letter.

I firmly believe that the way we completed the applications is correct and that staff has scored them as such.

Conclusion

I believe that staff has been consistent with the way this scoring item was reviewed, and that all QCP scoring items are to be determined by staff and not dictated by this particular section of the application.

If in fact there was to be a change to how this was to be reviewed and scored, it would have been brought up through the QAP/Application process – which it wasn't. There simply is nothing to indicate that there was a change in the meaning or interpretation of this item in the application.

I believe that the language of the QAP and the historic handling of the QCP scoring by staff are clear indications that the applications that we submitted have been handled and scored appropriately.

Thank you for the opportunity to submit comment on this agenda item.

Sincerely,

A handwritten signature in black ink that reads 'Sarah Anderson'.

Sarah Anderson



April 15, 2020

Sharon D. Gamble MSW, PMP
Competitive (9%) Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711

Re: Notice Regarding Points Awarded under QCP

Dear Ms. Gamble,

We are writing this letter in response to an email you sent out on April 2, 2020 regarding points awarded the QCP (Quantifiable Community Participation). We wanted to express our support for Staff's position in how this issue was evaluated and the outcome to award the QCP points. We feel a Staff recommendation to award of these points is consistent with the intent and clear direction of the QAP, since the QCP section is not a scoring item that an applicant directly controls and has historically not been a self-scoring item. I was surprised to see the notice - since the QAP did not change regarding this scoring item, our assumption would be that the application itself would also not change. Similar to an applicant's control over receiving points under the Support from a State Senator, the applicant ultimately cannot self-score this item and the QAP directs Staff to award such points based on information received from outside parties. Staff is required to evaluate this scoring item based on information it receives from parties other than the applicant. The final score in this section therefore is ultimately decided by Staff under guidance in the QAP. In the instance of the project(s) Franklin is involved with, the absence of a letter and/or neighborhood group the QAP specifically states the Applicant receives 4 (four) points.

In conclusion, based on the language of the QAP and the historic handling of the QCP points, we want to express our support for Staff's recommendation to include the QCP points.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ryan Wilson', is written over a faint, larger version of the same signature.

Ryan Wilson
Franklin Companies



600 Congress, Suite 2200
Austin, TX 78701
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

April 15, 2020

Via Email

Mr. Bobby Wilkinson,
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Notice Regarding Points Awarded under QCP dated April 2, 2020
Application Nos.: 20066, 20069, 20204, 20012, 20317, 20344

Dear Bobby:

Our Firm represents the six Applications¹ referenced above with regard to this matter and supports staff's action regarding the posting of the March 13, 2020 application log. TDHCA's governing statute, the QAP, historical Department procedure, and prior Board guidance all favor a determination that staff acted appropriately.

QCP Points are not Part of Self Scoring

When reviewing an Application, staff distinguishes between items that are included in an Applicant's self-score and items that are not included in the self-score. Points under §11.9(d)(4) for Quantifiable Community Participation ("QCP") are excluded from the self-score, because letters from a Neighborhood Organization are submitted to the Department separately from the Application. It is possible that an Applicant could be expecting a letter of support, but a letter of neutrality is submitted instead. It is possible that an Applicant believes there is no Neighborhood Organization to offer its opinion, but a qualifying Neighborhood Organization does exist, and submits a letter. Because the submission of a letter by a Neighborhood Organization is not within the Applicant's control, staff has always taken responsibility for determining and scoring QCP points to which any given Application is entitled. QCP is not a scoring category where an Applicant claims or applies for a score. The score is awarded, based upon the facts present.

¹ Capitalized terms used but not otherwise defined in this letter shall have the meanings given them in the 2020 QAP.

Staff Acted Appropriately Under the Government Code and QAP

State law says the Application log must contain the score of the Application in each scoring category adopted by the Department under the QAP. (Tex. Gov't Code §2306.6709(b)(5), emphasis added) The Application log published by the Department complies with this mandate. Consistent with how the scoring rubric is presented in both the Pre-Application and the Application, the Application log establishes eight categories of scoring – one for the Applicant's self-score and seven others for items that are not included in the self-score, including QCP.

The QAP states: "The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff." (10 TAC §11.201(5)). When staff identified that the March 10, 2020 log did not include the proper score for 36 Applications, it made the scoring adjustment for QCP, as permitted by the rule.

Confusion Stemmed from Change to Application Form

For 2020, staff changed Tab 46 of the Application form, with regard to QCP. In prior years, the Application form looked like this:

2 Quantifiable Community Participation - §11.9(d)(4)

Application expects to receive QCP points.

**** Note that QCP Packets are due March 1, 2019 and MAY NOT be submitted by the Applicant. Packets MUST be received from Neighborhood Organization!**

In prior years, Applicants interpreted the phrase "Application expects to receive QCP points" as meaning "Application expects to receive a QCP letter." Most Applicants that did not have a Neighborhood Organization encompassing the Development would leave this item blank or mark it as "N/A." With that approach, they would qualify for the 4 QCP points awarded when no Neighborhood Organization exists. In fact, in 2019 over 93% of the winning Applications that automatically qualified for 4 QCP points, by virtue of not being located within the boundaries of a Neighborhood Organization, did just that, and were awarded the points by the Department.

For the 2020 Application Round, the same section of Tab 46 looked like this and included the new box circled in red:

2 Quantifiable Community Participation - §11.9(d)(4)

Application expects to receive QCP points.

Points Requested

**** Note that QCP Packets are due February 28, 2020 and MAY NOT be submitted by the Applicant. Packets must be received from Neighborhood Organization!**

Notably, neither the QAP nor the Procedures Manual were changed in relation to this item. Our clients, experienced Applicants, marked the box on the left side as "N/A" or kept it blank, just like they had in the past, because they were not expecting to receive QCP letters. As to the new box on the right side, some left it blank while others marked it as "0", intending to reflect that they

were not expecting to receive a QCP letter. This translated to a “0” on the Application log, which did not provide the correct score for Applications that had no Neighborhood Organization to submit a QCP letter. Staff correctly identified the problem caused by the insertion of this new cell, verified that the 36 Applications had included support for the 4 points, and made the adjustment.

QAP Dictates Points for QCP

The QAP dictates the number of points to which an Applicant is entitled for QCP. Under §11.9(d)(4), an Applicant receives 0 points only if it receives a letter of opposition from a Neighborhood Organization. The only option in the QAP for an Application that does not have a Neighborhood Organization is 4 points. Thus, where Applicants identified in both the Pre-Application and the Final Application that there was no Neighborhood Organization, staff must award 4 points, not 0.

Administrative Deficiency is not Required

An Administrative Deficiency is not required for staff to adjust the Application log to correct this error. By definition, an Administrative Deficiency is utilized when Department staff requires clarification or explanation for an inconsistency during the review process. The staff is not required to issue an Administrative Deficiency if it believes the result is clear, as it is in this circumstance. The Applicants showed that there was no Neighborhood Organization in existence; staff can accept that assertion and award 4 points, consistent with the requirements of §11.9(d)(4).

Staff Action is Consistent with Prior Board Action

In the 2017 Application Round, staff took a more stringent position regarding scoring and items that could be cured through Administrative Deficiencies. This change in procedure was based upon the actions of aggrieved Applicants who used the RFAD process to question staff’s decision-making regarding qualification for points. A series of appeals was presented to the Board. Through that process, the Board indicated that the staff should and did have the authority to make scoring decisions on items for which adequate documentary support is provided.

Staff Action is Consistent with TDHCA’s Policy and Purpose

“In allocating low income housing tax credits, the department shall score each application using a point system based on criteria adopted by the department that are consistent with the department's housing goals” (Tex. Gov’t Code §2306.6725)

The opposition is trying to interpret the addition of one cell in the Application form as a nearly invisible “trip wire” for over a quarter of this year’s total Applicants. There is no public benefit to penalizing the 36 Applicants that followed the procedural precedent, but there is a cost: Texans would lose access to 36 Applications that would otherwise take their rightful places within the Department’s scoring system. That system, created through input from multidisciplinary stakeholders across the state, as well as by statute, delivers the best housing to the right places for underserved Texans, and it should not be disregarded because of “gotcha” technicalities.

Imposing a penalty on nearly 30% of the Applicants that should earn the 4 QCP points automatically would disproportionately affect the number of competitive Applications located in

high opportunity areas that score points under the Opportunity Index. This important housing policy was created to incentivize Tax Credit development in areas where residents can access the tools to improve their familial circumstances. Of the 36 Applications affected by this matter, 30 score points under the Opportunity Index.

Concluding Remarks

While those opposing the staff action are understandably disappointed that their Applications may not rise to the level of an award if staff's action is upheld, the competitors have not suffered from a lack of information or due process. All 36 Applicants submitted Pre-Applications, indicating that they had no Neighborhood Organization and thus expected 4 points in the QCP category. Their competitors made decisions to proceed to Final Application based upon that information. When the March 10, 2020 log was posted and 36 Applications were shown as receiving 0 points for QCP, it was obvious to all knowledgeable participants that something had gone awry; receiving 36 QCP letters of opposition in one Application Round would be completely unprecedented. Staff's action in recording the 4 points on the March 13, 2020 log should not come as a surprise to anyone.

The action taken by staff to correct the March 10, 2020 Application log was proper, consistent with statute, and consistent with the QAP. We respectfully request that you uphold the staff action to award 4 points for QCP to our clients' Applications.

Sincerely,



Cynthia L. Bast

April 15, 2020

Ms. Sharon Gamble, MSW, PMP
Competitive Housing Tax Credit Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Notice Regarding Points Awarded Under QCP

Dear Ms. Gamble:

I am sending this letter in response to your email received on April 2, 2020 regarding points awarded under QCP and on behalf of two projects I worked on and that are affected by this matter. Thank you for your thorough review of this scoring item. We are in full agreement with your analysis and how this QCP scoring item has ultimately been addressed by staff. We support Lock Lorde's expert interpretation on this matter. And still further, we strongly urge the Board of Directors to consider that the **best course of action is to remain consistent** right now.

Our reasoning for supporting staff is as follows:

1. **Staff has always determined this scoring item, not by a check the box, but by a subjective and consistent review of the evidence in the application.** *Staff is doing that this year, and we agree with that approach.*
2. **As the applicant, we have submitted all the required evidence in our application and pre-application to be awarded these QCP points, which is exactly how it's always been done in the past.** *Because we've included our evidence, we deserve the points, which is consistent procedure with the past application rounds.*
3. **Valuing consistency, the QAP has not materially changed on this particular QCP matter for multiple cycles in a row now.** *A consistent QAP has been the trademark of TDHCA staff and this Board for years.*
4. **There was never a webinar, rule change or alert that indicated anything material had changed for this scoring item.** *Staff is very good at alerting us when things that are material must be taken into account. This matter does not rise to the level of material.*
5. **Nearly three dozen other applicants in almost every region of the state followed this exact same procedure, which historically has been consistent with board decisions.** *It's clear there was some confusion, but it can be fairly and consistently corrected next cycle with zero impact in the current round.*

On the whole, staff has rightfully awarded four (4) points for QCP to applications that are eligible for those points. Again, while we urge the Board of Directors to support the actions taken by Staff on this matter and uphold the award of four (4) points for QCP for the 36 applications, we also believe that the Board would be acting with consistency and within the spirit and express language of the QAP and program.

Respectfully,



Matt Higgins
(817) 683-1571
mhiggins@msh-icservices.com



SGL Ventures, Inc.

206 E. Live Oak Street, #D
Austin, Texas 78704
C: 713 882 3233
Sally@SGIventures.com

April 15, 2020

Ms. Sharon D. Gamble MSW, PMP
Competitive (9%) Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711

RE: Notice Regarding Points Awarded Under ACP relating to Application #20063 Azalea West

Dear Ms. Gamble:

In response to your email regarding Points Awarded under Quantifiable Community Participation (QCP), dated April 2, 2020, I would first like to thank staff for the thorough review of the issues, as well as the clear and concise explanation of the rationale utilized in reaching the recommendation being submitted to the Board. Also, I would like to go on record that I am in agreement with Staff's recommendation for all of the reasons Staff cited, primarily relating to historic process and lack of change to the QAP on this particular matter.

The Azalea West application, like many others, provided a Certification of Notifications at Tab 16, and identified the applicable Neighborhood Organization, but none of the organizations provided a statement regarding the application. Therefore, Azalea West is eligible for the 4 points per 10 TAC §11.9(d)(4)(C)(iv) or (v). We did not check the box based on the process from previous years where the box was only checked if we *expected* to receive a QCP packet from a neighborhood organization. For example, in 2019, if the box was not checked, and no QCP packet was submitted, an application was granted 4 points without any explanation or additional action by the Applicant. Therefore, because there was no indication in the QAP, any of the application webinars, application procedures manual, FAQs, or other documentation to the 2020 score form relating to this scoring item, and the fact that the form itself was so similar to the 2019 form, the 2020 form was filled out in the same manner.

Further, because the QCP points are not part of the applicant's self score, rather, QCP points are awarded based on the existence of a neighborhood organization and whether that neighborhood organization submits a QCP packet. Therefore, the points are awarded based on factors totally out of the control of the Applicant, i.e. documentation for this item is specifically not allowed to be submitted in the application. In addition, the QCP scoring is very specific regarding point values, wherein zero (0) points is for "statements of opposition meeting the requirements of this subsection". The QAP does not state that zero (0) points *may be* awarded for anything other than a statement of opposition. Because the QAP has a specific requirement for zero (0) points, and because the item is based on documentation submitted directly by a third party, there is no way for an applicant to "opt out" or "not Participate" in

the scoring item. Additionally, assessment of zero (0) points without a statement of opposition would not comply with the QAP.

Finally, no competitor can claim that the Azalea West application is not eligible for the 4 points. Rather, it can only be claimed that the box was not checked on an item that read the same as last year without any new instructions to indicate different treatment. Because approximately 36 applicants completed the form the same way, there was ambiguity in the form. Therefore, for all of the reasons previously stated, I strongly support the process used by staff to review this QCP issue, as well as the scoring recommendation being submitted to the Board.

Thank you for your consideration,



SALLY GASKIN

President

SGI Ventures

C: 713 882 3233

Sally@SGIVentures.net

5d

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

6a

BOARD ACTION REQUEST

COMPLIANCE DIVISION

APRIL 23, 2020

Presentation, discussion, and possible action on adoption of amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing that they be published for adoption in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, at the meeting of December 12, 2019, the Board approved proposed amendments to sections of the compliance rule for publication and public comment in the *Texas Register*; and

WHEREAS, public comment was accepted from December 27, 2019, through January 27, 2020, and staff received comment from 36 entities and has prepared a reasoned response;

NOW, therefore, it is hereby

RESOLVED, that the amendments to the Compliance Rule together with the preambles presented at this meeting, are hereby adopted for publication in the *Texas Register*; and

FURTHER 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 adopted actions herein in the form 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 including any requested revisions to the preambles.

BACKGROUND

At the meeting of December 12, 2019, the Board approved the publication of proposed amendments to the Compliance Rule. Significant comments were received related to the proposed changes to the utility allowance rule. Staff has reviewed all comments and provided a reasoned response to these comments in the following preamble.

Attachment 1: Preamble for adopting amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to sections 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625 with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8147).

The purpose of the amendments is to update the rule to delete unnecessary requirements, delete sections of the rule pertaining to functions that are being moved in the Department, to provide clarity for changing household designations, to comply with Tex. Gov't Code §434.214 regarding requirements related to screening for veteran status, to add clarity regarding unit mix requirements for the HOME, TCAP RF and NHTF developments, to require a 12 month rate to be used for calculating utility allowances for certain MFDL Developments and all Developments that apply for funding after January 1, 2021, and to limit rent increases to once every 12 months.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Wilkinson has determined that, for the first five years the amendments will be in effect:

1. The amended rule does not create or eliminate a government program.
2. The amended rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The amended rule changes do not require additional future legislative appropriations.
4. The amended rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The amended rule is creating a new regulation, which is being created to comply with Texas Gov't Code §434.214, which requires Department's Administered Developments to screen for Veteran status.
6. The amended rule will not expand, limit, or repeal an existing regulation.
7. The amended rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The amended rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for monitoring the activities of multifamily developments awarded funds through various Department programs. Other than, in the case of a small or micro-business, that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the new rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because the rule is not directly applicable to rural communities there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amended rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the rule is updating an existing rule, therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Robert Wilkinson, Executive Director, has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the

new section because the change that may have an economic impact is proposed for Developments that apply for funding after January 1, 2021, and if there is any cost, it can be offset by increased funding.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the 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 because the amendments carry on an existing activity.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between December 27, 2019, and January 27, 2020. Comments regarding the proposed amendments were accepted in writing and by e-mail with comments received from:

1. Robert Dryman, President, Brownstone Residential, LLC
2. Charles Holcomb, President, Community Retirement Centre, Inc
3. Barry Palmer with Coats | Rose, A Professional Corporation
4. Danna Hoover, Vice President, Hamilton Valley Management, Inc
5. Chernob M. Njie, President, Songhai Development Company, LLC
6. Jean Maria Latsha, Vice President – Development, Pedcor Investments, A LLC
7. Katherine Saar, Vice President, Leslie Holleman & Associates, Inc.
8. Elizabeth and Vernon Young, Artisan/American Corporation
9. Sandy Rollins, Texas Tenant's Union
10. Patrick A. Barbolla, Fountainhead Management, Inc.
11. Jen Brewerton, Vice President of Compliance, Property Management Dominion
12. Jim Beats, Diamond Property Consultants, Inc.
13. Billy Bryant, Mayfair Management Group, LP
14. Drew Hoskins, Encore Residential, LLC
15. Juanita Sanchez, Sanchez Compliance & Consulting
16. Mike Robinson, President, Robinson Capital & Investment, Inc.
17. Dena Moreland, Director of Compliance, Accolade Property Management
18. Nancy McIlhane, Director of Compliance, Pathways Asset Management, Inc.
19. Margaret M. Jones, SVP Finance, Palladium USA International, Inc.
20. Marnie Geurin, Operations Director, DMA Properties, LLC
21. Sandy Hoy, TAA General Counsel, Texas Apartment Association
22. Jen Brewerton, TAAHP – Texas Affiliation of Affordable Housing Providers
23. Cody J. Hunt, Corporate Controller, Palladium USA International, Inc
24. Fred D'Lizarrage, Senior Vice President -COO, Palladium USA International, Inc.
25. Joan Maxwell, Senior Vice President, Palladium USA International, Inc.
26. Keith Pomykal, Vice President, Investments, Palladium USA International, Inc.
27. Kim Schwimmer, Managing Member, The Land Experts, LLC
28. Scott E. Johnson, Senior Vice President, Palladium USA International, Inc & President | Catalyst Builders, Inc.
29. Thomas E. Huth, President and CEO, Palladium USA International, Inc

30. Wade Roper, Project Development Manager, Palladium USA International, Inc
31. Saleem A. Jafar, Odyssey Residential Holdings, LP
32. Wanda White, Compliance Director, Lifestyle Property Management
33. Chris Lischke, Ledg Capital, LLC
34. Lauren Loney, Staff Attorney, Advocacy Co-Director, Texas Housers
35. W. Barry Kahn, Hettig/Kahn Development Corp
36. Jason Arechiga, NRP Management.

Rule Section §10.611. Determination, Documentation and Certification of annual income

COMMENT SUMMARY: Commenter 4 proposed three additional scenarios when an owner should be permitted to change a household's designation.

Commenter 10 opposed and expressed concern with the proposed changes. He noted that property managers are required to constantly keep track of the income level of tenants and believed that this change would result in inaccurate reporting of the income levels served by the program. He also believed this rule would prevent a 60% unit from later being designated at 50% and that a 30% household could not be changed until the household went over income. He also commented on the available unit rule. Lastly, he believes that the proposed rule would increase the workload of property managers.

Commenter 10 also noted that the proposed rule requires all Multifamily Direct Loan (MFDL) properties to obtain two months of source documentation evidencing annual income, not just MFDL properties funded on or after August 23, 2013, and requested the change not be adopted.

Commenter 17 suggested that this rule should be stricken because there are additional times that a household's designation should be changed. She used an example of a property layered with HOME and Housing Tax Credits when a household goes over income. Another example she provided is when a household is improperly designated as a 50% household due to an error by property management.

Commenter 22 opposes limiting an owner's ability to change a household's designation outside of federal requirements. They believe that the proposed rule would not allow owners to self-correct noncompliance, re-designate households during re-syndication, remove designations as programs applicable to a property are no longer required, and that the rule would limit flexibility with owners that elect the average income minimum set aside. Further they believe there is a potential conflict with the waitlist requirement under §10.615(b).

Commenter 34 supported the proposed changes to this section of the rule and suggested *"...that TDHCA staff be more proscriptive in what this policy would require. For example, every written policy for changing income designations should include a written notice that (1) gives a minimum 90-day notice to tenants that their income designation will be change; (2) provides information explaining that if their income designation changes, how much their rent will increase; and (3) ensures a guaranteed face-to-face meeting with the property manager to explain what is happening."*

STAFF RESPONSE:

In response to Commenter 4, all three scenarios requested are already addressed in rule; the first scenario is covered by §10.611(c)(3), and the second and third scenarios are covered by §10.615 and §10.611(c)(2). No changes are being made based on comment from Commenter 4.

In response to commenter 10, staff agrees that managers are required to constantly keep track of the income level of tenants to maintain compliance with program requirements. This rule will not impact how the Department reports the income levels of households served by TDHCA administered properties. Staff reports resident data based on actual household income; not owner designation. This section of the rule read in harmony with §10.615 addresses the commenters concerns about redesignations to a lower level. The requirement of all MFDL properties to obtain two months of source documentation to evidence annual income is a federal requirement. No changes are being made based on comment from Commenter 10.

In response to Commenter 17, if a property is layered with HOME and Housing Tax Credits and a household goes over 80% income limit, the property must comply with the program requirements which are covered in §10.611(c)(1). The property must comply with the available unit rule and lease the next available unit to a HOME eligible household (if the units are floating). If the household has not exceeded 140% of the income limit established by the minimum set aside for the Housing Tax Credit program, the household's HTC designation cannot be removed. Likewise, if property management makes an error and designates a household at 50% that should have been a 60% household, property management cannot removed this household's designation unless they have a written policy and procedure to address such errors. No changes are suggested in response to Commenter 17.

To address any confusion or possible conflict noted by Commenter 22 between §10.611 and §10.615(b) the following language is included in the adopted rule:

(6) The household's designation is being lowered.

Other changes are not needed because the rule permits changing designations to self-correct, at the time of re-syndication, when programs are no longer applicable and to address changes in household income for properties that elect the average income minimum set-aside, if the owner has adopted a written policy stating changes in household income.

Except to the extent the comments address notice about written policies described in Subchapter G, the changes suggested by Commenter 34 are beyond the scope of this rulemaking. Staff may consider these comments in future rulemaking.

§10.612 Tenant File Requirements

COMMENT- Commenter 10 stated that TDHCA is misreading Tex. Gov't Code §434.212 by requiring owners to implement a new or revised application form that screens applicants for veteran status and include a specific statement regarding potential benefits information for veterans.

Commenter 10 also states, *"It seems counterproductive to have private owners inquire about veteran status when neither priority nor preference can be given to veterans. Indeed, if developments*

are required to ask about veteran status and include the proposed language, owners should also indicate that this is just a public service announcement and no special veteran services will be offered. Remove this proposal from the rule pending a request from TDHCA for an opinion of the Texas Attorney General whether this requirement applies to applicants for services directly from TDHCA or whether it also applies to previously subrecipients.”

Commenter 34 requested that tenant acknowledgement forms include an acknowledgment that leasing staff verbally explained these documents to potential tenants and that each document be provided in the proper language for the tenant at issue.

STAFF RESPONSE- TDHCA’s Legal Division has determined that asking this question and providing the information is a requirement for TDHCA monitored developments. Staff does not recommend changes based on this comment, and finds it is not necessary to seek an opinion from the Texas Attorney General. However, staff proposes the following change to allow owners ample time to update their rental applications:

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). Beginning January 1, 2021, the application must provide a space for applicants to indicate if they are a veteran. In addition, the application must include the following statement: "Important Information for Former Military Services Members. Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Reserves or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at <https://veterans.portal.texas.gov/>.

The changes suggested by Commenter 34 are beyond the scope of this rulemaking. Staff may consider these comments in future rulemaking.

Rule Section §10.613(h). Lease Requirements

COMMENT SUMMARY: Commenter 10 believes that there is an error in this sentence:

“All NHTF, TCAP RF, NSP, [811 PRA,] and HOME Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e).”

Commenter believes that it should not be the Department who determines if a tenant qualifies for an emergency transfer.

STAFF RESPONSE: 24 CFR §92.359(g) and 24 CFR §93.356(f) require the Department to determine if the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). The Department will enforce this as it would any other program requirement. The Department has Violence Against Women Act resources on its website at <https://www.tdhca.state.tx.us/pmcomp/forms>. The Department has not made any changes to this subsection as a result of this comment.

Rule Section §10.614. Utility Allowances

COMMENT SUMMARY: Commenters 1, 2, 3, 5, 6, 7, 8, 11, 12, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 36 oppose the proposed requirement to use a 12-month rate term when calculating utility allowance. For a variety of reasons, they believe the change would have a fiscal impact on existing Developments.

Commenter 9, 15, and 34 supported the proposed change and urged the adoption of a requirement to use a 12-month rate when determining utility allowances because introductory rates lead to an inaccurate determination of the real costs facing tenants.

STAFF RESPONSE:

Treasury Regulation §1.42-10 was adopted in 2008. At that time, the HUD utility schedule model and engineering model were added as options for calculating an allowance. The updated regulation implemented the requirement for owners and State Housing Finance Agencies to review utility allowances once a calendar year and “...take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.”

In 2008, the Internal Revenue Service and U.S. Treasury Department received comment on proposed §1.42-10 suggesting that owners should be required to update the allowance if the rate changed. However, the regulation was adopted with the assumption that that utility rates do not change more than once per year. In 2008, IRS and Treasury wrote:

“The IRS and Treasury Department do not believe that fluctuations in utility rates within a given year should trigger recalculations of utility allowances more than once a year. The IRS and Treasury Department do not believe that the additional burden of updating the utility allowances more than once a year is warranted at this time. Utility rates generally do not change more than once a year, and yearly updated utility allowances would reflect average rates applicable to all tenants in a building from year to year. Therefore, the final regulations require building owners to calculate new utility allowances once during the calendar year regardless of any percentage change in utility rates. Building owners may choose, however, to calculate new utility allowances more frequently than once during the calendar year provided the owner complies with the requirements of these regulations, including the notification requirements to the Agency and tenants.”

Despite this language in the IRS rulemaking, the Department is not able to identify a clear federal requirement to use a 12-month rate term when calculating an allowance. Nonetheless, staff believes a 12-month term is necessary to accurately estimate a household’s yearly expected utilities.

Under the Texas Administrative Procedures Act, State agencies are prohibited from adopting rules that increase costs on regulated persons unless one of nine reasons is present including that the change is “necessary to receive a source of federal funds or to comply with federal law.”

Staff agrees that this rule could have a fiscal impact. However, moving forward, so that the Department and owners have the data that would be necessary to determine the actual fiscal impact, whenever possible, staff will provide two utility allowances; one using the lowest 12-month rate available, and one using the rate plan requested by the owner. In the event the U.S. Treasury Department or the U.S. Department of Housing Urban Development update their regulations, all parties will have the data needed to determine the actual fiscal impact of using a utility allowance based on a 12 month term.

Any possible fiscal impact of a utility allowance based on a 12-month term can be offset during the application process and underwriting. The adopted rule requires the use of a utility allowance based on a term that is available for 12 months for Developments that apply for funding after January 1, 2021.

Lastly, under the authority of 24 CFR §92.252(d) and 24 CFR §93.302(c), for utility allowances calculated by the Department for MFDL properties, the allowance will be based on the lowest 12-month rate term available. Owners have other options to calculate their utility allowance. If they do not avail themselves of those options and rely on the Department to estimate the allowance, a 12-month rate term will be used.

Rule Section §10.615. Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments

COMMENT SUMMARY: Commenter 9 stated: *“Lower income tenants without housing vouchers often struggle to make ends meet when they are living in a unit restricted at 50% or 60% of the Area Median Income (AMI). Despite increases in the AMI, we see many people being left behind. For example, the average Social Security check last year was \$1,461 per month, and many one-bedroom tax credit units are at or very close to \$1,000 per month. Requiring landlords to maintain a waiting list to allow tenants to be placed in a lower cost unit is a useful rule change.”*

Commenter 17 suggested that the requirement to maintain waiting lists should be stricken in its entirety because it is not a federal requirement for HTC, Exchange, or Bond; it causes work for staff and hinders immediate housing of low-income people.

STAFF RESPONSE: Commenter 9 was not requesting any changes from the proposed rule, merely expressing support. Staff agrees with commenter, no changes made based on this comment.

Staff disagrees that there are no requirements to maintain waitlists. For example, 24 CFR §8.27 requires that an Owner maintain a waitlist of households that need the accessible features of a Unit. Many LURAs require Developments to maintain waitlists for special needs households. Furthermore, several HTC, Exchange, or Bond Developments are layered with federal programs such as HOME or Section 811 PRA that do require maintaining of a waitlist. The commenter has the ability to amend their waitlist policy in a manner that reduces staff workload within the rules and regulations that apply to a specific Development

Rule Section §10.622. Special Rules regarding rents and rent limit violations

COMMENT SUMMARY: Commenter 3 indicated that the proposed changes to §10.614, regarding the requirement to use a 12-month rate term when calculating a utility allowance would affect §10.622(j). Commenter 4 proposed additional circumstances when it should be permissible to change rent during a lease term.

Commenter 9 and 34 supported the prohibition on rent increases during a period, which is the lesser of 12 months or the lease term.

Commenter 10 and 17 opposed the changes to this section. Commenter 17 suggested that if the utility allowance decreases or the rent limit increased, owners should be allowed to increase rents up to \$50 at the time of the change and then to the rent limit at lease renewal.

Commenter 18 noted several times that a federal program would require changes in the household's rent during a lease term.

Commenter 22 supports proposed language that now allows rent increases for any lease term, including month to month leases or other lease terms.

STAFF RESPONSE: Staff agrees with Commenter 4 and 18, and proposes changes which will address the opposition noted by Commenter 10.

Commenter 9 and 34 were not requesting any changes from the proposed rule, merely expressing support.

Staff has identified that the proposed rule may have a fiscal impact and is adopting the rule with changes to address the potential impact:

(j) "Owners are not permitted to increase the tenant portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes."

§10.623- Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period

COMMENT- Commenter 22 stated: *"§10.623(b)(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis; We request that the Department reconsider its position on prohibiting owners from charging fees for amenities that were included in eligible basis when the compliance period expires. Upon conclusion on the compliance period, the low-income housing tax credits have been claimed and event of noncompliance are no longer reportable to the IRS on Form 8823. Being able to charge fees for these amenities"*

STAFF RESPONSE- After the compliance period, certain rules are relaxed in an effort to ease the administrative burden of residents and management staff. None of the relaxed rules are intended to affect the affordability of the property. Staff does not recommend allowing owners to charge for amenities after the close of the compliance period. Staff also notes that many developments have excess basis. This issue is best addressed by identifying and excluding the cost of amenities from the Development's qualified basis at the time of cost certification in order to avoid this issue.

§10.624-Compliance requirements for Developments with 811 Units

COMMENT- Commenter 22 stated *"10.624(b) - There is a requirement to notify of potential 811 unit vacancies immediately. This was previously 30 days. Immediately is not reasonable and there should be some defined time frame for notification. If 30 days is too long, then I would suggest 10 or 15 days."*

STAFF RESPONSE- Staff agrees that immediately is not reasonable and updated the language as follows to align with 10 TAC §8.7(l)(4) which provides a seven calendar day timeframe for notification:

(b) Throughout the term of an 811 PRA Use Agreement, Owners must maintain the required number of 811 PRA households, and provide notice to the Department when an 811 PRA household is expected to vacate. Notice must be provided within seven calendar days of when the Development is notified that the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant, ~~whichever is earlier~~. Failure to notify the Department will be cited as noncompliance and be referred to the Enforcement Committee to be considered for possible ~~for~~ administrative penalties, and may be proposed for debarment, in accordance with the Enforcement Rule under 10 TAC Chapter 2.

General Comment:

COMMENT SUMMARY: Commenter 16 stated that all rules under Subchapter F should be up for comment; not just the rules TDHCA would like to change.

STAFF RESPONSE: Staff is holding quarterly roundtables to solicit input on emerging issues and will take rule action based on feedback and input from stakeholders. The commenter did not identify any rule changes she felt was necessary in any of the sections that were not out for comment. No changes were made based on this comment.

The Board adopted the final order adopting the amended rule on April 23, 2020.

STATUTORY AUTHORITY. The amended sections are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the amended sections affect no other code, article, or statute.

§10.602. Notice to Owners and Corrective Action Periods.

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a 30 day Corrective Action Period for noncompliance related to the AOCR, and a 90 day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the Owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: compliance.extensionrequest@tdhca.state.tx.us. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional 10 calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

§10.605.Elections under IRC §42(g).

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 (20% of the Units restricted at the 50% income and rent limits), 40/60 (40% of the Units restricted at the 60% income and rent limits), or the average income test.

(b) HTC projects must meet the required election under IRC §42(g) no later than the end of the first year of the Credit Period.

(c) An Owner that elects the average income test under IRC §42(g) must disperse 20%, 30%, 40%, 50%, 60%, 70%, and 80% Unit designations across all Unit Types to the greatest extent feasible, and in a manner that does not violate fair housing laws.

(d) Until and unless the Internal Revenue Service or the Treasury Department issues conflicting or additional guidance, the Department will examine the actual gross rent and income of all households to determine if a Project that elected the average income test are at or below the federal minimum of 60% AMI.

§10.607.Reporting Requirements.

(a) The Department requires reports to be submitted electronically through CMTS and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be emailed to cmts.requests@tdhca.state.tx.us for:

(1) 9% Housing Tax Credit Developments - no later than the date prescribed in §10.402(g) of this chapter (relating to the 10% Test);

(2) 4% Housing Tax Credit Developments - no later than the date prescribed in §10.402(e) of this chapter (relating to Post Bond Closing Documentation Requirements); or

(3) For all other rental Developments, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of

this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2015. The first report is due April 30, 2017, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and

(4) Part D "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The Owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required, it must be uploaded to the Development's CMTS account.

(1) "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data requested in the Annual Owner's Financial Certification (AOFC).

(2) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 15th business day of the month.

(e) Parts A, B, C, and D of the AOCR and the Annual Owner's Financial Certification must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first

quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

§10.609. Notices to the Department.

If any of the events described in paragraphs (1) - (7) of this section occur, written notice must be provided to the Department within the respective timeframes. Failure to do so will result in an Event of Noncompliance, and may be taken into consideration during Previous Participation Reviews in accordance with Chapter 1 Subchapter C of this title, or in Enforcement actions in accordance with Chapter 2 of this title.

(1) Written notice must be provided at least 30 days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership, requiring that they complete and provide a Previous Participation Review Form;

(2) Notification must be provided within 30 days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster);

(3) Owners of Bond Developments shall notify the Department of the date on which 10% of the Units are occupied and the date on which 50% of the Units are occupied, and notice must occur within 90 days of each such date;

(4) Within 30 days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure;

(5) Within 10 days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses, phone numbers, and/or the name of the property as know by the public) for the Ownership entity, management company, and/or Development the Department's CMTS must be updated;

(6) Within 30 days of completion of the American Institute of Architects form G704- Certificate of Substantial Completion, or Form HUD-92485 for instances in which a federally insured HUD loan is utilized, an Owner must request a Final Construction Inspection; and

(7) Owners of Developments that participate in the Section 811 PRA program are required to notify the Department about the availability of Units as described in §10.624 of this subchapter.

§10.610. Written Policies and Procedures.

Written Policies and Procedures are a requirement of the Department on monitored Developments as provided for in more specificity at §10.802 of this chapter (relating to Written Policies and Procedures).

§10.611. Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using a manager's services to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers and that they exercise appropriate oversight of any manager's activities.

(b) For the initial certification of a household residing in a HOME, NHTF, NSP, or TCAP RF assisted unit, Owners must examine at least two months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation).

(c) A household's income designation at the time of move in cannot be changed unless:

(1) The household goes over income and they are replaced with another low income household;

(2) The Development has a written policy and procedure for changing household designations as household income changes;

(3) The household receives rental assistance, and due to changes in their income, their portion of required rent exceeds the rent limit of their move in designation;

(4) The household is designated as Market Rate and a certification is performed that completely and clearly documents that the household is qualified as low income; ~~or~~

(5) The household has been designated as low income and they become, or it is determined that they have been, an ineligible full time student household. If the Development has Units that do not have student restrictions, the household can continue occupancy, and their designation may be removed; or

(6) The household's designation is being lowered.

§10.612. Tenant File Requirements.

(a) At the time of program designation as a low income household, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the Development also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). Beginning January 1, 2021, the application must provide a space for applicants to indicate if they are a veteran. In addition, the application must include the following statement: "Important Information for Former Military Services Members. Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Reserves or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at <https://veterans.portal.texas.gov/>."

(3) The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents; and

(4) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this subchapter (relating to Lease Requirements).

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP, and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form.

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the Affordability Period for all Bond developments and HOME, and TCAP RF Developments, Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original student verification and can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond Developments, if the household is not an eligible student household, it

may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME and TCAP RF Developments, an individual does not qualify as a low income or very low income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of Developments described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the 15 year Compliance Period.

(B) All Bond Developments with less than 100% of the units set aside for households with an income less than 50% or 60% of area median income.

(C) THTF Developments with Market Rate units. However, THTF Developments with other Department administered programs will comply with the requirements of the other program.

(D) HOME, TCAP RF, and NHTF Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME, TCAP RF, and NHTF Developments:

(1) HOME, TCAP RF, and NHTF Developments must complete a recertification with verifications of each assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME, TCAP RF and NHTF Development affordability period is the effective date in the HOME, TCAP RF, and NHTF LURA. For example, a HOME Development with a LURA effective date of May 2011, will have the years of the affordability determined in Example 612(1):

(A) Year 1: May 15, 2011 - May 14, 2012;

(B) Year 2: May 15, 2012 - May 14, 2013;

(C) Year 3: May 15, 2013 - May 14, 2014;

(D) Year 4: May 15, 2014 - May 14, 2015;

(E) Year 5: May 15, 2015 - May 14, 2016;

(F) Year 6: May 15, 2016 - May 14, 2017;

(G) Year 7: May 15, 2017 - May 14, 2018;

(H) Year 8: May 15, 2018 - May 14, 2019;

(I) Year 9: May 15, 2019 - May 14, 2020;

(J) Year 10: May 15, 2020 - May 14, 2021;

(K) Year 11: May 15, 2021 - May 14, 2022; and

(L) Year 12: May 15, 2022 - May 14, 2023.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME, TCAP RF, and NHTF Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2016, to May 14, 2017, and between May 15, 2022, and May 14, 2023.

(3) In the intervening years the Development must collect a self-certification by the effective date of the original Income Certification from each household that is assisted with HOME, TCAP RF, and NHTF_funds. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self-certification that their annual income exceeds the current 80% applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

(d) Tenant File requirements for Section 811 PRA Units. Files for households assisted under the Section 811 program must document the household's eligibility for the program, the deductions for which the household qualifies and the following HUD forms:

(1) Section 811 Project Rental Assistance Application;

(2) Verification of disability, HUD 90102;

(3) House Rules;

(4) Move in move out inspection form HUD 90106, or TDHCA Section 811 Waiver of Move-in;

(5) Tenant acknowledgement of the Fact Sheet "How your rent is determined";

(6) Tenant acknowledgement of Resident Rights and Responsibilities;

(7) Tenant acknowledgement of EIV and You Brochure;

(8) Verification of Age;

(9) Verification of Social Security number;

(10) Screening for drug abuse and other criminal activity;

(11) 811 Tenant Selection Plan;

(12) Supplement to Application for Federally Assisted Housing: Form 92006;

(13) Annual Recertification Initial Notice;

(14) Annual Recertification First Reminder Notice;

(15) Annual Recertification Second Reminder Notice;

(16) Annual Recertification Third Reminder Notice;

(17) Race and Ethnic Data Reporting form: HUD 27061-H;

(18) HUD 9887 and HUD 9887-A;

(19) Annual Unit inspection;

(20) Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures: HUD form 50059; and

(21) HUD Model lease 92336-PRA.

§10.613. Lease Requirements.

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action.

(b) HOME, TCAP RF, NHTF, and NSP Developments are prohibited from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, and NSP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy. The Department does not determine if an Owner has good cause or if a resident has violated the lease terms for other reasons. Challenges for evictions or terminations of tenancy must be made by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

(d) A Development must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c)). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) An Owner may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2013.

(h) All NHTF, TCAP RF, NSP, and HOME Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, TCAP RF, or NHTF Units to an organization that, in turn, rents those Units to individuals is not permissible for Developments with contracts dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP Developments may only utilize Master Leases if specifically allowed in the Development's LURA.

(j) Housing Tax Credit Units leased to an organization through a supportive housing program where the receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the Unit remains vacant for over 60 days. The Unit will be found out of compliance under the Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

- (1) Information about Fair Housing and tenant choice;
 - (2) Information regarding common amenities, Unit amenities, and services; and
 - (3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.
 - (4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.
- (m) For Section 811 PRA Units, Owners must use the HUD Model lease, HUD form 92236-PRA.

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, and 12 of this title.

(1) Building Type. The HUD Office of Public and Indian Housing (PIH) characterizes building and Unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator (URL)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: <http://www.powertochoose.org/> (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (e.g., cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge); and

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found <http://comptroller.texas.gov/> (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (MFDL). Funds provided through the HOME Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Repayments from the Tax Credit Assistance Program (TCAP RF), or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, and Project Based Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (RUBS); and

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet.

(A) For HTC, TCAP, Exchange buildings, Bonds and THTF include:

(i) Utilities paid by the resident directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except Developments funded with MFDL funds, which are addressed in subsection (d) of this section.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service (IRS), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority (PHA). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ Units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, 10 of which are Apartments (5+ Units) and the other 10 buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient Units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is \$8.63, Electric Heating is \$5.27, Other Electric is \$24.39, Water and Sewer is \$15. The Utility Allowance in this example is \$54.00.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher

Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service. In deregulated areas, the rate plan used to calculate the estimate must have a term of at least 12 months.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at <http://www.huduser.gov/portal/resources/utilallowance.html> (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at <http://www.huduser.org/portal/resources/utilmodel.html> (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g., MapQuest).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the Units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review.

(I) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the Owner may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the Units and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider

provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4): A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

(v) For Developments in deregulated areas that apply for funding after January 1, 2021, the rate plan used to calculate the allowance must have a term of at least 12 months.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. For Developments in deregulated areas that apply for funding after January 1, 2021, the rate plan used to calculate the allowance must have a term of at least 12 months. Component Charges used must be no older than in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20% of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100% of the Unit Type must be provided; and

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in subsection (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within 45 days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(2) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods.

(3) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or

(C) The Owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the ~~median~~ lowest cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans of at least 12 months; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The Owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the Owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program Units thirty days after the Department notifies the Owner of the allowance.

(4) HTC Buildings in which there are Units under an MFDL program are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. No other utility method described in this section can be used by HUD-regulated buildings. If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that, sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in subsection (c)(3) (B), (C), (D), or (E) of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. For Developments in deregulated areas that apply for funding after January 1, 2021, if the allowance is for a building in a deregulated area, the utility rate selected for use in calculation must have a term of at least 12 months, unless the allowance is calculated using the method described in subsection (c)(3)(E) of this section, in which case the Unit's actual effective utility rate will be used regardless of the rate's term. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the

building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year eight, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the Owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodologies as described in subsection (c)(3)(A) of this section related to Methods, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.

Figure: 10 TAC §10.614(f)(3)

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA releases an updated schedule.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation

required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department will establish the Utility Allowance for all 811 PRA Units. On an annual basis, the Department will calculate a Utility Allowance and provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance listed on the rent schedule only applies to 811 PRA Units, not the entire building, and is the only allowance approved for use on 811 PRA Units.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with HOME/ TCAP RF funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods. Applicants must submit their utility allowance to the Compliance Division prior to full application

submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department.

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods.

(A) Upon request, the Compliance Division will calculate or review an allowance within 21 days but no earlier than 90 days from when the application is due.

(B) Example 614(8): An application for a 9% HTC is due March 1, 2017. The applicant would like Department approval to use an alternative method by February 15, 2017. The request must be submitted to the Compliance Division no later than January 25, 2017, three weeks before February 15, 2017.

(C) Example 614(9): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2017, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2017, (90 days prior to August 11, 2017) and no later than July 21, 2017, (21 days prior to August 11, 2017).

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to ua_application@tdhca.state.tx.us. Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method.

(I) If Owners want to change to a utility allowance other than what was used for underwriting the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier.

(m) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(n) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

§10.615.Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments.

(a) Under the Code, HTC Development Owners may elect 20% of the Units restricted at the 50% income and rent limits (20/50), 40% of the Units restricted at the 60% income and rent limits (40/60) or the average income minimum set aside. Many Developments have additional income and rent requirements (e.g., 30%, 40% and 50%) that are lower than or in addition to the election requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA.

(b) A Development with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted Units. The Development's waitlist policy must inform applicants and current residents of the availability of lower rent Units and the process for renting a lower rent Unit. Unless otherwise approved at Application, underwriting, and cost certification, all Unit sizes must be available at the lower rent limits. The waitlist 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.

(c) The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met. Until and unless the Internal Revenue Service or Treasury Department issue conflicting guidance, the Department will examine the actual gross rent and income of all households to determine if Developments that elected the average income minimum set aside have met the federal requirements and any lower additional occupancy restriction reflected in the Development's LURA.

(d) Until and unless the Internal Revenue Service or the Treasury Department issue conflicting or additional guidance, the Department will monitor the Available Unit Rule in the following manner for Developments that elected the average income minimum set aside:

(1) If the income of the household who, at the last certification, had an income and rent less than the 60% limits exceeds 140% of the 60% limit, the household must be redesignated as over income.

(2) If the income of a household with an income or rent above the 60% level and less than or equal to the 70% limits exceeds 140% of the 70% limit, the household must be designated as over income.

(3) If the income of a household with an income or rent above the 70% level and less than or equal to the 80% limits exceeds 140% of the 80% limit, the household must be designated as over income.

(4) Owners are not required to terminate the tenancy of over income households. When the Unit occupied by an over income household is vacated, it must be reoccupied by a household with an income and rent level equal to or less than the rent level of the household that went over income.

In addition, the Unit must be reoccupied by a household that restores the low income average of the project to 60% or less.

(e) Units at 80% area median income and rent on HTC Developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10% of the Development's Market Rate Units to households at 80% income and rents. This section provides guidance for implementation. If the LURA requires 10% of the Market Rate Units be leased to households at 80% income and rent limits, the Owner must certify the 80% households at the time of move in only. Recertifications will not be required. Student rules do not apply to Units occupied by 80% households. Noncompliance with the requirement to lease to 80% households is not reportable to the IRS on IRS Form 8823 but will be cited as noncompliance under the event "Development failed to meet additional state required rent and occupancy restrictions."

(f) The Department does not require Developments to lease more Units under the additional occupancy restrictions than established in their LURA. However, if a Development inadvertently designates more households than required under the additional rent and occupancy restrictions, they may only decrease to the minimum number through attrition and new move ins, not by removing designations.

§10.616. Household Unit Transfer Requirements for All Programs.

(a) The requirements and restrictions regarding household transfers for HTC, Exchange, and TCAP Developments are based on whether the tax credit project is 100% low-income or mixed income and if the Owner elected to treat buildings in the project as part of a multiple building project. To determine if a Development is a multiple building project, refer to the election on IRS Form(s) 8609 line 8(b) and accompanying statements (if any). If IRS Form(s) 8609 have not yet been issued by the Department and filed by the Owner, each building is its own project. The Department may allow Owners to indicate their intended 8(b) elections and will monitor accordingly. Failure to file the same elections with the IRS may result in noncompliance, additional monitoring, an additional monitoring fee and findings of noncompliance.

(1) 100% low-income multiple building projects: Households may transfer to any Unit in a 100% low-income multiple building project and retain their program designation. The household does not need to be and should not be certified at the time of transfer. The move in date remains the date the household was first designated under the program.

(2) Each building is its own project (100% low-income and mixed income projects). Developments that made the 20/50 or 40/60 election: at the time of transfer, the household must be certified and have a current annual income less than the income limit established by the minimum set aside the Owner selected. Developments that elected the average income test under IRC §42(g): the household must be certified and their current designation averaged together with the designations of the other households in the project must be equal to or less than the percentage represented at the time of Application.

(3) Mixed income multiple building projects: Low-income households retain their program designation when they transfer to any Unit in a multiple building project if at the last annual certification their income was less than 140% of area median income level set by the minimum set aside.

(b) Household transfers for Bond, THTF, NHTF, HOME, TCAP RF, and NSP with floating Units. Households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the household transfers to a different Unit Type, the Development must maintain the Unit Type dispersion as reflected in its LURA, by re-leasing the vacated Unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(c) Household transfers for NHTF, HOME, TCAP RF, and NSP with fixed Units. Households may transfer to any Unit and do not need to be certified at the time of the transfer. If the household transfers to a Unit that is not fixed, the Development must re-lease the vacated Unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(d) Household Transfers in the Same Building for the HTC Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The Unit designations will swap status.

§10.617. Affirmative Marketing Requirements.

Affirmative Marketing Requirements are a requirement of the Department on monitored Developments as provided for in more specificity at §10.801 of this chapter (relating to Affirmative Marketing Requirements).

§10.618. Onsite Monitoring.

(a) The Department may perform an onsite monitoring review, a mail in desk review and physical inspection of any Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low-income Development. The Department will conduct:

(1) The first review of HTC Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) The first review of all Developments, other than those described in paragraph (1) of this subsection, as leasing commences;

(3) During the Federal Compliance Period subsequent reviews will be conducted at least once every three years;

(4) After the Federal Compliance Period, Developments will be monitored in accordance with §10.623 of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period);

(5) A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(6) Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least 48 hours notice will be provided); and

(7) Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews or a mail in desk review and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records; and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) The LURA for most HOME, NSP, TCAP RF, and NHTF Developments specifies a required Unit Mix. During onsite monitoring visits it will be determined if the minimum number of affordable Units and exact square footage has been provided. Failure to provide the exact square footage listed in the LURA will be cited as "Failure to provide correct square footage". Failure to provide the required number of Units required by the LURA will be cited as "Household income above income limit upon initial occupancy".

(1) Example 612(2). A TCAP RF LURA requires eight low-income units with the following Unit mix:

(A) Three one bedroom, one bath units with a Net Rentable Area (NRA) of 770 sq ft;

(B) One two bedroom one bath units with a NRA of 900 sq ft; and

(C) Four three bedroom two bath units with a NRA of 1000 sq ft.

(2) If during the onsite review the Development has eight units designated as TCAP RF, but is not exactly the Units and square footage mix shown in subparagraphs (A) - (C) of this paragraph in Example 612(2) (even if the actual square footage provided is greater) the noncompliance "Failure to provide correct square footage" will be cited.

(e) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low-Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the

Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.

(f) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice, as defined in Treasury Regulation 1.42-5, to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

(g) In order to prepare for monitoring reviews and physical inspections and to reduce the amount of time spent onsite, Department staff must review certain requested documentation described in the onsite notification announcement. Owners are required to submit documentation by the required deadline indicated in the onsite notification announcement. Failure to submit required documentation will result in a finding of noncompliance.

§10.622.Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees or application deposits not promptly converted into a security deposit under the HTC program. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Example 622(2): A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected Units back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC Developments after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund (not a credit to amounts owed the Development) to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME and TCAP RF Developments:

(1) 100% HOME/TCAP-RF assisted Developments. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF Developments with any Market Rate units. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC and THTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(i) Owners of HOME, NSP, TCAP-RF, and NHTF must comply with §10.403 of this chapter which requires annual rent review and approval by the Department's Asset Management Division. Failure to do so will result in an Event of Noncompliance.

(j) "Owners are not permitted to increase the tenant portion of rent **more than once during a 12 month period**, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a **federal housing** program that requires such changes."

§10.623. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least 30 years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department requests;

(2) At least once every three years the property will be physically inspected including the exterior of the Development, all building systems and 10% of Low-Income Units. No less than five but no more than 35 of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this subchapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must

be completed unless the Development participates in the Rural Rental Housing Program or a project-based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. TCAP, Exchange, Bond, and THTF Developments layered with Housing Tax Credits no longer within the Compliance Period also include utilities paid to the Owner as part of the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc.), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units can be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first 15 years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15% of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with subsection (b)(13) of this section.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year 15 Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§10.624. Compliance Requirements for Developments with 811 PRA Units.

(a) One hundred and eighty days prior to the date an Owner expects to begin leasing, Developments that have agreed to rent Units to households assisted by Section 811 PRA must contact Department staff and begin accepting referrals. Failure to reserve the agreed upon number of Units for 811 households will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.

(b) Throughout the term of an 811 PRA Use Agreement, Owners must maintain the required number of 811 PRA households, and provide notice to the Department when an 811 PRA household is expected to vacate. Notice must be provided within seven calendar days of when the Development is notified that the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant, ~~whichever is earlier~~. Failure to notify the Department will be cited as noncompliance, and will be referred to the Enforcement Committee to be considered for possible administrative penalties, and may be proposed for debarment, in accordance with the Enforcement Rule under 10 TAC Chapter 2 of 10 TAC.

(c) Compliance with 811 PRA requirements will be monitored at least once every three years, either through an onsite review or a desk review. During the review, Department staff will monitor for compliance with program eligibility which includes the following:

(1) The household must include at least one person with a disability and who is 18 years of age or older and less than 62 years of age at the time of admission into the Development; and the person with a disability must be part of one or more of the target populations for the 811 program.

(2) The household's income is less than the extremely low income limit at move in.

(3) The Owner must check the following criminal history related to drug use of the household. Households in the 811 PRA program must not include:

(A) Any member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity;

(B) Any member that is currently engaged in illegal use of drugs or for which the Owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents; and

(C) Any member who is subject to a State sex offender lifetime registration requirement.

(4) Student Status. If the household includes a student, the student must meet all of the criteria described in HUD handbook 4350.3 par. 3-13B, as modified by the September 21, 2016, Federal Register Notice 5969-N-01.

(d) Noncompliance will be cited if the Development:

(1) Leased a Unit to a household that is not qualified for the 811 PRA program in accordance with the requirements of subsection (c)(1) - (4) of this section;

(2) Fails to Use the Enterprise Income Verification system for documenting the household's income;

(3) Fails to properly document and calculate deductions in order to determine adjusted income (dependent, child care, disability assistance, elderly/disabled family, unreimbursed medical expenses);

(4) Fails to use the required HUD forms listed in §10.612(d) of this subchapter or the following forms when applicable:

(A) EIV summary report;

(B) EIV income report;

(C) EIV income discrepancy report;

(D) EIV No income reported;

(E) EIV no income report by health and human services or social security administration;

(F) EIV new hires report;

(G) Existing tenant search;

(H) Multiple Subsidy report;

(I) Failed EIV pre-screening report;

(J) Failed verification report;

(K) Deceased tenants report;

(L) Owner approval letter authorizing access to EIV for the EIV coordinators;

- (M) EIV Coordinator Access Authorization form (CAAF);
- (N) The rules of behavior for staff that use EIV reports/data to perform their job functions; and
- (O) Cyber awareness challenge certificates of completion for anyone that uses EIV or has access to EIV data (annually);
- (5) Accepts funding that limits the ability for the Department to place the agreed upon number of 811 Units at the Development;
- (6) Violates §1.15 of this title (relating to Integrated Housing);
- (7) Fails to properly calculate the tenant portion of rent;
- (8) Fails to properly calculate the tenant security deposit;
- (9) Fails to use the HUD model lease;
- (10) Egregiously fails to disperse 811 PRA Units throughout the Development;
- (11) Fails to conduct required interim certifications;
- (12) Fails to conduct annual income recertification; or
- (13) Fails to prominently display, as required by 24 CFR Part 110, Fair Housing Poster HUD-928.1 (English), HUD 928.1A (Spanish), and in other languages as required by Limited English Proficiency Requirements.

§10.625.Events of Noncompliance.

Figure: 10 TAC §10.625 lists events for which a multifamily rental Development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.625

Figure: 10 TAC §10.614(f)(3)

Method	Beginning of 90 Day Notification Period
Written Local Estimate	Date of letter from the Utility Provider
HUD Utility Schedule Model	Date entered as "Form Date"
Energy Consumption Model	60 days after the end of the last month of the 12 month period for which data was used to compute the estimate

Actual Use Method	Date the allowance is approved by the Department
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Figure: 10 TAC §10.625

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the Uniform Physical Condition Standards	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements	All Programs	No
Development is not available to the general public because of leasing issues	HTC	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue or other Fair Housing noncompliance to the Texas Workforce Commission	All programs	No
Development has gone through a foreclosure	All programs	Yes
Development is never expected to comply due to failure to report or allow monitoring	All programs	yes
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes
Project failed to meet minimum set aside	HTC and Bonds	Yes
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC	Yes, if non- profit issue, No, if HUB issue
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	HTC and Bond	No
Development failed to provide housing to the elderly as promised at application	All programs	No

Failure to provide special needs housing as required by LURA	All programs	No
Changes in Eligible Basis or Applicable percentage	HTC	Yes

Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit quarterly reports as required by §10.607	All programs	No
Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting, updating etc.
Noncompliance with lease requirements described in §10.613 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.404 of this chapter	All programs	No
Failure to provide a notary public as promised at application	HTC	No
Violation of the Unit Vacancy Rule	HTC	Yes
Casualty Loss	All programs	Yes
Failure to provide pre-onsite documentation	All programs	No
Failure to provide amenity as required by LURA	HTC	No
Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, Bond, NHTF, TCAP-RF, Exchange and HOME/NSP Developments committed funds after August 23, 2013	No
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No

Noncompliance with written policy and procedure requirements	All programs	No, unless finding is because Owner refused to lease to Section 8 households
Program Unit not leased to Low-Income household/ Household income above income limit upon initial occupancy	All programs	Yes
Program unit occupied by nonqualified full-time students	HTC during the Compliance Period, Bond and HOME/ NSP developments committed funds after August 23, 2013, NHTF, 811 Developments	Yes
Low Income Units used on a transient basis	HTC and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP, and Exchange	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	Yes
Failure to provide Tenant Income Certification and documentation	All programs	Yes
Unit not available for rent	All programs	Yes
Failure to collect data required by §10.612(b)(1) and/or §10.612(b)(2)	HTC, TCAP, Exchange, and Bond	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME, TCAP- RF, NHTF, and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME	NA
Violation of the Integrated Housing Rule	All programs	No

Failure to resolve final construction deficiencies within corrective action period	All programs	No
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards as modified in the Department rules, or other accessibility related requirements of a Department rule	HOME, NSP, TCAP- RF, NHTF, THTF and for HTC properties that were awarded after 2001 or that were	No
Noncompliance with the notice to the Department requirements described in §10.609 of this subchapter	All programs	No
Failure to reserve Units for Section 811 PRA participants	811 developments	NA
Failure to notify the Department of the availability of units	811 developments	NA
Owner failed required criminal history	811 Developments	NA
Failure to use Enterprise Income Verification System	811 developments	NA
Failure to properly document and calculate adjusted income	811 developments	NA
Failure to use required HUD forms	811 developments	NA
Accepted funding that limits 811 participation	811 developments	NA
Failure to properly calculate tenant portion of rent	811 developments	NA
Failure to use HUD model lease	811 developments	NA
Failure to disperse 811 units	811 developments	NA
Failure to conduct interim certifications	811 developments	NA
Failure to conduct annual income recertification	811 developments	NA

Asset Management Division has reported that Development has failed to review rents on an annual basis in accordance with §10.403 of this chapter	HOME, NSP, TCAP RF, and NHTF	NA
Unit Leased to a household that is not qualified for the 811 PRA program	811 Developments	NA
Failure to submit documentation for a mail in review	All programs	Yes
Noncompliance with CHDO Requirements	HOME	NA

From: [Robert Dryman](#)
To: [Patricia Murphy](#)
Subject: FW: TDHCA PROPOSING TO CHANGE UTILITY ALLOWANCE RULES
Date: Saturday, January 25, 2020 8:11:21 AM
Attachments: [image002.png](#)

Changing the rules on the HUD model UA to force owners to use a 12 month energy rate would certainly have a negative impact on the financial health of the properties and would cause many LIHTC deals to be financially unfeasible. Owners should not be forced to use a 12 month rate to calculate UAs when residents can freely choose any rate/term/provider available in the local market. Using rates that are readily available to the residents of the community should be allowed in the UA calculations, no matter the terms. The residents can choose the 3 month rates and renew every three months, or shop for even better rates, if they so choose.

Pushing this rule onto existing LIHTC properties that are already cash poor would be a disaster for everyone involved, including the residents. My company owns and manages 11 LIHTC properties in Texas. This change would result in an estimate loss of \$278,400 to our portfolio. This would force us into cutting expense that benefit the residents at our communities. In some cases it would mean certain financial disaster to the community.

3 mth vs 12 mth UA Effects on LIHTC NOI					
Property	NOI with 3 mth UA		NOI with 12 mth UA		DIFF
PROP 1	\$	101,315	\$	77,315	\$ 24,000.00
PROP 2	\$	9,723	\$	(4,677)	\$ 14,400.00
PROP 3	\$	60,786	\$	36,786	\$ 24,000.00
PROP 4	\$	351,845	\$	315,245	\$ 36,600.00
PROP 5	\$	166,183	\$	149,383	\$ 16,800.00
PROP 6	\$	148,321	\$	130,321	\$ 18,000.00
PROP 7	\$	232,442	\$	202,442	\$ 30,000.00
PROP 8	\$	660,396	\$	622,596	\$ 37,800.00
PROP 9	\$	237,123	\$	215,523	\$ 21,600.00
PROP 10	\$	272,722	\$	239,122	\$ 33,600.00
PROP 11	\$	53,955	\$	32,355	\$ 21,600.00
				Total Loss of NOI	\$278,400.00

HUD defines utility allowances as "estimates of the expenses associated with different types of utilities and their uses". The "electric" portion of the UA was never meant to cover ALL electricity usage in a household. It is intended to cover the essentials like cooking, heat and air, lights. NOT 100" TVs, gaming consoles, computers, smart speaker, and the 100 other electronic gadgets people have these days. This rule proposal is extreme and unnecessary to maintain the intent of the program.

Robert Dryman, CPM[®]
 President, Brownstone Residential, LLC
 214.663.2962 (mobile)
 903-287-5008 (office)
rdryman@brownstoneresidential.com



From: [Charles Holcomb](#)
To: [Patricia Murphy](#)
Subject: Increased Utility rates
Date: Friday, January 24, 2020 3:58:01 PM

Patricia,

The proposed utility rate increase will cause many developments to become unfeasible, or worse yet, insolvent.

We are already battling the increase cost of taxes and insurance far beyond the 3% annual adjustment anticipated.

The proposed utility rate increases would cause a negative cash flow, especially on rural properties with 80 units or less.

Charles Holcomb, President
Community Retirement Centre, Inc.

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A PROFESSIONAL CORPORATION

BARRY J. PALMER

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January 27, 2020

By Email to patricia.murphy@tdhca.state.tx.us

Patricia Murphy, Director
Compliance Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

RE: Proposed Compliance Rule, 10 TAC, Chapter 10, Subchapter F,
Section 10.614: Utility Allowances, Rate Change Analysis.

Dear Patricia:

Our clients have requested that we let you know of our opposition to the proposed revisions to Section 10.614 which will limit project owners to only use electrical rate plans with a term of 12 months when establishing alternative utility allowances. We have not seen anything identifying an underlying reason why the use of any rate plan other than a 12-month plan will result in an incorrect utility allowance in comparison to other alternative methods. We refer you to the sampling done by the Texas Affiliation of Affordable Housing Providers of rates available to tenants in the 77005 ZIP Code (see attached). All 3-month and 12-month rate plans from the Power to Choose website for the 77005 ZIP Code in Houston were pulled and inputted into the HUD Utility Schedule. The results indicated that required use of a 12-month plan would result in increasing the utility allowances for all bedroom types sampled by approximately 50%. There are not many affordable housing developments that can readily absorb such extensive increases in the utility allowance. This proposed rule change could endanger the fiscal health of many existing developments that have been operating successfully for years.

We point out that the availability of short-term plans with promotional rates is a benefit to tenants. When the initial term ends, the user has the option to: (i) let the short-term plan be extended at a stated rate; (ii) choose a new plan which may have a different rate, (iii) do nothing, in which the user is converted to a month-to-month user at a default rate stated in advance; or

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Patricia Murphy, Director
January 27, 2020
Page 2

(iv) terminate the plan and enroll with another provider. Requiring that utility allowances be based solely upon 12-month plans eliminates consideration of the market flexibility enjoyed by users in deregulated areas.

Our review of the proposed rule changes indicates that this limitation on the use of service plans to 12-month plans is implemented by the following provisions, each of which should be eliminated [References to page numbers are to the Blacklined Section of Rule Proposed for Amendment which was published in the December 12, 2019 TDHCA Board Book]:

- (a) Section 10.614(c)(3)(B) on page 941;
- (b) Section 10.614(c)(3)(C)(v) on page 962;
- (c) Section 10.614(c)(3)(D) on page 962;
- (d) Section 10.614(d)(3)(D)(ii)(II) on page 964;
- (e) Section 10.614(e) on page 965; and
- (iii) Section 10.622(j) on page 978.

Thank you for this opportunity to express our opposition to this proposed rule change.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barry J. Palmer', with a large, stylized flourish extending to the right.

Barry J. Palmer



TEXAS AFFILIATION OF
AFFORDABLE HOUSING
PROVIDERS

Model with this summary analysis:

Deregulated EFLs: (zip code 77005)	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
3 Month Rate Plan Average	\$ 48.00	\$ 55.00	\$ 71.00	\$ 87.00	\$ 99.00	\$ 115.00
12 Month Plan Average	\$ 74.00	\$ 85.00	\$ 107.00	\$ 129.00	\$ 150.00	\$ 173.00
Average Difference	\$ 26.00	\$ 30.00	\$ 36.00	\$ 42.00	\$ 51.00	\$ 58.00
Average % increase	54.17%	54.55%	50.70%	48.28%	51.52%	50.43%

This chart represents the average difference between the results of the 3-month and 12-month rate plans & the percentage increase, on average, if the rule is adopted. For the Department to represent that this change **may generate a slightly higher utility allowance** is a significant understatement.

In other words, if you are doing a HUD Model in Houston, you can anticipate the utility allowance for a one bedroom to increase by, on average (approx.) 55.54%. Contemplating the effect on a pro forma for a property underwritten that used an approved HUD Utility Schedule Model with a 3 month rate plan being forced to move to a 12 month rate plan could have dire consequences on cash flow, which could directly impact the owner's ability to maintain reserves. The proposed change far exceeds the assumptions in utility allowance increases, which jeopardize the property's operating feasibility.

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www.hamiltonvalley.com

Jan 27, 2020

Patricia Murphy
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Comment on compliance rules

Dear Ms. Murphy, Please see the attached comments regarding the proposed changes to the compliance rules (Texas Administrative Code (TAC), Chapter 10, Subchapter F)

10.611 (c) Redistributing set-asides. We propose adding three additional exclusions.

1) Paragraph #3 should be modified to include all situations in which a tenant's net contribution is changed due to a federal housing program. One such situation that is currently excluded would be a family living in a USDA Section 515 plan II (Interest Credit) that does not receive rental assistance. That tenant's net contribution (NTC) is determined at move-in and at least annually thereafter by completing a tenant certification form (Very similar to the HUD 50059). On USDA 515 projects the NTC will never go lower than a minimum (basic) and never to higher than a maximum (Note rate) rent. The difference between the Basic rent and Note Rate rent is called Overage and is collected from the tenant and paid to USDA. If the NTC increases substantially (due to a change in income), normal procedure would be to re-designate the household as a 60% set-aside and the tenant would be required to pay the lessor of the rent indicated on the USDA tenant certification form or the 60% HTC rent limit. However, if we did not have the ability to re-designate the set aside, the project would be limited to collecting max rent of the lower set aside that the tenant was originally designated with.

Reference: USDA HB-2-3560, chapter 7.4

2) Add additional exclusion to allow a lower designation to be assigned to a qualifying household. It is a fairly common occurrence for applicants to lease a unit at a higher rent because there is not a lower set aside available. When the lower set aside does become available the project should be able to assign that set aside to current tenants.

3) Modify exclusions to account for situations in which a household's income at recertification is determined to be above their current income designation, and there is an appropriate designation available. This exclusion would apply to any HTC project that completes annual income certifications.

10.66(j) Prohibition against changing NTC during the lease term. This proposed rule would cause compliance issues and a financial burden for every LIHTC project that is layered with USDA 515 or HUD Sec 8 subsidy and consequently we ask that this group of project be excluded from this requirement.

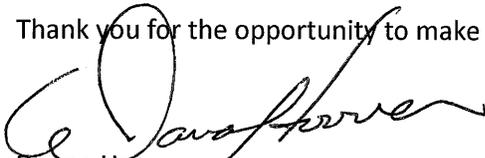
1) Annual Rent & UA Changes: The USDA 515 program and the HUD Section 8 program are both required to implement rent & UA changes on an annual basis and are required to implement rent & UA changes on the effective date of the change.

Reference: USDA HB-2-3560, Section 4, Paragraph 7.12
HUD 4350.3, Section 4, Chapter 7-17

2) Interim Certifications: Both the USDA 515 program and HUD Section 8 program require interim recertification if the household income changes substantially or the family size changes.

Reference: USDA HB-2-3560 SECTION 7, Paragraph 6.28, b.
HUD 4350.3, Section3, chapter 7-11, A.

Thank you for the opportunity to make comment.



Danna Hoover
Vice-President



Songhai Development Company, LLC
11824 Jollyville Road, Suite 502
Austin, TX 787259
512-514-0134 Office / 512-514-0242 Fax

Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, TX 78701

RE: TDHCA Proposed Compliance Rule, 10 TAC, Chapter 10, Subchapter F Section 10.614: Utility Allowances, Rate Change Analysis

We oppose the TDHCA's proposal of the rule that, for properties in deregulated areas of Texas, requiring a specific rate plan be used for these alternative methods in an effort to accomplish a more "correct" utility allowance. Any increased allowance directly reduces the owner's rental income on a dollar-for-dollar basis with no prospect of increased public subsidy from dollar basis with no prospect of increased public subsidy from federal appropriations.

Currently, under §10.614(b)(2) in deregulated areas, this is the requirement for selecting rate plans to use in these alternative methods:

Power to Choose (<http://powertochoose.org/>) is the Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: <http://powertochoose.org/> (or successor URL).

In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

The Power to Choose website allows a user to enter their zip code & it populates all the residential utility providers and a tenant can choose any of those providers. For example, in the 77005 zip code, there are 51 residential utility providers from which a tenant living in a building located in the 77005 zip code could choose. And, of those 51 residential utility providers, there are 197 available residential rate plans that a tenant can choose. These terms of the plans range from month-to-month to 60 months.

Nothing under Treasury Regulation §1.42-10 prescribes or prohibits the owner's ability to choose; in fact, the only federal requirement is that it be a utility provider that provides residential service to the tenants of the buildings. If the tenants have complete choice in their rate plans, it is incompatible to represent an owner would not have that same ability in calculating their utility allowance. In other words, for buildings located in the 77005-zip code, the current rule allows for the owner to choose any one of the 51 residential utility provide and one of the 197 associated rate plans.

The proposed rule will prohibit the owner ability to choose the rate plan by limiting the owner to only using a rate plan with a 12 month term on the following basis from the December 12, 2019 Board Book Action Item (item 8e)TDHCA Staff is proposing a new requirement for Owners that elect to use the HUD Utility Schedule Model to calculate their utility allowance. The proposed rule would require the use of a rate plan that has a term of at least 12 months. Although the "Power to Choose" website may show plans that have a lower price per kilowatt for electricity, if that price is not available for a 12-month period, TDHCA staff believes that it should not be used to calculate a utility allowance which is valid for a 12-month period. This may result in higher utility allowances, which could decrease the amount of rent an Owner can charge. Staff analyzed some areas to determine the difference and impact. In a sample zip code in Houston, for plans available for less than 12 months, the most affordable plan offered an energy rate of 3.9 cents per kWh. For plans with a term of longer



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than 12 months, the most affordable plan offered an energy rate of 4.7 cents per kWh. Calculating the HUD Model with a rate plan that has a term of at least 12 months may result in an allowance that is approximately \$5.00 to \$10.00 more. At the October 21, 2019, roundtable stakeholders pointed out the HUD Utility Schedule Model is not the only method that allows owners to select the rate plan used to calculate the allowance and all methodologies should be required to use a term of 12 months.

With this new rule, if you are doing a HUD Model in Houston, you can anticipate the utility allowance for a one bedroom to increase by, on average (approx.) 55.54%. Contemplating the effect on a pro forma for a property underwritten that used an approved HUD Utility Schedule Model with a 3 month rate plan being forced to move to a 12 month rate plan could have dire consequences on cash flow, which could directly impact the owner's ability to maintain reserves. The proposed change far exceeds the assumptions in utility allowance increases, which jeopardize the property's operating feasibility.

We, as owners, have the same goal and that all methods (other than the Agency Estimate) are estimates based on a set of rules under Treasury Regulation §1.42-10. It is not industry intent to generate a utility allowance that is high or low; rather accurate given the market and options available to Texans thru statute.

Treasury Regulation §1.42-10 has specific procedural safeguards for tenants. For these alternate methods, the owner is required to post in a common area of the leasing office, their intent to renew the current utility allowance method or change the method at the beginning of a 90-day period defined by each method. This provides tenants with the opportunity to comment on proposed utility allowances to the Agency and building owner. The Department has not provided any data that any tenants have provided comment in relationship to the required notification that the rates chosen by the owners are producing incorrect allowances.

In general, the appeal to selecting a 12-month term in lieu of a 3-month term, is that there are often there are credits and/or penalties that are applied to your bill when you use are using the HUD Utility Schedule Model. If the Department proceeds in adopting the proposed change, because of the exclusion of these credits and/or penalties, the allowance produced will not be correct.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chernon Njie", is written over a horizontal line.

Cherno Njie

From: [Jean Latsha](#)
To: [Patricia Murphy](#)
Cc: [Lela Murch](#); [Margie Williamson](#); [Craig Lintner](#); [Tom Crowe](#)
Subject: comment to proposed rule change
Date: Monday, January 27, 2020 4:06:07 PM
Attachments: [TAAHP-CPAC-UA-Analysis_1.24.20.pdf](#)

Good afternoon Patricia,

Please accept this email as comment on the proposed changes to 10 TAC §10.614(c)(3)(B) related to Written Local Estimate. We believe the added language regarding the requirement to use rate plans with 12-month terms in deregulated areas should be removed. We support the comments made by TAAHP in their letter (attached here for reference) regarding the same. Thank you,
Jean

Jean Marie Latsha
Vice President - Development
Pedcor Investments, A Limited Liability Company
PO Box 684162
Austin TX 78768
512.470.7312

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From: [Kathryn Saar](#)
To: [Patricia Murphy](#)
Cc: [Bobby Wilkinson](#)
Subject: Compliance Rules - Public Comment
Date: Monday, January 27, 2020 4:50:58 PM
Attachments: [Operating Analysis Houston Deal 3 month rate.pdf](#)
[Operating Analysis Houston Deal 12 month rate.pdf](#)

Dear Patricia,

The preamble of the published Amendment to 10 TAC §§10.602 - 10.605, 10.607, 10.609 - 10.618, 10.622-10.625 states that the proposed amendment “will not create an economic effect on small or micro-businesses or rural communities.”

Many other people and groups have provided comment on the effect this change will have on the small business they run (ie: the single-asset entity that owns a tax credit development is a small business). In support of those comments, particularly those provided by TAAHP, I offer the attached analysis of a standard 9% Tax Credit property in Houston, Harris County, using the Utility Allowances (“UA”) (calculated by TAAHP) with a 3-month rate vs a 12-month rate.

At cost certification, TDHCA’s underwriting rule allows a Debt Coverage Ratio (DCR) of up to 1.50. This hypothetical property sized its perm debt at \$4.8MM based on a UA approved by the Department using a 3-month rate, which results in a DCR of 1.36. However, if this proposed change goes into effect, the DCR for this property drops to a 1.25. This lowers the property’s Net Cash Flow by more than \$30,000. You’ll also notice that the 12-month rate causes the Development to trend negatively after year ten.

The Amendment’s preamble also states that it “does not have any foreseeable implications related to costs or revenues of the state or local governments.” As you can also see from the attached analysis, the revenues of the local taxing entities are negatively impacted by this change. The 3-month rate UA generates \$10,552 more in local property taxes, than does the 12-month rate. This is for one property. According to the Department’s inventory, there appears to be 237 properties located in Houston, Harris County. Even if only a quarter of those had a similar decrease due to this change, that would result in a tax collection loss of more than \$600,000, in Houston, Harris County alone.

Thank you,

Kathryn Saar, Vice President
Leslie Holleman & Associates, Inc.
943 S Lake Street
Salt Lake City, UT 84105
(512) 828-6413 (office)
(214) 532-4624 (cell)

From: [Elizabeth Young](#)
To: [Patricia Murphy](#)
Subject: FW: TDHCA PROPOSING TO CHANGE UTILITY ALLOWANCE RULES
Date: Monday, January 27, 2020 3:06:22 PM

Patricia:

Any change in this proposal will result in a dearth of tax credit affordable housing.

Elizabeth and Vernon Young

From: Tim Smith <tsmith@hokeservices.com>
Sent: Friday, January 24, 2020 2:54 PM
To: Vernon Young <VYoung@ARTISANAMERICAN.COM>; Elizabeth Young <EYoung@ARTISANAMERICAN.COM>
Subject: Fwd:  TDHCA PROPOSING TO CHANGE UTILITY ALLOWANCE RULES

You need to comment.

Sent from my iPhone
Tim Smith
Hoke Development Services, LLC
(832)-443-0333 Cell
(713)-490-3143 Fax
tsmith@hokeservices.com

Begin forwarded message:

From: TAAHP Regulatory Alert <info@taahp.org>
Date: January 24, 2020 at 2:49:34 PM CST
To: Tim <tsmith@hokeservices.com>
Subject:  TDHCA PROPOSING TO CHANGE UTILITY ALLOWANCE RULES
Reply-To: TAAHP Regulatory Alert <info@taahp.org>

[View this email in your browser](#)



**TELL TDHCA YOUR OPINION ON UTILITY
ALLOWANCE RULE CHANGES THAT WILL
RESULT IN MILLIONS OF DOLLARS IN LOST
REVENUE FOR TEXAS AFFORDABLE HOUSING
PROPERTIES**

**TDHCA IS PROPOSING TO CHANGE THE UTILITY
ALLOWANCE RULES IN TEXAS, REQUIRING
ALTERNATIVE METHOD UTILITY ALLOWANCES TO
USE A 12 MONTH RATE.**

**Comments are due by Monday, January 27th by 5:00 p.m.,
to the attention of Patricia Murphy at
Patricia.Murphy@tdhca.state.tx.us.**

**This rule change is significant, here is an example of the
impact it would have in Houston 77005 area code:**

Deregulated EFLs- zip code 77005	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Average Utility Allowance Using 3 Month Rate Plan allowed under the current rule	\$48	\$55	\$71	\$87	\$99	\$115
Average Utility Allowance Using 12 Month <i>Required</i> in the Proposed Rule	\$74	\$85	\$107	\$129	\$150	\$173
Average Increase in Utility Allowance	\$26	\$30	\$36	\$42	\$51	\$58
Average % increase	54.17%	54.55%	50.70%	48.28%	51.52%	50.43%

FOR A 250 UNIT PROPERTY WITH EQUAL UNIT SIZES CHARGING
MAXIMUM TAX CREDIT RENTS, THIS IS A MONTHLY LOSS OF \$12,150,
AND AN ANNUAL LOSS OF \$145,800!

Please consider this impact for your properties or properties in your pipeline that are using alternative method utility allowances (meaning, HUD Models, Energy Consumption Models, or Written Provider Letters). Please send comments to TDCHA by Monday at 5:00 p.m., and let staff know how this will impact your properties and the residents you serve.

For a link to more background on this topic, and a copy of TAAHP's draft comment to TDHCA, please click [here](#).

Questions? Email Us Here



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Texas Affiliation of Affordable Housing Providers
221 E. 9th Street, Ste. 408
Austin, TX 78701

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From: [Sandy Rollins](#)
To: [Patricia Murphy](#)
Subject: Comments on Proposed Amendments to Compliance Rule
Date: Friday, January 17, 2020 1:41:26 PM

Dear Ms. Murphy,

I am writing on behalf of the Texas Tenants' Union to comment on several proposed amendments to the Compliance Rule (10 TAC Chapter 10, Subchapter F).

The Texas Tenants' Union is a non-profit organization based in Dallas that has been empowering tenants through education and organizing since the 1970's. We conduct free tenant education workshops in Dallas and Tarrant Counties, operate a telephone hotline, help tenants form associations at the apartment complex level, and advocate on public policy issues. We work with thousands of tenants each year, including significant numbers of tenants living in tax credit developments.

We urge the adoption of the proposed changes to Section 10.614 related to utility allowances, Section 10.615 related to maintaining waiting lists for lower cost units, and Section 10.622 related to mid-term rent increases.

Section 10.614

We have seen tenants struggle to pay rent and utilities, including those living in tax credit developments. Using low introductory utility rates when determining the utility allowances will lead to an inaccurate determination of the real costs facing tenants. We agree that only 12-month rates should be utilized.

Section 10.615

Lower income tenants without housing vouchers often struggle to make ends meet when they are living in a unit restricted at 50% or 60% of the Area Median Income (AMI). Despite increases in the AMI, we see many people being left behind. For example, the average Social Security check last year was \$1,461 per month, and many one-bedroom tax credit units are at or very close to \$1,000 per month. Requiring landlords to maintain a waiting list to allow tenants to be placed in a lower cost unit is a useful rule change.

Section 10.622

When tenants sign a 12-month lease, it can be a serious hardship when the landlord raises the rent before the end of the contract. People need to be able to budget their limited resources, and deserve to have housing stability. We support the prohibition on rent increases during a period which is the lesser of 12 months or the lease term.

Thank you for your consideration of these comments.

Sandy Rollins
Texas Tenants' Union
8035 East RL Thornton Fwy, Suite 535
Dallas, TX 75228
www.txtenants.org
www.facebook.com/texastenantsunion
214-823-2999

On Fri, Jan 3, 2020 at 11:56 AM TDHCA <do-not-reply@tdhca.state.tx.us> wrote:

The Texas Department of Housing and Community Affairs (TDHCA) Compliance Division has posted proposed amendments to sections of the Compliance Rule (10 TAC Chapter 10, Subchapter F), as approved by the TDHCA Governing Board on December 12, 2019. The public comment period began on December 27, 2019, and ends on Monday, January 27, 2020, at 5 p.m., Austin local time.

The proposed rules can be found on the TDHCA Public Comment Center webpage at: <http://www.tdhca.state.tx.us/public-comment.htm> and in the Friday, December 27, 2019, edition of the Texas Register at: <https://www.sos.state.tx.us/texreg/archive/December272019/index.html>.

Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, TX 78711-3941, or via email to patricia.murphy@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5 p.m., Austin local time, Monday, January 27, 2020.

If you have any questions, please contact TDHCA Director of Compliance Patricia Murphy at 512-475-3140 or at patricia.murphy@tdhca.state.tx.us.

Please do not reply to this email. It is from an unattended email address. To contact the Texas Department of Housing and Community Affairs, get more information, or view a slideshow of recent TDHCA activities, visit <http://www.tdhca.state.tx.us/> in your Web browser. Like us on facebook (<http://www.facebook.com/TDHCA>) and follow us on twitter (<http://twitter.com/TDHCA>).

Login to your email list account to edit your subscription:

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Sandy Rollins
Texas Tenants' Union
8035 East RL Thornton Fwy, Suite 535
Dallas, TX 75228
www.txtenants.org
www.facebook.com/texastenantsunion
214-823-2999

FOUNTAINHEAD MANAGEMENT, INC.

4000 OLD BENBROOK ROAD

FORT WORTH, TEXAS 76116

TELEPHONE (817) 732-1055; FAX (817) 732-7716

January 23, 2020

Texas Department of Housing &
Community Affairs
Attn: Ms. Patricia Murphy
Rules Comment
P.O. Box 13941
Austin, Texas 13941

Re: Comments on Proposed Compliance Monitoring published On
December 27, 2019 44 TexReg 8147 et seq.

Dear Ms. Murphy:

I appreciate the opportunity to comment on the significant and retroactive application revisions labeled as Compliance Monitoring rules while, in fact, several of the rules are substance revisions to program requirements.

Proposed rule §10.611 (c)

Proposed §10.611(c) states:

“(c) A household’s income designation at the time of move in cannot be changed unless:

- (1) The household goes over income and they are replaced with another low income household;
- (2) The Development has a written policy and procedure for changing household designations as household income changes;
- (3) The household receives rental assistance, and due to changes in their income, their portion of required rent exceeds the rent limit of their move in designation;
- (4) The household is designated as Market Rate and a certification is performed that completely and clearly documents that the household is qualified as low income; or
- (5) The household has been designated as low income and they become, or it is determined that they have been, an ineligible full time student household. If the Development has Units that do not have student restrictions, the household can continue occupancy and their designation may be removed.”

As drafted, this section will cause a significant increase in analysis required before a household is “designated” at a particular income and rent level. For example, assume a 48 unit apartment property is required by its Land Use Restrictive Agreement to have 10 units designated as 30% income units. The property, however, has 20 units of project based rental assistance. Historically, the resident manager would review the income and check the box as 30% if their incomes were below the 30% limit and they received rental assistance. Thus, the property may

have 20 units “designated” as 30% units. Under this example and the proposed rule, only 10 of these units would be designated as 30% units with the remainder at the next highest income level. The manager would be required to keep a constant track of the income levels. As it is now, there is already a severe underreporting of the lowest income designations on the unit status reports. This rule will further enhance this underreporting of the lower income units on the Unit Status Report that causes the incorrect perception that the lowest income category is not being served. Conversely, assume a household qualifies for a 50% designation, but there are none available so the applicant accepts a unit under the 60% set aside. At some point in the future when a 50% comes available that household should have the opportunity to be designated at the lower set-aside.

More important, the language of subsection (1) is hopefully only confusing and does not mean what it states. As drafted, a household moving in as a designated 30% household could not be changed unless the household became over-income, i.e, over 60% for the tax credit program. This subsection, if it remains, should be changed to read: “The household’s income exceeds the maximum for the original designation at move-in.” The language “and they are replaced with another low income household” should not be coupled with removing the designation. Once a household’s income increases, then the owner should be able to benefit from the next available unit rule. Regardless, the ability to fill the required designation slot has nothing to do with the income increasing household.

The second subsection appears to grant the property the ability to modify income designations if the property has a policy and procedure to revise income designations as household incomes change. This section is subject to the same increased workload on the manager and the property managers to insure that the lowest number of the lower income designations are used at move-in.

This proposed rule is a significant program change that cannot be masked by calling it a “compliance monitoring issue”. In effect, it is the retroactive application of requirements that were not included in the LURA and significantly increases the burden on the property owner. The rule should not be enacted since it is a retroactive law and effectively impairs the contract between the owner and TDHCA both in violation of the Texas Constitution.

Proposed §10.622(j)

Proposed §10.622(j) states:

“Unless the household receives rental assistance, and due to changes in their income, the household’s portion of required rent changes, Owners are not permitted to increase the tenant portion of rent during a period which is the lesser of 12 months or the lease term, even if there are increases in rent limits or decreases in utility allowances.”

If enacted, this proposed rule would immediately cause every USDA financed housing property and every HUD subsidized or project based section 8 property to be either in non-compliance with USDA and HUD requirements or this TDHCA rule. The USDA financed property are required to have a lease that adjusts rent and UA’s upon the approval of USDA. 7 CFR §3560.156(c)(2) states:

“(2) Leases must contain a clause permitting escalation in the tenant contribution when there is an Agency-approved change in basic or note rate rents prior to the expiration of the lease. The escalation clause also must specify that the tenant contribution may be changed prior to expiration of the lease if the change is due to changes in tenant status, as documented on then tenant certification form, or the tenant’s failure to properly recertify”. HUD also requires an adjustment clause in all four of its model leases. The HUD Model lease for subsidized lease also states: “The Tenant agrees that the amount of rent the Tenant pays and/or the amount of assistance that HUD pays on behalf of the Tenant may be changed during the term of this agreement if : (a) HUD or the Contract Administrator (such as a Public Housing Agency) determines, in accordance with HUD procedures, that an increase in rents is needed; (b) HUD or the Contract Administrator changes any allowance for utilities or services considered in computing the Tenant’s share of the rent:...” IT should be noted that both USDA and HUD require the rent and UA adjustment language for properties even if rental assistance is not received. As proposed, even if a property receives rental assistance, the use of the word “and” would preclude a rent adjustment unless the household’s income changes.

The two largest financing agencies for affordable housing in the United States require rent adjustments during the lease term. The reason is very simple; unless the properties it financed remain financially viable, then there will be no affordable housing. This concept seems foreign to the drafter of the TDHCA rule, but it is self-evident. Without the ability to implement rent increases as needed, properties will fail. The rule as drafted should not be implemented. If TDHCA decides to pursue this concept, there should be two major exceptions: (1) exclude all rent and UA changes approved by either USDA or HUD, and (2) exclude all properties that have been awarded tax credits or receive some other type of committed financing from TDHCA on or before the effective date of this rule. Excluding HUD or USDA approved rent or UA changes provides a third party review. Excluding the current properties will avoid certain Constitutional issues of retroactive application and impairment of contracts. By making the provision prospective only would allow for the financial feasibility to be considered using this restriction and only trap the prospective applicants knowing the potential hazards they face.

Proposed 10.612(a)(2)

It is my understanding that TDHCA believes the last three sentences of this section is required by S.B. 1677, 85th regular session of the legislature, now Texas Government Code, section 434.212. This bill was directed to women veterans of military service so that a state agency would notify female veterans of its programs, services or assistance. Upon being considered by the Texas Veterans Commission, the scope of the notice was expanded to include all military veterans. While I support all military veterans, I am concerned that TDHCA is misreading the statute. The statute applies to services or programs offered by a State Agency. This statute should apply only to those applications where the veteran makes a direct application to TDHCA for services. It does not apply to private owners that sometime previous received some type of direct or indirect financing with TDHCA. The Bill Analysis for S.B. 1677 states:

“Specifically, the bill provides state agencies and hospitals, which assist adult women with services, with a mechanism by which they can ask applicants to their program and services whether they are veterans, and applicants can then be better informed that they may be entitled to services because of their veterans status. Additionally, the bill provides that the Texas Veterans Commission retain the information of veteran applicants in a veteran database and to inform veterans that they may be eligible for services.”

It seems counterproductive to have private owners inquire about veteran status when neither priority nor preference can be given to veterans. Indeed, if developments are required to ask about veteran status and include the proposed language, owners should also indicate that this is just a public service announcement and no special veteran services will be offered. Remove this proposal from the rule pending a request from TDHCA for an opinion of the Texas Attorney General whether this requirement applies on to applicants for services directly from TDHCA or whether it also applies to previously subrecipients.

Proposed §10.611(b)

The proposed revision deletes the language “at a Development committed HOME Funds after August 23, 2013”. By this deletion, it is giving retroactive status to a requirement that HUD stated only applied to properties awarded HOME funds on or after August 23, 2013. It is suggested that TDHCA follow the requirements of HUD and reinstate the language.

Proposed §10.613 (h)

As I mentioned in my 2017 comments on this language, there is a flaw in the first sentence. The sentence reads as follows:

“All NHTF, TCAP RF, NSP and HOME Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department (emphasis added) determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e).”

The flaw is that the Development Owner makes the determination about emergency transfers not the Department. Of course, if I am incorrect, then maybe the Department will provide the name of the TDHCA contact person that should be contacted, what information is needed, information about how soon an answer will be given, and what happens if the Development Owner disagrees with Department decision.

Again, I appreciate the opportunity to comment.

Very truly yours,



Patrick A. Barbolla

From: [Brewerton, Jen](#)
 To: [Patricia Murphy](#)
 Subject: FW: NEED YOUR HELP FOR UA CALL TO ACTION
 Date: Monday, January 27, 2020 4:50:51 PM
 Attachments: [Logo_64c1683d-9e0a-4073-941b-009c24977634.jpg](#)
[DivinaLine_1f2c6a05-d614-413c-b0b3-f55d9a657f36.jpg](#)
[LinkedIn_379139fa-dbf6-4edd-b66f-df3b3a638313.jpg](#)

Hi Patricia,

Please note this as public comment to §10.614 Utility Allowances for Dominion. Our comment is to remove all new language in the UA rule requiring the 12 month rate for alternative method UAs. Please see the basis for comment, below.

We have taken a look at every TX property in a deregulated area for which we have an ECM. If the property is in a regulated area, we did not include it our analysis. Our approach was simple and straightforward. For each property, we went to the PowerToChoose.org website and pulled a 3 month rate and a 12 month rate for each property's zip code. We then applied the 3 month rate and 12 month rate within each property's ECM without changing any of the other variables within the model to compare apples to apples. Next, we calculated the difference for each bedroom size/configuration and calculated the difference for that specific property annually overall to obtain the difference in applying the two rates. In this way, we are able to provide a reasonable estimate of how the change in the TDHCA rate ruling would affect our TX Property Portfolio. Below is a summary table of our findings. The difference in tenant charges using a 12 month fixed rate is overall (highlighted in yellow) is -\$626,989.93 less per year when compared to using an introductory rate. The annual difference by unit type is also highlighted in yellow at the bottom. Please let us know if you have any questions or need any additional information.

PROPERTY DATA					ANNUAL DIFFERENCE BY PROPERTY	MONTHLY DIFFERENCE BY UNIT TYPE			
PID	Property Name	Property Address	Property City	Property Zip	DIFFERENCE	1 BR	2 BR	3 BR	4 BR
474	City Parc at West Oaks	3443 Addicks Clodine Road	Houston	77082	-\$47,563.66	\$0.00	-\$20.64	-\$26.54	\$0.00
476	Madison Pointe	200 Mars Drive	Cotulla	78014	-\$20,128.80	-\$14.75	-\$21.68	-\$27.09	\$0.00
477	Pegasus Villas	7200 N Stemmons Freeway	Dallas	75247	-\$28,630.30	-\$13.00	-\$18.19	\$0.00	\$0.00
481	Arbor Cove Single Family Homes	2805 Fordyce Avenue	Donna	78537	-\$18,594.41	\$0.00	-\$12.41	-\$14.78	-\$16.97
487	Sea Mist	2211 FM 3036	Rockport	78382	-\$15,980.03	\$0.00	-\$16.22	-\$20.34	\$0.00
509	Humble Memorial Gardens	9850 J M Hester Street	Humble	77338	-\$3,872.86	\$0.00	-\$13.45	\$0.00	\$0.00
512	Hickory Manor	1626 Old Hickory Trail	Desoto	75115	-\$27,281.27	-\$11.49	-\$13.98	\$0.00	\$0.00
513	Lakeside Manor	902 West Eldorado Parkway	Little Elm	75068	-\$23,911.61	-\$10.52	-\$14.93	\$0.00	\$0.00
516	Cobblestone Manor	8201 Sartain Drive	Fort Worth	76120	-\$43,483.28	-\$14.70	-\$16.97	\$0.00	\$0.00
518	Park Manor	1725 S FM Road 1417	Sherman	75092	-\$29,191.07	-\$10.62	-\$13.65	\$0.00	\$0.00
650	Villa Springs	15101 Blue Ash Drive	Houston	77090	-\$40,144.76	-\$10.78	-\$15.47	-\$19.66	\$0.00
663	Lakecrest Village Apartments	9393 Tidwell Road	Houston	77078	-\$24,752.89	\$0.00	-\$14.87	-\$18.96	\$0.00
663	Lakecrest Village Townhomes	9393 Tidwell Road	Houston	77078	-\$25,617.80	\$0.00	-\$15.62	-\$19.61	-\$23.59
672	Quail Chase	500 W Airtex Blvd	Houston	77090	-\$51,925.97	-\$12.33	-\$17.54	-\$21.94	\$0.00
920	Shady Creek	1220 Knowlton Drive	Baytown	77520	-\$13,495.36	-\$11.73	-\$14.62	\$0.00	\$0.00
969	Signature at Five Mile Creek Apartments	5151 Village Fair Drive	Dallas	75224	-\$24,934.82	-\$12.79	-\$15.57	-\$17.65	\$0.00
969	Signature at Five Mile Creek Townhomes	5151 Village Fair Drive	Dallas	75224	-\$23,772.10	\$0.00	-\$19.24	-\$20.92	\$0.00
970	Signature at Highland Hills	3131 Simpson Stuart Road	Dallas	75241	-\$56,064.13	-\$12.53	-\$18.29	-\$22.69	\$0.00
439	Stoneridge Apartments	16701 N Heatherwilde Blvd	Pflugerville	78660	-\$54,458.29	\$0.00	-\$15.80	-\$19.84	-\$24.36
694	Vinewood Apartments	1411 North Cockrell Hill Road	Dallas	75211	-\$53,186.54	-\$15.08	-\$21.05	-\$27.64	\$0.00
ANNUAL DIFFERENCE INTRODUCTORY RATE VS. 12 MONTH RATE					-\$626,989.93	\$1,803.85	\$3,962.09	\$3,332.02	-\$779.01

Jen Brewerton
 Vice President of Compliance
 Property Management
 Dominion
 2905 Northwest Blvd Suite 150
 Plymouth, MN 55441
 Phone [763-354-5518](tel:763-354-5518)
dominiumapartments.com



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2113 Kings Pass, Heath, TX 75032 Phone: (972) 475-9977 Fax: (972) 771-8288 E-mail: information@dpcservices.net

January 27, 2020

VIA EMAIL to patricia.murphy@tdhca.state.tx.us

Patricia Murphy
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701
Fax: (512) 475-3359

RE: Public Comment, Proposed Amendments to Compliance Rules at 10 TAC, Chapter 10, Subchapter F, §10.614 Utility Allowances

Dear Ms. Murphy,

Diamond Property Consultants, Inc. (DPC) is submitting for your review comments on the proposed rules regarding the utility allowances.

PROPOSED CHANGE:

The new language “*In deregulated areas, the rate plan used to calculate the estimate must have a term of at least 12 months.*” is being proposed for (B) Written Local Estimate, (C) HUD Utility Schedule Model, (D) Energy Consumption Model.

COMMENTS

1. In the deregulated areas of the Texas electricity markets end users have the option to choose their providers by going to the Power to Choose website <http://www.powertochoose.org>
2. Electricity is a traded commodity in the deregulated markets and as such is subject to fluctuations in daily market prices.
3. Rates offered by a provider, through the Energy Facts Label (EFL) on the Power to Choose website, for whatever term, may be available one day then taken down and replaced with a different EFL the next.
 - a. Just because a 12 month term is offered today does not mean that EFL will be available for the next 12 months.
 - b. For example, a 12 month term offered on January 27th could be replaced on January 28th with a different EFL.
4. TDHCA regulates housing. The Texas state legislature authorized open competition in the electricity market, which is regulated by the Public Utilities Commission (PUC). The Power to Choose website gives end users a choice of both electric providers and rate plans. By requiring only the 12 month plans be used for the utility allowances TDHCA is restricting that right to choose.
 - a. Attached are examples from deregulated markets. Using the Power to Choose website on January 25, 2020, we looked up rate plans available in the Oncor, CenterPoint and AEP Central markets. In each example we printed off the first 20 offerings from the providers. In all three markets there was not a single 12 month plan offered by these first 20 providers. By TDHCA requiring only 12 month plans, the right to choose these providers is eliminated.

5. Comments specific to (B) Written Local Estimate:
 - a. DPC works with several providers to deliver utility allowances using the written local estimate. The providers issue the utility allowance letters for specific properties.
 - b. DPC works with specific providers to ensure the letters are TDHCA compliant and include “all component charges”. The rates used and final numbers issued are up to the provider based on their judgement, data and pricing policies. By requiring 12 month term rates TDHCA is dictating to the providers how to conduct business. The providers are regulated by the PUC, not TDHCA.
 - c. Electricity is a commodity and market prices change constantly. The providers issuing the utility allowance letters may not always offer a 12 month plan.
 - d. Not all providers are willing to issue the utility allowance letters. If TDHCA requires a 12 month rate term and the provider regularly issuing the letters does not offer one this could force the property to switch to a different methodology. In that scenario TDHCA is not only limiting the power to choose but is limiting the ability to use an approved methodology for calculating the utility allowances.
6. The proposed rules have the potential to put unnecessary burdens on the properties.
 - a. Potential financial impact. Initial analyses indicate double digit percentage increases in the utility allowances, negatively impacting the owner’s ability to provide the required services the residents rely on.
 - b. Potentially eliminating one of the approved methodologies for calculating the utility allowances as stated in 5.d above.

RECOMMENDATIONS:

1. The new language “In deregulated areas, the rate plan used to calculate the estimate must have a term of at least 12 months.” be struck from the proposed rules.
2. All references to the 12 month rate terms, even if not in the specific sections cited above, be struck from the proposed rules.

PROPOSED CHANGE:

Part (E) An allowance based upon an average of the actual, the "Actual Use Method." Proposes a change to “(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans of at least 12 months;”.

COMMENTS

1. See comments 1, 2, 3 and 4 above regarding (B) Written Local Estimate, (C) HUD Utility Schedule Model, (D) Energy Consumption Model.
2. The proposed rules have the potential to put unnecessary burdens on the properties.
 - a. Potential financial impact. Initial analyses indicate double digit percentage increases in the utility allowances, negatively impacting the owner’s ability to provide the required services the residents rely on.

RECOMMENDATIONS:

1. The new language “of at least 12 months;” be struck from the proposed rules.
2. All references to the 12 month rate terms, even if not in the specific sections cited above, be struck from the proposed rules.

Thank you in advance for your consideration. Please contact me directly with any questions (972) 672-7681.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'James Beats', written over a horizontal line.

James Beats – President

Enclosures: Oncor Market, First 20 Provider Offers
 CenterPoint Market, First 20 Provider Offers
 AEP Central Market, First 20 Provider Offers

Shop. Compare. Choose.

75237

REFRESH RESULTS

TDU Area

ONCOR ELECTR...

Estimated Use

1,000 kWh

Price/kWh

¢ to ¢

Contract Length

to mo

Pricing and Billing

Show All Plans

Plans without a minimum usage fee/credit and plans without tiered pricing

Plan Type

- Fixed Rate
- Variable (Changing Rate)
- Indexed (Market Rate)

Prepaid Plans

- Show All Plans
- Show Only Prepaid Plans
- Do Not Show Prepaid Plans

Time Of Use Plans

- Show All Plans
- Show Only Time Of Use Plans
- Do Not Show Time of Use Plans

Company Rating



1-20 OF 146

1 2 3 ...

SORT BY PRICE/kWh

VIEW 20 PER ...



COMPARE	Company	Plan Details	Price/kWh	Pricing Details	Ordering Info
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Move In Promo 3 Fixed Rate 3 Months 19% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 6.6¢ 500 kWh 2000 kWh 6.9¢ 6.4¢</p>	<p>Cancellation Fee: \$0.00 Fact Sheet Terms of Service</p>	<p>Special Terms (281) 369-5900 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Essential Infusion 3 Fixed Rate 3 Months 16% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 6.6¢ 500 kWh 2000 kWh 7.1¢ 6.3¢</p>	<p>Cancellation Fee: \$100.00 Fact Sheet Terms of Service</p>	<p>Special Terms (844) 463-8732 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>4 Month Texas Wind Fixed Rate 4 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 6.6¢ 500 kWh 2000 kWh 6.9¢ 6.4¢</p>	<p>Cancellation Fee: \$50.00 Fact Sheet Terms of Service</p>	<p>Special Terms (855) 797-8465 OR SIGN UP</p>
<input type="checkbox"/>	<p>No SCORECARD DATA COMPANY RATING ★★★★★ HISTORY</p>	<p>SoFed Try Us Out Now-3 Fixed Rate 3 Months 5% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 6.6¢ 500 kWh 2000 kWh 7.5¢ 6.2¢</p>	<p>Cancellation Fee: \$39.00 Fact Sheet Terms of Service</p>	<p>Special Terms (844) 644-0474 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Eco Green 4 Fixed Rate 4 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 6.7¢ 500 kWh 2000 kWh 7.1¢ 6.6¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (877) 261-1024 OR SIGN UP</p>
<input type="checkbox"/>	<p>No SCORECARD DATA COMPANY RATING ★★★★★ HISTORY</p>	<p>3 Months Fixed Fixed Rate 3 Months 11% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 6.7¢ 500 kWh 2000 kWh 7¢ 6.5¢</p>	<p>Cancellation Fee: \$20 per month remaining Fact Sheet Terms of Service</p>	<p>Special Terms (888) 576-9473 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Gexa Choice Green 3 Fixed Rate 3 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 6.7¢ 500 kWh 2000 kWh 7.1¢ 6.6¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (866) 329-4392 OR SIGN UP</p>
<input type="checkbox"/>			1,000 kWh	Cancellation Fee: \$0.00	Special Terms



Renewable Energy

N/A

Electric Companies

ALL

REFRESH RESULTS

 BRILLIANT ENERGY COMPANY RATING  HISTORY	Simple Plan (Web Enrollment Only) Fixed Rate 3 Months 6% Renewable NEW CUSTOMERS	6.7¢ 500 kWh 2000 kWh 7.1¢ 6.6¢	Fact Sheet Terms of Service	<input type="checkbox"/> SIGN UP
<input type="checkbox"/>  CHARIOT ENERGY COMPANY RATING  HISTORY	Chariot Choice 3 Fixed Rate 3 Months 100% Renewable	1,000 kWh 6.8¢ 500 kWh 2000 kWh 7.2¢ 6.7¢	Cancellation Fee: \$49.00 Fact Sheet Terms of Service	<input type="checkbox"/> Special Terms (855) 524-2746 OR <input type="checkbox"/> SIGN UP
<input type="checkbox"/>  GEXA ENERGY COMPANY RATING  HISTORY	Gexa Choice Green 4 Fixed Rate 4 Months 100% Renewable NEW CUSTOMERS	1,000 kWh 6.8¢ 500 kWh 2000 kWh 7.2¢ 6.7¢	Cancellation Fee: \$150.00 Fact Sheet Terms of Service	<input type="checkbox"/> Special Terms (866) 329-4392 OR <input type="checkbox"/> SIGN UP
<input type="checkbox"/>  TEXANS ENERGY COMPANY RATING  HISTORY	PTC SUPER SAVER 3 Fixed Rate 3 Months 19% Renewable NEW CUSTOMERS	1,000 kWh 6.8¢ 500 kWh 2000 kWh 7.1¢ 6.6¢	Cancellation Fee: \$150.00 Fact Sheet Terms of Service	<input type="checkbox"/> Special Terms (281) 287-2901 OR <input type="checkbox"/> SIGN UP
<input type="checkbox"/>  Green Energy Exchange COMPANY RATING  HISTORY	Price Breaker 3 - Autopay Fixed Rate 3 Months 100% Renewable	1,000 kWh 6.8¢ 500 kWh 2000 kWh 7.2¢ 6.7¢	Cancellation Fee: \$150.00 Fact Sheet Terms of Service	<input type="checkbox"/> Special Terms (800) 791-8494 OR <input type="checkbox"/> SIGN UP
<input type="checkbox"/>  FRONTIER UTILITIES COMPANY RATING  HISTORY	Eco Green 5 Fixed Rate 5 Months 100% Renewable NEW CUSTOMERS	1,000 kWh 6.9¢ 500 kWh 2000 kWh 7.3¢ 6.8¢	Cancellation Fee: \$150.00 Fact Sheet Terms of Service	<input type="checkbox"/> Special Terms (877) 261-1024 OR <input type="checkbox"/> SIGN UP
<input type="checkbox"/>  GEXA ENERGY COMPANY RATING  HISTORY	Gexa Choice Green 5 Fixed Rate 5 Months 100% Renewable NEW CUSTOMERS	1,000 kWh 6.9¢ 500 kWh 2000 kWh 7.3¢ 6.8¢	Cancellation Fee: \$150.00 Fact Sheet Terms of Service	<input type="checkbox"/> Special Terms (866) 329-4392 OR <input type="checkbox"/> SIGN UP
<input type="checkbox"/>  INFINITE ENERGY COMPANY RATING  HISTORY	4 Month Simple Plan Fixed Rate 4 Months 4% Renewable	1,000 kWh 7.2¢ 500 kWh 2000 kWh 7.5¢ 7¢	Cancellation Fee: \$100.00 Fact Sheet Terms of Service	<input type="checkbox"/> Special Terms (877) 928-8766 OR <input type="checkbox"/> SIGN UP
<input type="checkbox"/>  WINDROSE ENERGY	Winter Saver 4 (Web Enrollment)	1,000 kWh 7.2¢	Cancellation Fee: \$100.00	<input type="checkbox"/> Special Terms

<p>COMPANY RATING</p> <p>★★★★★</p> <p>HISTORY</p>	<p>Fixed Rate 4 Months 15% Renewable NEW CUSTOMERS</p> <p>500 kWh 7.5¢</p> <p>2000 kWh 7¢</p>	<p>Fact Sheet Terms of Service</p>	<p>(800) 483-1836 OR SIGN UP</p>
<p><input type="checkbox"/></p> <p>ELIGOENERGY</p> <p>No SCORECARD DATA</p> <p>HISTORY</p>	<p>6 Months Fixed Fixed Rate 6 Months 11% Renewable NEW CUSTOMERS</p> <p>1,000 kWh 7.2¢</p> <p>500 kWh 7.5¢</p> <p>2000 kWh 7¢</p>	<p>Cancellation Fee: \$20 per month remaining</p> <p>Fact Sheet Terms of Service</p>	<p>Special Terms (888) 576-9473 OR SIGN UP</p>
<p><input type="checkbox"/></p> <p>DISCOUNT POWER</p> <p>COMPANY RATING</p> <p>★★★★★</p> <p>HISTORY</p>	<p>Select 6 Fixed Rate 6 Months 10% Renewable NEW CUSTOMERS</p> <p>1,000 kWh 7.3¢</p> <p>500 kWh 7.6¢</p> <p>2000 kWh 7.1¢</p>	<p>Cancellation Fee: \$75.00</p> <p>Fact Sheet Terms of Service</p>	<p>Special Terms (855) 265-9153 OR SIGN UP</p>
<p><input type="checkbox"/></p> <p>VETERAN ENERGY</p> <p>COMPANY RATING</p> <p>★★★★★</p> <p>HISTORY</p>	<p>Basic 4 Month Fixed Rate 4 Months 4% Renewable</p> <p>1,000 kWh 7.3¢</p> <p>500 kWh 7.7¢</p> <p>2000 kWh 7.2¢</p>	<p>Cancellation Fee: \$100.00</p> <p>Fact Sheet Terms of Service</p>	<p>Special Terms (855) 856-7613 OR SIGN UP</p>
<p><input type="checkbox"/></p> <p>POWER OF TEXAS</p> <p>COMPANY RATING</p> <p>★★★☆☆</p> <p>HISTORY</p>	<p>Power of Texas 3 Fixed Rate 3 Months 15% Renewable NEW CUSTOMERS</p> <p>1,000 kWh 7.7¢</p> <p>500 kWh 8.5¢</p> <p>2000 kWh 7.3¢</p>	<p>Cancellation Fee: \$150.00</p> <p>Fact Sheet Terms of Service</p>	<p>Special Terms (888) 500-8348 OR SIGN UP</p>
<p>1-20 OF 146 1 2 3 ... SORT BY PRICE/kWh VIEW 10 PER ...  </p>			

Shop. Compare. Choose.

77082

REFRESH RESULTS

TDU Area

CENTERPOINT ...

Estimated Use

1,000 kWh

Price/kWh

¢ to ¢

Contract Length

to mo

Pricing and Billing

Show All Plans

Plans without a minimum usage fee/credit and plans without tiered pricing

Plan Type

- Fixed Rate
- Variable (Changing Rate)
- Indexed (Market Rate)

Prepaid Plans

- Show All Plans
- Show Only Prepaid Plans
- Do Not Show Prepaid Plans

Time Of Use Plans

- Show All Plans
- Show Only Time Of Use Plans
- Do Not Show Time of Use Plans

Company Rating



1-20 OF 145

1 2 3 ...

SORT BY PRICE/kWh

VIEW 20 PER ...



COMPARE Company Plan Details Price/kWh Pricing Details Ordering Info

<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>4 Month Texas Wind Fixed Rate 4 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7¢ 500 kWh 2000 kWh 7.6¢ 6.8¢</p>	<p>Cancellation Fee: \$50.00 Fact Sheet Terms of Service</p>	<p>Special Terms (855) 797-8465 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Essential Infusion 3 Fixed Rate 3 Months 16% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.1¢ 500 kWh 2000 kWh 7.8¢ 6.7¢</p>	<p>Cancellation Fee: \$100.00 Fact Sheet Terms of Service</p>	<p>Special Terms (844) 463-8732 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Move In Promo 3 Fixed Rate 3 Months 19% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.1¢ 500 kWh 2000 kWh 7.6¢ 6.8¢</p>	<p>Cancellation Fee: \$0.00 Fact Sheet Terms of Service</p>	<p>Special Terms (281) 369-5900 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Eco Green 4 Fixed Rate 4 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.1¢ 500 kWh 2000 kWh 7.7¢ 6.9¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (877) 261-1024 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>SoFed Try Us Out Now-3 Fixed Rate 3 Months 5% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.1¢ 500 kWh 2000 kWh 8.2¢ 6.6¢</p>	<p>Cancellation Fee: \$39.00 Fact Sheet Terms of Service</p>	<p>Special Terms (844) 644-0474 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Gexa Choice Green 3 Fixed Rate 3 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.2¢ 500 kWh 2000 kWh 7.8¢ 7¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (866) 329-4392 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Simple Plan (Web Enrollment Only) Fixed Rate 3 Months 6% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.2¢ 500 kWh 2000 kWh 7.8¢ 7¢</p>	<p>Cancellation Fee: \$0.00 Fact Sheet Terms of Service</p>	<p>Special Terms SIGN UP</p>



Renewable Energy

N/A

Electric Companies

ALL

REFRESH RESULTS

<input type="checkbox"/>  <p>COMPANY RATING ★★★★☆ HISTORY</p>	<p>Chariot Choice 3 Fixed Rate 3 Months 100% Renewable</p>	<p>1,000 kWh 7.3¢ 500 kWh 2000 kWh 7.9¢ 7.1¢</p>	<p>Cancellation Fee: \$49.00 Fact Sheet  Terms of Service </p>	<p>Special Terms (855) 524-2746 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★☆ HISTORY</p>	<p>Gexa Choice Green 4 Fixed Rate 4 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.3¢ 500 kWh 2000 kWh 7.9¢ 7.1¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet  Terms of Service </p>	<p>Special Terms (866) 329-4392 OR SIGN UP</p>
<input type="checkbox"/>  <p>NO SCORECARD DATA HISTORY</p>	<p>3 Months Fixed Fixed Rate 3 Months 11% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.3¢ 500 kWh 2000 kWh 7.8¢ 7¢</p>	<p>Cancellation Fee: \$20 per month remaining Fact Sheet  Terms of Service </p>	<p>Special Terms (888) 576-9473 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★☆ HISTORY</p>	<p>SUPER SAVER 3 Fixed Rate 3 Months 19% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.3¢ 500 kWh 2000 kWh 7.8¢ 7¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet  Terms of Service </p>	<p>Special Terms (281) 287-2901 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★☆ HISTORY</p>	<p>Eco Green 5 Fixed Rate 5 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.4¢ 500 kWh 2000 kWh 7.9¢ 7.1¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet  Terms of Service </p>	<p>Special Terms (877) 261-1024 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★☆ HISTORY</p>	<p>Gexa Choice Green 5 Fixed Rate 5 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 7.4¢ 500 kWh 2000 kWh 8¢ 7.2¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet  Terms of Service </p>	<p>Special Terms (866) 329-4392 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★☆ HISTORY</p>	<p>Price Breaker 3 - Autopay Fixed Rate 3 Months 100% Renewable</p>	<p>1,000 kWh 7.4¢ 500 kWh 2000 kWh 8¢ 7.1¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet  Terms of Service </p>	<p>Special Terms (800) 791-8494 OR SIGN UP</p>
<input type="checkbox"/>  <p>NO SCORECARD DATA HISTORY</p>	<p>6 Months Fixed Fixed Rate 6 Months 11% Renewable</p>	<p>1,000 kWh 7.8¢ 500 kWh 2000 kWh 8.3¢ 7.5¢</p>	<p>Cancellation Fee: \$20 per month remaining Fact Sheet  Terms of Service </p>	<p>Special Terms (888) 576-9473 OR SIGN UP</p>
<input type="checkbox"/> 	<p>Select 6 Fixed Rate 6 Months</p>	<p>1,000 kWh 7.9¢</p>	<p>Cancellation Fee: \$75.00 Fact Sheet </p>	<p>Special Terms (855) 265-9153</p>

<p>COMPANY RATING</p> <p>★★★★☆</p> <p>HISTORY</p>	<p>10% Renewable</p> <p>NEW CUSTOMERS</p>	<p>500 kWh 2000 kWh</p> <p>8.4¢ 7.6¢</p>	<p>Terms of Service</p>	<p>OR</p> <p>SIGN UP</p>
<p><input type="checkbox"/></p> <p></p> <p>COMPANY RATING</p> <p>★★★★☆</p> <p>HISTORY</p>	<p>Winter Saver 4 (Web Enrollment)</p> <p>Fixed Rate</p> <p>4 Months</p> <p>15% Renewable</p> <p>NEW CUSTOMERS</p>	<p>1,000 kWh</p> <p>8¢</p> <p>500 kWh 2000 kWh</p> <p>8.7¢ 7.6¢</p>	<p>Cancellation Fee: \$100.00</p> <p>Fact Sheet</p> <p>Terms of Service</p>	<p>Special Terms</p> <p>(800) 483-1836</p> <p>OR</p> <p>SIGN UP</p>
<p><input type="checkbox"/></p> <p></p> <p>COMPANY RATING</p> <p>★★★★☆</p> <p>HISTORY</p>	<p>4 Month Simple Plan</p> <p>Fixed Rate</p> <p>4 Months</p> <p>4% Renewable</p>	<p>1,000 kWh</p> <p>8.1¢</p> <p>500 kWh 2000 kWh</p> <p>8.7¢ 7.9¢</p>	<p>Cancellation Fee: \$100.00</p> <p>Fact Sheet</p> <p>Terms of Service</p>	<p>Special Terms</p> <p>(877) 928-8766</p> <p>OR</p> <p>SIGN UP</p>
<p><input type="checkbox"/></p> <p></p> <p>COMPANY RATING</p> <p>★★★★☆</p> <p>HISTORY</p>	<p>You Got This 4</p> <p>Fixed Rate</p> <p>4 Months</p> <p>15% Renewable</p> <p>NEW CUSTOMERS</p>	<p>1,000 kWh</p> <p>8.2¢</p> <p>500 kWh 2000 kWh</p> <p>9.3¢ 7.7¢</p>	<p>Cancellation Fee: \$135.00</p> <p>Fact Sheet</p> <p>Terms of Service</p>	<p>Special Terms</p> <p>(888) 676-9883</p> <p>OR</p> <p>SIGN UP</p>
<p><input type="checkbox"/></p> <p></p> <p>COMPANY RATING</p> <p>★★★★☆</p> <p>HISTORY</p>	<p>Live Brighter 5</p> <p>Fixed Rate</p> <p>5 Months</p> <p>15% Renewable</p> <p>NEW CUSTOMERS</p>	<p>1,000 kWh</p> <p>8.3¢</p> <p>500 kWh 2000 kWh</p> <p>9.4¢ 7.8¢</p>	<p>Cancellation Fee: \$135.00</p> <p>Fact Sheet</p> <p>Terms of Service</p>	<p>Special Terms</p> <p>(877) 697-7560</p> <p>OR</p> <p>SIGN UP</p>
<p>1-20 OF 145 1 2 3 ... SORT BY PRICE/kWh VIEW 20 PER ...  </p>				

Shop. Compare. Choose.

78336

REFRESH RESULTS

TDU Area

AEP TEXAS CE...

Estimated Use

1,000 kWh

Price/kWh

¢ to ¢

Contract Length

to mo

Pricing and Billing

Show All Plans

Plans without a minimum usage fee/credit and plans without tiered pricing

Plan Type

- Fixed Rate
- Variable (Changing Rate)
- Indexed (Market Rate)

Prepaid Plans

- Show All Plans
- Show Only Prepaid Plans
- Do Not Show Prepaid Plans

Time Of Use Plans

- Show All Plans
- Show Only Time Of Use Plans
- Do Not Show Time of Use Plans

Company Rating



1-20 OF 133

1 2 3 ...

SORT BY PRICE/kWh

VIEW 20 PER ...



COMPARE	Company	Plan Details	Price/kWh	Pricing Details	Ordering Info
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Essential Infusion 3 Fixed Rate 3 Months 16% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 8.2¢ 500 kWh 2000 kWh 9.3¢ 7.6¢</p>	<p>Cancellation Fee: \$100.00 Fact Sheet Terms of Service</p>	<p>Special Terms (844) 463-8732 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING No SCORECARD DATA HISTORY</p>	<p>SoFed Try Us Out Now-3 Fixed Rate 3 Months 5% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 8.3¢ 500 kWh 2000 kWh 9.7¢ 7.7¢</p>	<p>Cancellation Fee: \$39.00 Fact Sheet Terms of Service</p>	<p>Special Terms (844) 644-0474 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Gexa Choice Green 3 Fixed Rate 3 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 8.4¢ 500 kWh 2000 kWh 9.3¢ 8¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (866) 329-4392 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Move In Promo 3 Fixed Rate 3 Months 19% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 8.4¢ 500 kWh 2000 kWh 9.3¢ 7.9¢</p>	<p>Cancellation Fee: \$0.00 Fact Sheet Terms of Service</p>	<p>Special Terms (281) 369-5900 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Chariot Choice 3 Fixed Rate 3 Months 100% Renewable</p>	<p>1,000 kWh 8.4¢ 500 kWh 2000 kWh 9.3¢ 8¢</p>	<p>Cancellation Fee: \$49.00 Fact Sheet Terms of Service</p>	<p>Special Terms (855) 524-2746 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Eco Green 4 Fixed Rate 4 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 8.4¢ 500 kWh 2000 kWh 9.3¢ 8¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (877) 261-1024 OR SIGN UP</p>
<input type="checkbox"/>	<p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Price Breaker 3 - Autopay Fixed Rate 3 Months 100% Renewable</p>	<p>1,000 kWh 8.5¢ 500 kWh 2000 kWh 9.4¢ 8¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (800) 791-8494 OR SIGN UP</p>



Renewable Energy

N/A

Electric Companies

ALL

REFRESH RESULTS

<input type="checkbox"/>  <p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Gexa Choice Green 4 Fixed Rate 4 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 8.5¢ 500 kWh 2000 kWh 9.4¢ 8.1¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (866) 329-4392 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Gexa Choice Green 5 Fixed Rate 5 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 8.6¢ 500 kWh 2000 kWh 9.5¢ 8.2¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (866) 329-4392 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★★ HISTORY</p>	<p>4 Month Simple Plan Fixed Rate 4 Months 4% Renewable</p>	<p>1,000 kWh 8.6¢ 500 kWh 2000 kWh 9.5¢ 8.2¢</p>	<p>Cancellation Fee: \$100.00 Fact Sheet Terms of Service</p>	<p>Special Terms (877) 928-8766 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Eco Green 5 Fixed Rate 5 Months 100% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 8.6¢ 500 kWh 2000 kWh 9.5¢ 8.2¢</p>	<p>Cancellation Fee: \$150.00 Fact Sheet Terms of Service</p>	<p>Special Terms (877) 261-1024 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Basic 4 Month Fixed Rate 4 Months 4% Renewable</p>	<p>1,000 kWh 8.8¢ 500 kWh 2000 kWh 9.7¢ 8.4¢</p>	<p>Cancellation Fee: \$100.00 Fact Sheet Terms of Service</p>	<p>Special Terms (855) 856-7613 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★★ HISTORY</p>	<p>You Got This 4 Fixed Rate 4 Months 15% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 9.2¢ 500 kWh 2000 kWh 10.6¢ 8.5¢</p>	<p>Cancellation Fee: \$135.00 Fact Sheet Terms of Service</p>	<p>Special Terms (888) 676-9883 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★★ HISTORY</p>	<p>Live Brighter 5 Fixed Rate 5 Months 15% Renewable NEW CUSTOMERS</p>	<p>1,000 kWh 9.2¢ 500 kWh 2000 kWh 10.6¢ 8.5¢</p>	<p>Cancellation Fee: \$135.00 Fact Sheet Terms of Service</p>	<p>Special Terms (877) 697-7560 OR SIGN UP</p>
<input type="checkbox"/>  <p>COMPANY RATING ★★★★★ HISTORY</p>	<p>6 Month Texas Wind Fixed Rate 6 Months 100% Renewable</p>	<p>1,000 kWh 9.2¢ 500 kWh 2000 kWh 10.1¢ 8.7¢</p>	<p>Cancellation Fee: \$50.00 Fact Sheet Terms of Service</p>	<p>Special Terms (855) 797-8465 OR SIGN UP</p>
<input type="checkbox"/> 	<p>Price Protection Plan 5 Fixed Rate</p>	<p>1,000 kWh 9.2¢</p>	<p>Cancellation Fee: \$135.00</p>	<p>Special Terms</p>

<p>COMPANY RATING</p> <p>★★★★★</p> <p>HISTORY</p>	<p>5 Months</p> <p>15% Renewable</p> <p>NEW CUSTOMERS</p>	<p>500 kWh 2000 kWh</p> <p>10.6¢ 8.5¢</p>	<p>Fact Sheet</p> <p>Terms of Service</p>	<p>(844) 664-2838</p> <p>OR</p> <p>SIGN UP</p>
<p><input type="checkbox"/></p> <p></p> <p>COMPANY RATING</p> <p>★★★★★</p> <p>HISTORY</p>	<p>Live Brighter 4</p> <p>Fixed Rate</p> <p>4 Months</p> <p>15% Renewable</p> <p>NEW CUSTOMERS</p>	<p>1,000 kWh</p> <p>9.3¢</p> <p>500 kWh 2000 kWh</p> <p>10.7¢ 8.6¢</p>	<p>Cancellation Fee: \$135.00</p> <p>Fact Sheet</p> <p>Terms of Service</p>	<p>Special Terms</p> <p>(877) 697-7560</p> <p>OR</p> <p>SIGN UP</p>
<p><input type="checkbox"/></p> <p></p> <p>COMPANY RATING</p> <p>★★★★★</p> <p>HISTORY</p>	<p>TrueClassic 4</p> <p>Fixed Rate</p> <p>4 Months</p> <p>6% Renewable</p> <p>NEW CUSTOMERS</p>	<p>1,000 kWh</p> <p>9.4¢</p> <p>500 kWh 2000 kWh</p> <p>10.9¢ 8.6¢</p>	<p>Cancellation Fee: \$150.00</p> <p>Fact Sheet</p> <p>Terms of Service</p>	<p>Special Terms</p> <p>(877) 544-4857</p> <p>OR</p> <p>SIGN UP</p>
<p><input type="checkbox"/></p> <p></p> <p>COMPANY RATING</p> <p>★★★★★</p> <p>HISTORY</p>	<p>Power of Texas 3</p> <p>Fixed Rate</p> <p>3 Months</p> <p>15% Renewable</p> <p>NEW CUSTOMERS</p>	<p>1,000 kWh</p> <p>9.4¢</p> <p>500 kWh 2000 kWh</p> <p>10.8¢ 8.7¢</p>	<p>Cancellation Fee: \$150.00</p> <p>Fact Sheet</p> <p>Terms of Service</p>	<p>Special Terms</p> <p>(888) 500-8348</p> <p>OR</p> <p>SIGN UP</p>
<p><input type="checkbox"/></p> <p></p> <p>COMPANY RATING</p> <p>★★★★★</p> <p>HISTORY</p>	<p>Entrust 3</p> <p>Fixed Rate</p> <p>3 Months</p> <p>15% Renewable</p> <p>NEW CUSTOMERS</p>	<p>1,000 kWh</p> <p>9.4¢</p> <p>500 kWh 2000 kWh</p> <p>10.8¢ 8.7¢</p>	<p>Cancellation Fee: \$150.00</p> <p>Fact Sheet</p> <p>Terms of Service</p>	<p>Special Terms</p> <p>(800) 871-8100</p> <p>OR</p> <p>SIGN UP</p>
<p>1-20 OF 133 1 2 3 ... SORT BY PRICE/kWh VIEW 10 PER ...  </p>				

From: [Billy Bryant](#)
To: [Patricia Murphy](#)
Subject: New UA requirements
Date: Sunday, January 26, 2020 11:57:50 AM

Patricia,

I wanted to voice my opinion against the new 12 month requirement. The shorter rates are available for all renters and after their initial term they can contact the provider to get new rates or switch to another provider. I currently do this for my provider in Mcallen so that i am getting the lowest and best rate versus being locked in for 12 months at a higher rate.

Many properties rely on the lower UA rates to stay in the black each year. This requirement will increase the UA's significantly which puts many properties at risk. Even if they switch back to the PHA it might not help since many PHA schedules are high.

Thank you for your time.

Billy Bryant

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From: [Drew Hoskins](#)
To: [Patricia Murphy](#)
Subject: Potential change in how utility changes are reviewed.
Date: Monday, January 27, 2020 3:58:49 PM

Mrs. Murphy,

It has come to our attention that a new rule may be added on how utility allowances are calculated when using the HUD model. This change will hurt our portfolio of 23 communities that comprise of 4,753 units. Running rough numbers based on the current electric rates for 12 month terms and comparing it to our current GPR we are looking at losing almost 1 Million in revenue annually. This could lead to lay-offs and lower the quality of services we provide our residents. Each year I review what electric rates are and pick the best rates. They are not always 3 month terms. In fact the best rates I was able to find the past 3 years where 6, 8, and 12 month terms. Also, some of the previous year electric rates had increased which in turn lowered our rents overnight. This year (UA's submitted in 2019) we basically broke even with no increase on some unit types and only \$1 to \$2 increases on others. I wish the same was for expenses, but as you're aware that almost never happens. The majority of our rents are at max, so if the perception is that our rents are no longer affordable then we shouldn't also be having record occupancy percentages with waiting lists. I truly believe we have the best rental rates for the quality of apartment homes and services provided when compared to many of our "Market" competitors. Also, please remember that residents have the option of shopping around and getting the same electrical rates as we find on the Power to Choose website so they could switch plans every 3, 6, 8, or 12 months if desired. Thank you for considering leaving things the same and if you have any questions please let me know.

Sincerely,

Drew Hoskins
Encore Residential
713.334.5808 O
713.560.1097 C

From: juanita@sanchezcompliance.com
To: [Patricia Murphy](#)
Subject: Proposed Rules Comments/Questions
Date: Monday, January 27, 2020 4:48:34 PM

Hi Patricia,

I am totally sending this last minute. It has been a long day and kept starting and stopping this email so I apologize.

Here are my questions/comments for the proposed rules.

- 10.802: (a)(3) - How it will be monitored? And will posting a notice in the mail rooms or community rooms suffice the obligation to notify all the residents? Or do we have to send individual notices?
- 10.802: (a)(2) – How will this be monitored? And will all the items required to be made available or posted in the office also be made available on the community website?
- 10.615: (d) – (f) How will the AUR be monitored for the average income for the lower limits 20% through 50%?
- 10.614:(c)(3)(B), 10.614:(c)(3)(C)(v), 10.614:(c)(3)(D) & 10.614: (d)(3)(D)(ii)(II) & 10.614:(e) – I have always done it using a 12 month rate plan and it is how I teach others to do them. While I know many are upset about this I am ok with it. I just wanted you to know because I am sure you are catching a lot of flak for this one!
- 10.802: (g)(2)(A) – It was brought to my attention that this may mean that 3 day and 30 day notices to pay or quit now need to have the VAWA forms attached and not just the blurb that is included in the notice. I do not like the idea of adding like 18 pages to those notices to the 3 day and 30 day notices. In the event this does pass how will it be monitored?

Ok that is all I have, I hope my questions and comments help.

Juanita

Thank you and Have a Great Week!

Juanita Jeanie Sanchez, COS, HCCP, NCP-E

1900 Little Elm Trail #44

Cedar Park, TX 78613

Email: juanita@sanchezcompliance.com

Cell: 512-761-7256

Website: www.sanchezcompliance.com



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From: [Mike Robinson](#)
To: [Patricia Murphy](#)
Subject: Proposed Utility Allowance Change
Date: Monday, January 27, 2020 12:11:02 PM

Hi Patricia, I just wanted to let you know my thoughts on the proposed change to the utility allowance rule requiring alternative method utility allowances to use a 12 month rate. I believe this is a **very** bad idea- the financial burden this will place on affordable housing properties will be too much to bear, and many will undoubtedly go underwater, and ultimately be foreclosed on by the lender- therefore removing the property from the tax credit program. I have developed 17 affordable housing communities in three states over the last 25 years, and I can assure you there will be no benefit derived from implementing this rule.

I urge the Department to abandon this rule, and leave the current 3 month plan in place.

Thanks,

Mike Robinson
President
Robinson Capital & Investment, Inc.
1177 West Loop South Suite 1570
Houston, Texas 77027
713-850-7168
mike.robinson@ robcap.com

January 27, 2020

Patricia Murphy
Texas Department of Housing and Community Affairs
Rules Comment
P.O. Box 13941
Austin, TX 78711
Email: patricia.murphy@tdhca.state.tx.us

RE: Rules Comments

Dear Patricia Murphy,

The following is our comments on the Proposed Amendments 10 TAC Subchapter F:

- All rules under Subchapter F should be up for comment; not just the rules TDHCA would like to change.
- 10.611 Determination, Documentation and Certification of Annual Income (c) page 19
 - *A household's income designation at the time of move in cannot be changed unless:*
 - This rule needs to be stricken in its entirety. The current proposed rule only list 5 exceptions to this rule; however, there are many more examples of when a household's designation needs to be changed. One example is if a property is layered with HTC and HOME and the HOME household exceeds the 80% HIGH HOME AMI we are required to replace the household with an eligible household. Also, this rule will force owners into noncompliance. Example, if an owner moves in a household who they believe qualifies at the 50% AMI but later determines that the household actually qualifies at the 60% AMI we would not be allowed to correct this issue.
- 10.614 Utility Allowances (c)(B) page 29
 - *In deregulated areas, the rate plan used to calculate the estimate must have a term of at least 12 months.*
 - We, as an industry, have the same goal; that all methods (other than the Agency Estimate) are estimates based on a set of rules under Treasury Regulation §1.42-10. It is not industry intent to generate a utility allowance that is high or low; rather one that reflects an accurate estimate given the market and options available to Texans thru statute. Treasury Regulation §1.42-10 states that we must use residential rates and does not require that rate plans be for any amount of time. The proposed changes intent of getting the estimate "closer to correct" would need something to which to compare in order to identify that the estimates are incorrect. After all these are just estimates based on prevailing market conditions. Staff appears to have **analyzed some areas to determine the difference and impact**, but only speaks to the difference in the results specific to the HUD Utility Schedule Model in limited capacity, but does not identify why the usages of any of the rate plans produce an incorrect utility allowance in comparison to other alternative methods. Our comment on this item is not make any change on this item and continue with the existing rule, as it is.

- 10.615 Elections under IRC 42(g) and Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments (b) page 37
 - *A Development with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted Units.*
 - This rule needs to be stricken in its entirety. TDHCA has made owner maintain a waitlist for their properties even though there is no federal requirement for HTC, Exchange or BOND properties. Maintaining the waitlist takes away time from our staff from focusing on the requirements that are set forth by federal guidelines. Also, owners are seeing an increase turn around time in filling vacant units. Due to the inefficiencies of contacting the waitlist participants and once exhausted circling back to applicants needing immediate occupancy not on the list. The waitlist is hindering immediate housing of low income households.
- 10.622 Special Rules Regarding Rents and Rent Limit Violations (j) page 46
 - *Unless the household receives rental assistance, and due to changes in their income, their portion of required rent changes, Owners are not permitted to increase the tenant portion of rent during a period which is the lesser of 12 months or the lease term, even if there are increases in rent limits or decreases in utility allowances.*
 - This rule needs to be stricken in its entirety. If the Board moves forward with this rule, we propose the rule be amended to allow for a cap of \$50 when rent limits increase or UA decreases and be allowed to charge max rents at time of renewal.

We hope that you take in consideration our comments and thank you for your time.

Sincerely,



Dena Moreland
Compliance Director
Accolade Property Management
621 Cowboys Pkwy, Ste. 200
Irving, TX 75063

From: [Nancy McIlhaney](#)
To: [Patricia Murphy](#)
Cc: [Brian Gamble](#)
Subject: Public Comment- Proposed Amendment to §10.622
Date: Monday, January 27, 2020 11:26:50 AM

Good afternoon, Ms. Murphy:

Pathways Asset Management, Inc. respectfully submits the following comment and recommended revision on Proposed Amendment **§10.622(j)**.

Proposed Amendment: §10.622 Special Rules Regarding Rents and Rent Limit Violations

(j): *Unless the household receives rental assistance, and due to changes in their income, their portion of required rent changes, Owners are not permitted to increase the tenant portion of rent during a period which is the lesser of 12 months or the lease term, even if there are increases in rent limits or decreases in utility allowances.*

Comment: This portion of the proposed rule specifies that owners cannot change a tenant's rent mid-lease unless the household is receiving rental assistance, and only if their required portion of the rent changes due to a change in income.

We appreciate the department's language to consider properties layered with other federal housing programs and subsidies. However, the proposed rule does not address several situations in which layered properties, and in particular properties covered by a HUD Housing Assistance Payment (HAP) contract, are required to change a household's rent mid-lease. These include:

1. For properties participating in HUD's multifamily housing programs, HUD Handbook 4350.3, Chapter 7, Paragraph 7-18 (C) states, "Owners must implement approved rent changes on the effective date approved by HUD or the Contract Administrator." These rent changes also include Utility Allowance (UA) changes that must be implemented on a property-wide basis. The Owner/Agent must implement this rent change regardless of a household's current lease effective date, and if there is a UA decrease, this will increase the tenant's required rent. Per HUD's requirements, the Owner/Agent cannot postpone or withhold the change until the household's lease term expires.
2. For households receiving assistance, the proposed rule only allows for rent changes mid-lease (i.e. an Interim Recertification) due to changes in income. However, HUD multifamily housing programs and the HUD model lease require Owners/Agents to complete Interim Recertifications in other circumstances that would necessitate an increase to the household's required rent. These situations include, but are not limited to:
 - a. Changes in household composition, whereby a household member is removed from a unit, and they may no longer qualify for various deductions and/or allowances.
 - b. Decreases in eligible deductions paid by the household, including loss of medical or childcare expenses paid by the household.
 - c. Properties participating in HUD's Rental Assistance Demonstration (RAD) program are required to adhere to a "Phase-In" schedule for rent increases. For specific households, the Owner/Agent must phase-in their rent increase over a three to five year period, since the rent increase is solely due to the difference in how rent is calculated in HUD public housing versus HUD multifamily. In such cases, rent will not exceed the LIHTC established rent limit, but increases to the household's rent are required mid-lease.
 - d. In instances where a household is not compliant with specific terms of the lease, the Owner/Agent must terminate the household's subsidy. As a result, the resident's required rent must be raised to HUD defined contract rent to stay in the unit.

3. For properties participating in HUD's RAD program, households are required to pay 30% of their adjusted gross income towards rent up to the LIHTC rent limit, regardless of whether subsidy is received. This means there are times that a PBRA household/resident is not receiving rental assistance. This is established in HUD Housing Notice H 2019-09, Section 1-7 (B)(9):

“For residents living in the Converting Project on the date of conversion and all new admissions to the Covered Project thereafter, when TTP equals or exceeds the contract rent plus any utility allowance, the Project Owner must charge a tenant rent equal to the lesser of (a) TTP (which is not capped at gross rent), less the utility allowance in the contract, or (b) any applicable maximum rent allowable under LIHTC regulations.”

Prior versions of the notice include the same rule, and would govern properties who converted to HUD's Project Based Rental Assistance (PBRA) program and were issued tax credits prior to September 2019. Under this proposed rule, properties would be unable to comply with regulations for both programs if the exception is contingent on a household receiving subsidy.

Recommended Revision: To account for the concerns noted above, we are recommending that the rule be rewritten as follows:

*“Owners are not permitted to increase the tenant portion of rent during a period which is the lesser of 12 months or the lease term, even if there are increases in rent limits or decreases in utility allowances, **unless the unit or household is governed by a Federal Housing Program that requires such changes.**”*

Additionally, to assist in the department's monitoring of unsubsidized households still subject to HUD requirements under the RAD program, we recommend that the options on the “Assistance” Field on the Tenant Income Certification (TIC) be expanded to include “RAD-PBRA” as an assistance type. This would allow department staff to quickly determine whether a household is a participant in the RAD-PBRA program, and therefore, be subject to mid-lease rent increases due to RAD-specific rules.

Thank you for your consideration of our comment and recommended revision.

Best,

Nancy McIlhaney

Director of Compliance
Pathways Asset Management, Inc.
1124 S IH 35, Austin, TX 78704
Office: (512) 477-4488 Ext 2149
Direct Dial: (512) 767-7722
Email: nancym@hacanet.org
Web: www.hacanet.org

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From: [Peg Jones](#)
To: [Patricia Murphy](#)
Subject: RE: TDHCA PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES IN TEXAS
Date: Monday, January 27, 2020 11:09:44 AM

Dear Patricia,

On behalf of all of our Palladium tax credit properties, we strongly oppose TDHCA's UTILITY ALLOWANCE RULE CHANGES THAT WILL RESULT IN MILLIONS OF DOLLARS IN LOST REVENUE FOR TEXAS AFFORDABLE HOUSING PROPERTIES REQUIRING ALTERNATIVE METHOD UTILITY ALLOWANCES TO USE A 12 MONTH RATE.

The rule change would result in over a 50% average increase in utility allowance, which would create a monthly loss of \$12,150 and an annual loss of \$145,800 for a 250 unit property with equal unit sizes charging maximum tax credit rents. The loss would significantly reduce cash flow on existing tax credit properties and would reduce the number of future developments, as well, as the deals would not be deemed financially feasible.

Please consider the negative impacts TDHCA'S PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES would have on Affordable Housing in TEXAS.

Best regards,

Peg

Margaret M. Jones

SVP Finance

Palladium USA International, Inc.

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13455 Noel Road

Suite 400

Dallas, Texas 75240

Ph: 972-774-4452

Fax: 972-774-4456

www.palladiumusa.com

From: [Marnie Geurin](#)
To: [Patricia Murphy](#)
Subject: Rule Comments- Proposed Amendments to Compliance Rule
Date: Monday, January 27, 2020 4:55:08 PM
Attachments: [image001.png](#)

Good Afternoon Patricia,

With regards to the proposed Utility Allowance change, requiring the use of an average rate plan of at least 12 months. We agree with our fellow counterparts that this change could potentially have a devastating financial effect on the developments that currently use 3 month history vs 12 month history. The data analysis shows a potential of an average of a 50% increase on utility allowances. This increase would lower the development's income which would result in less money available for the services that are offered that benefit the residents and improve their quality of life.

Please do not hesitate to contact me if you have any questions or need anything further.

Thank you,

Marnie Geurin
Operations Director
DMA Properties, LLC
4101 Parkstone Heights
Suite 310
Austin, TX 78746
(512) 328-3232 ext. 4509





TEXAS APARTMENT ASSOCIATION

1011 SAN JACINTO BLVD., STE. 600 • AUSTIN, TEXAS 78701-1951
TELEPHONE 512/479-6252 • FAX 512/479-6291 • www.taa.org

January 27, 2020

Via email to patricia.murphy@tdhca.state.tx.us
Texas Department of Housing and Community Affairs
Attn: Patricia Murphy
P.O. Box 13941
Austin, TX 787-3941

Re: 10 TAC, §10.614: Utility Allowances, Rate Change Analysis

Dear Ms. Patricia Murphy:

The Texas Apartment Association has nearly 12,000 members who own or manage about 2.2 million rental homes in our state. While our primary focus is on market rate housing, a significant number of our members participate in affordable housing programs, such as the low-income housing tax credit program.

We have serious concerns about TDHCA's proposed change to Section 10 TAC §10.614 regarding utility allowances and rate change analysis and encourage the Department to withdraw this proposal.

As published in the December 27, 2019 edition of the Texas Register, we believe that if adopted, the rule will reduce flexibility for property owners and may result in higher utility allowances, thereby decreasing the amount of rent affordable housing providers may charge. In short, this proposed change will make it more difficult and costly to operate affordable housing properties in Texas.

Under the current rule, property owners in areas of the state with deregulated utilities may choose any rate plan available for the property. While we appreciate and share the goal of correct and accurate utility billing, we do not believe the proposed rule requiring rate plans with terms of at least 12 months will lead to more accurate allowances than those under the current rule. If the agency has identified certain alternative methods or usages of rate plans that produce an incorrect utility allowance, then the rules should be amended to remove that specific method from the available choices.

Additionally, Treasury Regulation §1.42-10 includes specific procedural safeguards for residents. For these alternate methods, the owner is required to post in a common area of the leasing office their intent to renew the current utility allowance method or change the method at the beginning of a 90-day period defined by each method. This provides residents with the opportunity to comment on proposed utility allowances to the agency and property owner. We are not aware of any data or have knowledge of a trend showing residents that the rate plans chosen and posted in the common areas by the owners are producing incorrect allowances.

TAA provides exceptional advocacy, education and communication for the Texas rental housing industry

24 LOCAL AFFILIATES ACROSS THE STATE OF TEXAS: ABILENE • AMARILLO • AUSTIN • BEAUMONT • BRYAN • CORPUS CHRISTI • CORSICANA • DALLAS • EL PASO • FORT WORTH • GALVESTON • HARLINGEN
HOUSTON • KILLEEN/TEMPLE • LONGVIEW • LUBBOCK • LURKIN/NACOGDOCHES • MIDLAND/ODESSA • SAN ANGELO • SAN ANTONIO • TYLER • VICTORIA • WACO • WICHITA FALLS

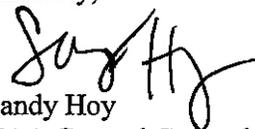
Lastly, under the current rule §10.614(c)(3)(C)(iv), owners are prohibited from applying any penalties and/or credits for consumption usage: *“Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4): A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.”*

There are often credits and/or penalties that are applied to the property owner’s bill when using the HUD Utility Schedule Model. If the agency adopts the proposed change, the allowances produced using the HUD model will not be “correct” because of the exclusion of these credits and/or penalties.

For these reasons, the Texas Apartment Association urges the Department to not make any changes to the current rule.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandy Hoy", written in a cursive style.

Sandy Hoy
TAA General Counsel



January 27, 2020

TAAHP Compliance and Post Award Rules Committee Comment

Ms. Murphy,

Thank you for the opportunity to provide comment to Proposed New 10 TAC Subchapter F Compliance Rule. Please note that this comment was the 100% consensus of a group of 42 people whose names and place of business is attached. Please consider that information when considering this comment, as we believe that this group represents a large part of the industry here in Texas who do the day to day operations that this rule impacts.

General Comment

TAAHP generally supports and appreciate the Departments move to take responsibility of monitoring the requirements proposed in Subchapter G from the Compliance Department, and we hope this will provide additional resources that the Compliance team definitely needs with the new federal Compliance Monitoring regulations are coming into effect.

§10.611 Determination, Documentation and Certification of Annual Income

§10.611(b) – The new requirement will restrict an owner’s ability to change a resident’s income designation from that of move-in unless, 1) The household becomes Over Income and the Next Available Unit Rule applies; 2) the household receives rental assistance and their portion of the rent exceeds their move-in designation rent limit; 3) the unit was market rate and is Initially Certified, 4) they are or become a full-time student; or, 5) the owner has a policy for changing household designations as household income changes.

In various roundtables, staff has said the basis of the proposed rule change is because a rule change that was put in place less than a year ago, is not being followed; which, is an untrue statement. TAAHP suggests that a large part of the industry did not understand the Department’s intent behind the language in the current rule as a result of the manner in which it was written.

That said, all 42 members of this TAAHP committee strongly agree that the Department should not limit an owner’s ability to change unit designations outside of federal requirements. **TAAHP comment is that we agree with striking the current language under §10.615 as proposed, and in addition, not approve the new proposed language under §10.611(b).** Limiting an owner’s ability to change unit designations is outside of the federal requirements and is extremely concerning for the reasons below.). .

1. The current language does not allow an owner to self-correct noncompliance, or correct non-compliance identified by TDHCA, or outside entities such as syndicators. Operating long term with units at lower set-asides that should be part of higher set-asides directly impacts budget and pro forma.

President
DAN KIERCE
*RBC Capital Markets – Tax Credit
Equity Group*

Immediate Past
President
DEBRA GUERRERO
The NRP Group

President–Elect
JANINE SISAK
DMA Development Co. LLC

First Vice President
CHRIS AKBARI
ITEX Group

Second Vice President
JEAN MARIE LATSHA
PEDCOR Investments

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CHRIS THOMAS
Tidwell Group

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Purple Martin Real Estate

DIRECTORS

TERRI ANDERSON
*Anderson Development &
Construction, LLC*

K. NICOLE ASARCH
Rock Real Estate, LLC

BOBBY BOWLING
Tropicana Building Corp

JEN BREWERTON
Dominium

ELLIE M. C. FANNING
Portfolio Resident Services

TOM DIXON
Boston Capital

DARRELL JACK
Apartment MarketData, LLC

NATHAN KELLEY
Blazer Building Texas, LLC

MARK MAYFIELD
Texas Housing Foundation

LORA MYRICK
BETCO Consulting LLC

STEPHANIE NAQUIN
Novogradac

DAVID SALING
JP Morgan Chase Bank, N.A.

JEFF SMITH
*Houston Housing Finance
Corporation*

VALERIE WILLIAMS (Ex–Officio)
*Bank of America
Merrill Lynch*

ROGER ARRIAGA
TAAHP Executive Director



2. The ability to re-designate households in a resyndication is imperative in order to meet both existing LURA and new LURA to ensure compliance is maintained with program requirements and deliver credit and financial promises made to outside investors.
3. When programs applicable to a property are no longer required, owners should have the ability to change set-asides as necessary for the financial health of the property. Many post-15 properties that are 100% at 60% for HTC, but also have expiring program requirements that were restricting households at 50% as a result of an additional state occupancy restriction, but that no longer apply. Restricting the ability to increase set-asides from 50% to 60% could prevent the property from being refinanced or resyndicated for badly needed rehabilitation of aging affordable housing stock.
4. Flexibility with unit designations is key for Average Income properties, especially to correct self-identified noncompliance
5. The language seems to conflict with the proposed waitlist requirement proposed under §10.615(b).
6. The proposed language seems to be in response to tenant complaints, and this big of an impact on owners and property management, a rule change does not seem practical.

For this reason, TAAHP comment is that we agree with striking the current language under §10.615 as proposed, and in addition, not approve the new proposed language under §10.611(b).

§10.614 Utility Allowances

For owners that use the Written Local Estimate, HUD Utility Schedule Model, Energy Consumption Model or the Agency Estimate (collectively “alternative methods”), staff has asserted that the proposed rule is written as proposed in an effort to accomplish a more “correct” utility allowance. TAAHP strongly believes the proposed rule language does not accomplish a more “correct” utility allowance, and unfortunately, also has a huge financial impact to affordable properties in Texas.

In 2002, the Texas State Legislature deregulated the electricity industry to open up the supply of electricity to competition. The main benefit to an energy deregulated market is that the rates for electricity lower. Introducing competition to the electricity market is also a significant benefit to Texans. Naturally, when you have more companies with similar products to choose from, those companies need to ensure that their products (and rates) are the best in the business. If a customer is not satisfied with their rates with one utility provider, they can switch utility providers with relative ease.

Currently, under §10.614(b)(2) in deregulated areas, this is the requirement for selecting rate plans to use in these alternative methods:

Power to Choose (<http://powertochoose.org/>) The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: <http://www.powertochoose.org/> (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

The Power to Choose website allows a user to enter their zip code & it populates all the residential utility providers and a tenant can choose any of those providers. For example, in the 77005 zip code, there are 51 residential utility providers from which a tenant living in a building located in the 77005 zip code could choose. And, of those 51 residential utility providers, there are 197 available residential rate plans that a tenant can choose. These terms of the plans range from month-to-month to 60 months. Nothing



under Treasury Regulation §1.42-10 prescribes or prohibits the owner's ability to choose; in fact, the only federal requirement is that it be a utility provider that provides residential service to the tenants of the buildings. If the tenants have complete choice in their rate plans, it is incompatible to represent an owner would not have that same ability in calculating their utility allowance.

In other words, for buildings located in the 77005 zip code, the current rule allows for the owner to choose any one of the 51 residential utility providers and one of the 197 associated rate plans.

The proposed rule will prohibit the owner ability to choose the rate plan by limiting the owner to only using a rate plan with a 12 month term.

With the [Board transcript](#) suggesting that...

Staff doesn't want the utility allowance to be high or low, but we want it to be correct or as close to correct as possible. All the methods are an estimate and none of them are perfect.

We believe the change we're proposing today will help get the estimate closer to correct. The change will impact methods where an owner picks a rate plan used to calculate the allowance.

Areas with deregulated utilities use the Power to Choose website to determine available plans. The current rule allows an owner to use any rate plan available that provides services to the building.

Some of the available plans provide a promotional rate, and so it's that's like a term of three to six months, and after that term, the rate increases.

*Since the utility allowance only needs to be updated once a year, the proposed change requires the use of a rate plan that has a term of 12 months. This may generate a slightly higher utility allowance, and staff's proposing this change because we believe it's **closer to correct** [emphases added].*

We, as an industry, have the same goal; and, that all methods (other than the Agency Estimate) are estimates based on a set of rules under Treasury Regulation §1.42-10. It is not industry intent to generate a utility allowance that is high or low; rather accurate given the market and options available to Texans thru statute.

The proposed change intention of getting the estimate "closer to correct" would need something to which to compare in order to identify that the estimates are incorrect. Staff appears to have analyzed some areas to determine the difference and impact, but only speaks to the difference in the results specific to the HUD Utility Schedule Model in limited capacity, but does not identify why the usages of any of the rate plans produce an incorrect utility allowance in comparison to other alternative methods.

Further, the Department's basis for the rule change is rooted in inaccurate assumptions about how the deregulated market functions. If a tenant chooses, for example, a 3 month rate plan from Utility Provider X, Utility Provider X contacts the tenant prior to the end of the term to extend the term, allow for the tenant to choose a different rate plan or change to an entirely new utility provider. If the tenant takes no action prior to expiration, then the rate used, on a month to month basis, may increase to the current "default rate", which changes from time to time. Note, the "default rate" is not the rate under a 12 month term, rather disclosed to the tenant at the time of their plan's expiration.

The tenant loses choice is if they choose a 12 month rate plan. At that point, they are locked in at 12 months. The Department has not completed any analysis as to the types of rate plans Texans choose to accurately support that the 12 month plan would produce the most "correct" allowance.



For actual data analysis, to stay apples to apples, all 3 month and 12 month rate plans from the Power to Choose website for the 77005 zip code in Houston were pulled, inputted into the HUD Utility Schedule Model with this summary analysis:

Deregulated EFLs- zip code 77005	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
3 Month Rate Plan Average	\$ 48.00	\$ 55.00	\$ 71.00	\$ 87.00	\$ 99.00	\$ 115.00
12 Month Plan Average	\$ 74.00	\$ 85.00	\$ 107.00	\$ 129.00	\$ 150.00	\$ 173.00
Average Difference	\$ 26.00	\$ 30.00	\$ 36.00	\$ 42.00	\$ 51.00	\$ 58.00
Average % increase	54.17%	54.55%	50.70%	48.28%	51.52%	50.43%

This chart represents the average difference between the results of the 3 month and 12 month rate plans & the percentage increase, on average, if the rule is adopted. For the Department to represent that this change may generate a slightly higher utility allowance is a significant understatement.

In other words, if you are doing a HUD Model in Houston, you can anticipate the utility allowance for a one bedroom to increase by, on average (approx.) 55.54%. Contemplating the effect on a pro forma for a property underwritten that used an approved HUD Utility Schedule Model with a 3 month rate plan being forced to move to a 12 month rate plan could have dire consequences on cash flow, which could directly impact the owner's ability to maintain reserves. The proposed change far exceed the assumptions in utility allowance increases, which jeopardize the property's operating feasibility.

Treasury Regulation §1.42-10 has specific procedural safeguards for tenants. For these alternate methods, the owner is required to post in a common area of the leasing office their intent to renew the current utility allowance method or change the method at the beginning of a 90-day period defined by each method. This provides tenants with the opportunity to comment on proposed utility allowances to the Agency and building owner. The Department has not provided any data that any tenants have provided comment in relationship to the required notification that the rates chosen by the owners are producing incorrect allowances.

Lastly, the current rule under §10.614(c)(3)(C)(iv), owners are prohibiting from applying any penalties and/or credits for consumption usage:

Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4): A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

In general, the appeal to selecting a 12 month term in lieu of a 3 month term, is that there are often there are credits and/or penalties that are applied to your bill when you use are using the HUD Utility Schedule Model. If the Department proceeds in adopting the proposed change, because of the exclusion of these credits and/or penalties, the allowance produced will not be correct.

For all of the aforementioned reasons, the TAAHP Post Award and Compliance Committee comment on this item is not make any change on this item as it relates to the 12 month term throughout the section as it relates to alternative method utility allowances and continue with the existing rule, as it is.

§10.622 Determination, Documentation and Certification of Annual Income



§10.622(j) – TAAHP supports comment that TDHCA will receive from other industry groups or organizations of how this proposed rule does not layer well with non-TDHCA programs, including but not limited to RAD properties, and TAAHP supports any language change that allows the intent of this rule to layer with all affordable programs.

Separately, TAAHP supports proposed language that now allows rent increases for any lease term, including month to month leases or other lease terms.

§10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period

§10.623(b)(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

We request that the Department reconsider its position on prohibiting owners from charging fees for amenities that were included in eligible basis when the compliance period expires. Upon conclusion on the compliance period, the low-income housing tax credits have been claimed and event of noncompliance are no longer reportable to the IRS on Form 8823. Being able to charge fees for these amenities

§10.624 Compliance Requirement for Development with 811 PRA Units

10.624(b) - There is a requirement to notify of potential 811 unit vacancies immediately. This was previously 30 days. Immediately is not reasonable and there should be some defined time frame for notification. If 30 days is too long, then I would suggest 10 or 15 days.

From: [Cody Hunt](#)
To: [Patricia Murphy](#)
Subject: TDHCA PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES IN TEXAS
Date: Monday, January 27, 2020 8:50:35 AM

Dear Patricia,

On behalf of all of our Palladium tax credit properties, we strongly oppose TDHCA's UTILITY ALLOWANCE RULE CHANGES THAT WILL RESULT IN MILLIONS OF DOLLARS IN LOST REVENUE FOR TEXAS AFFORDABLE HOUSING PROPERTIES REQUIRING ALTERNATIVE METHOD UTILITY ALLOWANCES TO USE A 12 MONTH RATE.

The rule change would result in over a 50% average increase in utility allowance, which would create a monthly loss of \$12,150 and an annual loss of \$145,800 for a 250 unit property with equal unit sizes charging maximum tax credit rents. The loss would significantly reduce cash flow on existing tax credit properties and would reduce the number of future developments, as well, as the deals would not be deemed financially feasible.

Please consider the negative impacts TDHCA'S PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES would have on Affordable Housing in TEXAS.

Thanks,

Cody J. Hunt, CPA
Corporate Controller
Palladium USA International, Inc.

"Changing lives – one apartment home at a time"

13455 Noel Road
Suite 400
Dallas, Texas 75240
Ph: 972-774-4439
Fax: 972-774-4495
www.palladiumusa.com

From: [Fred D'Lizarraga](#)
To: [Patricia Murphy](#)
Subject: TDHCA PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES IN TEXAS
Date: Sunday, January 26, 2020 8:01:23 PM
Attachments: [image003.jpg](#)

Dear Patricia,

This proposed rule change would result in millions of lost revenue. Why would the TDHCA consider a rule which negatively impacts the economic feasibility of current and future properties? On behalf of all the Palladium properties, consider this email as strong opposition to this proposed rule.

Best Regards,

Fred D'Lizarraga
Senior Vice President-COO,
Palladium USA International, Inc.
Omnium Management Company, Inc.
Palladium Sales & Marketing, Inc.
13455 Noel Road
Suite 400
Dallas, Texas 75240
972-774-4436



"Changing lives - one apartment home at a time"

From: [Joan Maxwell](#)
To: [Patricia Murphy](#)
Subject: TDHCA PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES IN TEXAS
Date: Monday, January 27, 2020 10:39:26 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)

Dear Patricia,

On behalf of all of our Palladium tax credit properties, we strongly oppose TDHCA's UTILITY ALLOWANCE RULE CHANGES THAT WILL RESULT IN MILLIONS OF DOLLARS IN LOST REVENUE FOR TEXAS AFFORDABLE HOUSING PROPERTIES REQUIRING ALTERNATIVE METHOD UTILITY ALLOWANCES TO USE A 12 MONTH RATE.

This rule change is significant, here is an example of the impact it would have in Houston 77005 area code:

Deregulated EFLs- zip code 77005

0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Average Utility Allowance Using 3 Month Rate Plan allowed under the current rule					
\$48	\$55	\$71	\$87	\$99	\$115
Average Utility Allowance Using 12 Month Required in the Proposed Rule					
\$74	\$85	\$107	\$129	\$150	\$173
Average Increase in Utility Allowance					
\$26	\$30	\$36	\$42	\$51	\$58
Average % increase					
54.17%	54.55%	50.70%	48.28%	51.52%	50.43%

FOR A 250 UNIT PROPERTY WITH EQUAL UNIT SIZES CHARGING MAXIMUM TAX CREDIT RENTS, THIS IS A MONTHLY LOSS OF \$12,150, AND AN ANNUAL LOSS OF \$145,800! This would result in making many existing tax credit properties negative cash flow and would prevent a significant number of future developments from being financial feasible thus resulting in the loss of many new affordable housing developments.

Please consider the negative impacts TDHCA'S PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES would have on Affordable Housing in TEXAS.

Thank you.

Best regards,

Joan Maxwell

Senior Vice President

Palladium USA International, Inc.

President

Omnium Management Company, Inc.

“Changing lives - one apartment home at a time”

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From: [Keith Pomykal](#)
To: [Patricia Murphy](#)
Cc: [Tom Huth](#); [Kim Schwimmer](#)
Subject: TDHCA PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES IN TEXAS
Date: Monday, January 27, 2020 11:12:45 AM
Attachments: [image002.jpg](#)

Dear Patricia,

As an advocate for affordable housing in Texas, and on behalf of our client, Palladium USA, their tax credit properties, and the Texans they serve, we strongly oppose TDHCA's UTILITY ALLOWANCE RULE CHANGES THAT WILL RESULT IN MILLIONS OF DOLLARS IN LOST REVENUE FOR TEXAS AFFORDABLE HOUSING PROPERTIES REQUIRING ALTERNATIVE METHOD UTILITY ALLOWANCES TO USE A 12 MONTH RATE.

The rule change would result in over a 50% average increase in utility allowance, which would create a monthly loss of \$12,150 and an annual loss of \$145,800 for a 250 unit property with equal unit sizes charging maximum tax credit rents. The loss would significantly reduce cash flow on existing tax credit properties and would reduce the number of future developments, as well, as the deals would not be deemed financially feasible.

Please consider the negative impacts TDHCA'S PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES would have on Affordable Housing in TEXAS.

Best regards,

Keith Pomykal
Vice President, Investments
RKS Group, Inc.
2626 Cole Avenue, Suite 300
Dallas, TX 75204

Office: (214) 720-1828
Cell: (214) 562-3207
Fax: (214) 853-5621

Keith@rksgroupprealestate.com
TREC Sales Agent License # 713864
www.RKSTexas.com



From: [Kim Schwimmer](#)
To: [Patricia Murphy](#)
Cc: [Tom Huth](#)
Subject: TDHCA PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES IN TEXAS
Date: Monday, January 27, 2020 4:28:06 PM

Dear Patricia,

As an co-developer/HUB for affordable housing in Texas, and collectively with my partners at Palladium USA, our tax credit properties, and the Texans we serve, we strongly oppose TDHCA's UTILITY ALLOWANCE RULE CHANGES THAT WILL RESULT IN MILLIONS OF DOLLARS IN LOST REVENUE FOR TEXAS AFFORDABLE HOUSING PROPERTIES REQUIRING ALTERNATIVE METHOD UTILITY ALLOWANCES TO USE A 12 MONTH RATE.

The rule change would result in over a 50% average increase in utility allowance, which would create a monthly loss of \$12,150 and an annual loss of \$145,800 for a 250 unit property with equal unit sizes charging maximum tax credit rents. The loss would significantly reduce cash flow on existing tax credit properties and would reduce the number of future developments, as well, as the deals would not be deemed financially feasible.

Please consider the negative impacts TDHCA'S PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES would have on Affordable Housing in TEXAS.

Sincerely,

Kim Schwimmer
Managing Member
The Land Experts, LLC
2626 Cole Avenue
Suite 300
Dallas, TX 75240
214-405-3507
www.thelandexperts.net

From: [Scott Johnson](#)
To: [Patricia Murphy](#)
Cc: [Tom Huth](#)
Subject: TDHCA PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES IN TEXAS
Date: Monday, January 27, 2020 11:00:14 AM
Attachments: [image001.jpg](#)

Dear Patricia,

On behalf of all of our Palladium tax credit properties, we strongly oppose TDHCA's UTILITY ALLOWANCE RULE CHANGES THAT WILL RESULT IN MILLIONS OF DOLLARS IN LOST REVENUE FOR TEXAS AFFORDABLE HOUSING PROPERTIES REQUIRING ALTERNATIVE METHOD UTILITY ALLOWANCES TO USE A 12 MONTH RATE.

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Please consider the negative impacts TDHCA'S PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES would have on Affordable Housing in TEXAS.

Thanks



Scott E. Johnson
Sr. Vice President | Palladium USA International, Inc.
President | Catalyst Builders, Inc.
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"Changing lives - one apartment home at a time"

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From: [Tom Huth](#)
To: [Patricia Murphy](#)
Subject: TDHCA PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES IN TEXAS
Date: Friday, January 24, 2020 3:43:20 PM
Attachments: [image001.jpg](#)

Dear Patricia,

On behalf of all of our Palladium tax credit properties, we strongly oppose TDHCA's UTILITY ALLOWANCE RULE CHANGES THAT WILL RESULT IN MILLIONS OF DOLLARS IN LOST REVENUE FOR TEXAS AFFORDABLE HOUSING PROPERTIES REQUIRING ALTERNATIVE METHOD UTILITY ALLOWANCES TO USE A 12 MONTH RATE.

This rule change is significant, here is an example of the impact it would have in Houston 77005 area code:

Deregulated EFLs- zip code 77005									0
BR	1 BR	2 BR	3 BR	4 BR	5 BR				
Average Utility Allowance Using 3 Month Rate Plan allowed under the current rule									\$48
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\$74	\$85	\$107	\$129	\$150	\$173				
Average Increase in Utility Allowance									
\$26	\$30	\$36	\$42	\$51	\$58				
Average % increase									54.17%
54.55%	50.70%	48.28%	51.52%	50.43%					

FOR A 250 UNIT PROPERTY WITH EQUAL UNIT SIZES CHARGING MAXIMUM TAX CREDIT RENTS, THIS IS A MONTHLY LOSS OF \$12,150, AND AN ANNUAL LOSS OF \$145,800! This would result in making many existing tax credit properties negative cash flow and would prevent a significant number of future developments from being financial feasible thus resulting in the loss of many new affordable housing developments.

Please consider the negative impacts TDHCA'S PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES would have on Affordable Housing in TEXAS.

Thank you.

Best regards,

Tom

Thomas E. Huth
President and CEO

Palladium USA International, Inc.

"Changing lives - one apartment home at a time"

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From: [Wade Roper](#)
To: [Patricia Murphy](#)
Cc: [Tom Huth](#)
Subject: TDHCA PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES IN TEXAS
Date: Monday, January 27, 2020 10:59:34 AM
Attachments: [image001.jpg](#)

Dear Patricia,

On behalf of all of our Palladium tax credit properties, we strongly oppose TDHCA's UTILITY ALLOWANCE RULE CHANGES THAT WILL RESULT IN MILLIONS OF DOLLARS IN LOST REVENUE FOR TEXAS AFFORDABLE HOUSING PROPERTIES REQUIRING ALTERNATIVE METHOD UTILITY ALLOWANCES TO USE A 12 MONTH RATE.

The rule change would result in over a 50% average increase in utility allowance, which would create a monthly loss of \$12,150 and an annual loss of \$145,800 for a 250 unit property with equal unit sizes charging maximum tax credit rents. The loss would significantly reduce cash flow on existing tax credit properties and would reduce the number of future developments, as well, as the deals would not be deemed financially feasible.

Please consider the negative impacts TDHCA'S PROPOSAL TO CHANGE THE UTILITY ALLOWANCE RULES would have on Affordable Housing in TEXAS.

Thank you,



Wade Roper
Project Development Manager | Palladium USA International, Inc.
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"Changing lives - one apartment home at a time"

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From: [Saleem Jafar](#)
To: [Patricia Murphy](#)
Subject: TDHCA Proposed Compliance Rule, 10 TAC, Chapter 10, Subchapter F, Sec 10.614: Utility Allownces, Rate Change Analysis
Date: Monday, January 27, 2020 3:37:03 PM
Attachments: [image001.jpg](#)

Dear Ms. Murphy-

With respect to the proposed rule captioned above, as GP of several HTC and HOME loan projects in the State of Texas and having successfully developed a few thousand such units in the State, after reviewing the impacts of the proposed changes, we would like to express our strong opinion that such changes would and could, and in many cases, severely adversely impact the NOI of many existing properties amidst a constantly-rising operating cost environment by essentially LOWERING NOI and therefore cash available for both hard and soft debt service, cap ex and proper and required minimum DSCR, thereby potentially placing such projects at risk of loan and/or covenant default by raising the utility allowances without a concomitant and contemporaneous increase in rents.

The adverse impact of such a rule or rule change would and could be widespread and ripple through both the financial stability of the partnerships that own such projects (with again, concomitant adverse implications for existing equity and lender loan provisions, guarantees and covenants). While perhaps the desire and intent to lower the effective tenant-portion of the rent is laudable, in our opinion, the financial stability of the partnerships (and guarantors who must stand behind and directly or indirectly collateralize such stability and provide liquidity as and when needed) far exceeds the potential tenant-rent benefits. After all, if the project/partnership cannot meet their financial obligations (minimum DSCR, CF, cap ex, etc.) and be able to timely and fully fund their replacement reserve requirements, budgeted and unbudgeted O&M requirements and maintain such projects in a quality, safe and habitable manner, where is the beneficiary?

We therefore strongly urge your and the Department's consideration in dropping this rule or rule change.

Thank you for your consideration of this important matter.

Respectfully submitted.

Saleem A. Jafar



Odyssey Residential Holdings, LP

*Stone Tower
13760 Noel Road
Suite 1000
Dallas, TX 75240
972-701-5550 (direct)*

sjafar@orhlp.com

"In God we trust; all others, bring data"

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From: [Wanda White](#)
To: [Patricia Murphy](#)
Subject: TDHCA PROPOSING TO CHANGE UTILITY ALLOWANCE RULES
Date: Monday, January 27, 2020 3:53:32 PM

Patricia Murphy,

In response to the TDHCA Proposing to Change Utility Allowance Rule

I am against this change, most of the population does not choose the 12 month over the 3 month rate plan, in fact most residents this day and age are using a prepay electric company.

The difference in revenue is a staggering amount with over a 50% increase which will Jeopardize the NOI of all LIHTC properties.

We have just been restricted by TAA on our current late fees last year which has already been a dramatic change in the NOI for most properties, especially smaller LIHTC communities.

We are against this TDHCA Proposed Change to the Utility Allowance rule.

Thank you,

Wanda White

CA M

**Compliance Director
Lifestyle Property Management
4851 Keller Springs Road, Ste 209
Addison, Tx 75001**

Email: wwhite@lifestylemgt.net

**Phone 972.733.0096
Fax 972.733.1864**

From: [Chris Lischke](#)
To: [Patricia Murphy](#); [Dmitry Gourkine](#)
Subject: TDHCA Utility Allowance Changes
Date: Monday, January 27, 2020 4:26:27 PM

Patricia,

We are writing you to voice our concern with the proposed change to the utility allowance method calculation. The new method of determining utility allowances will negatively affect all deals in our pipeline, with the residents unfortunately being the party that suffers as a result.

From the development side, the adverse change in rules will affect the DCR calculation for all deals that we are currently in the process of placing in to service. On the development side of our portfolio, properties were underwritten to a 1.15 DCR in accordance with TDHCA recommendation to maximize the private financing available to rehabilitate existing affordable housing that was approaching the end of its useful life. The change in methodology will be perceived as a risk going forward by lenders and will restrict badly needed funding in the future for affordable housing developments in the state of Texas.

On our portfolio of stabilized assets, the impact of an estimated 48% increase in utility allowances will have a direct affect on our 2021 budget for capital improvements to the projects. Major items such as HVAC systems, roofs, appliances, and flooring will likely have to be patched or repaired over multiple years, as a result of less available income at the property to support its needs. Additionally, private capital that fund the minor rehab of projects after the initial compliance period will be harder to find in the future knowing that ad-hoc rule changes such as this increase the risk of investing in Texas. Projects that are past the initial compliance period depend on this small margin that we have for badly needed capital expenditures that will be foregone as a result of this new methodology, leading to the deterioration of the affordable housing stock across Texas.

We urge you to reconsider the proposed rule change and would be happy to discuss further.

Thanks,

Chris Lischke | LEDG Capital, LLC
chris@LEDGcapital.com | 314-749-2038



January 27, 2020

Attn: Patricia Murphy
P.O. Box 13941
Austin, Texas 78711
Via email: patricia.murphy@tdhca.state.tx.us

Re: Texas Housers' comments on Draft 10 TAC 10, Subchapter F

Dear Ms. Murphy,

For over 30 years Texas Housers has been a committed advocate on behalf low-income income Texans' right to safe, affordable housing in high-quality neighborhoods. The Low-Income Housing Tax Credit (LIHTC) program is the most significant source of affordable housing in Texas, making it vital that the program is implemented in a manner that best serves our most vulnerable renters in a manner that overcomes past practices of racial residential segregation and discrimination.

We thank the Texas Department of Housing and Community Affairs (TDHCA) staff for opportunities to participate in the rulemaking process, particularly relating to the robust discussion around these amendments during the Rules Committee meeting on October 9, 2019 and the roundtable on October 21, 2019. We are greatly appreciative of staff's hard work during this process and for the Committee Members' commitment to ensuring that the multifamily rules are sensitive to the needs of the tenants we are all here to serve.

Please accept the following comments on the proposed amendments to 10 TAC Subchapter F:

1. Texas Housers supports TDHCA's proposed changes to §10.611(c).

Texas Housers supports the proposed change that would disallow any increases of a tenant's income designation after the tenant has moved in except under very specific circumstances, such as if the tenant's income changes such that they're no long eligible for a subsidized unit. We also support the change that would require a Development Owner to have a written policy for changing income designations.

However, we would request that TDHCA staff be more proscriptive in what this policy would require. For example, every written policy for changing income designations should

include a written notice that (1) gives a minimum 90-day notice to tenants that their income designation will be change; (2) provides information explaining that if their income designation changes, how much their rent will increase; and (3) ensures a guaranteed face-to-face meeting with the property manager to explain what is happening.

As tenant advocates one of the complaints we hear most frequently is that tenants don't understand why their rent is increasing because property managers only communicate that rent is increasing—not why and rarely with a justification for how much rent is increasing.

2. Texas Housers support's the proposed changes to §10.612(d)(5) – (7) requiring tenant files to include acknowledged statements regarding residents' rights and rent information.

It is important that tenant files include these acknowledgments because otherwise there is no way to ensure that property managers are reviewing important information with tenants. We would also request that this language be amended to include an acknowledgment that leasing staff verbally explained these documents to potential tenants and that each document be provided in the proper language for the tenant at issue.

3. Texas Housers supports TDHCA's proposed changes to §10.614(c)(3)(C)(v) which requires utility allowance calculations to have a minimum 12-month term.

As the rule is currently written, utility allowances at the start of a tenancy can be calculated using a term that is shorter than the lease period. If a utility allowance term is shorter than 12 months, a tenant could experience drastic changes in what they're expected to pay as the utility allowance changes over time. This rule change provides more security, certainty, and consistency for tenants.

We also support the change to a 12-month term for calculating utility allowances in the remaining sections of the Subchapter.

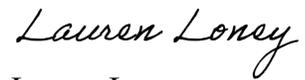
3. Texas Housers supports TDHCA's proposed changes to §10.622(j).

Every person who signs a lease has the right to rely on that lease as the total sum of the tenant's responsibilities for the term of that lease, including how much rent the tenant should pay. It is completely unreasonable for a Development Owner to increase rent during a lease term regardless of whether or not a tenant signed an addendum allowing the Development Owner to do so.

Any tenant in Texas is at a complete disadvantage in being able to negotiate the terms of a lease. Landlords—particularly at large multifamily properties—have complete control over lease terms and what addendums must be signed. This is especially true for lower-income tenants who are significantly more restricted in their housing choices than somebody who can afford a market-rate apartment. This change protects tenants and ensures that what they agree to pay at the start of the lease is what they can expect to pay throughout. If a rent limit or utility allowance changes, the Development Owner retains the right to change lease terms upon renewal.

Thank you, again, for the opportunity to submit comments to these proposed rules. If you have any questions, please don't hesitate to reach out.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Loney".

Lauren Loney

Texas Housers
Staff Attorney/Advocacy Co-Director
lauren@texashousing.org
(573) 355-1731

From: [Barry Kahn](#)
To: [Patricia Murphy](#)
Subject: Utility allowance change
Date: Monday, January 27, 2020 4:51:38 PM

Dear Patricia,

Hope you are doing well.

Upon returning from out of town last week, we have just become aware that the methodology used for utility allowances may change. Supposedly this proposal is very new and has not been vetted by the industry where those impacted have had any information or had an opportunity to examine the impact.

The shortage of affordable housing is critical. Nationally all are looking for methods to relieve current impediments and expand the affordable stock, not restrict or reduce it. As we understand the issue at this time, even if the methodology had been used for years, without criticism and with supposedly department oversight, such may not be allowed in the future. At least one involved professional has spoken on panels with department personnel and nothing was suggested such may not be proper. Most if not all developers just relied on the letters, supposedly prepared by engineers, and have operated on a premise that such was allowed. Further, prior to application submission, during underwriting, at cost certification and at any compliance inspections, the department approves the utility allowances. And when requested in the past, the department has reviewed rents and utility allowances for correctness. Other years they approved when info was sent in. Currently they are just acknowledging receipt of the utility allowances and stating that such allowances are approved during the next compliance inspection.

So if a property does not have sufficient cash flow to cover debt service due to this methodology change, whether from original perm closing or refinance, such property may no longer be feasible and be subject to foreclosure. And if foreclosed, the affordable housing availability would be reduced. In such instances investors will be lose part of their projected returns. Additionally some developers may have personal liability to the investor, all the while thinking they were using a department screened consultant and approved methodology.

Investors and lenders are dependent on TDHCA and developers for information they can rely on. Further if investors and lenders are impacted by this proposal, many or most will be apprehensive about future Texas commitments and likely will lower the benefits of their financial products. All of which will likely result in less affordable housing for Texas.

Please reopen the vetting process of any new proposal on a matter this important to all. Terminating this proposal is obviously preferred. We are happy to provide any additional needed information. Thank you.

Barry

W. Barry Kahn
Hettig/Kahn Development Corp.
5325 Katy Freeway, Suite One
Houston, Texas 77007
(713) 871-0063
bkahn@hettig-kahn.com

From: [Jason Arechiga](#)
To: [Patricia Murphy](#)
Subject: Utility Allowances
Date: Monday, January 27, 2020 3:41:51 PM

Ms. Murphy,

The NRP Group is in agreement with TAAHP regarding comments on Section 10.614: Utility Allowances. However, I would like to add a few notes.

Adopting a standard utility allowance can have both deleterious and positive outcomes for the resident, depending on where the property is located, but generally, would most likely reduce their rent due to increased UAs (as mentioned in the TAAHP response). While normally this may be a good thing from TDHCA's perspective, the unintended consequences are as follows:

Essentially, it can significantly alter current and future developments that utilize other methods to ensure it matches deregulated industry rates, by lowering revenue due to higher UA's (see TAAHPs research into Houston for example). To apply a standard number defeats the purpose of deregulated energy and would most likely have developers and owners electing to pay electricity and water and passing the difference in rent to the tenant. This unintended consequence would thereby *increase* the rent of the residents as frankly, the development and ownership community will seek to restore equivalent revenues. In turn, development and ownership will still utilize the cheapest deregulated option, and not give the resident the choice to manage their own bills anymore. Effectively, management would control which provider is used for nearly all services, and overall rents would rise. The resident would no longer have the choice to reduce power and water use to save themselves. In turn, this is also not

a green option as residents will use power and water as much as possible.

Please do not consider what I wrote above as an unlikely scenario. Our management team has paid for electricity and water in the past when UA's are too high. And in this case, based on our analysis, most UA's would increase significantly. It is extremely likely that current and future communities will switch almost immediately. Inevitably, it will lead to fewer projects being built as those that are underwritten with little room to spare will have reduced revenue and not be feasible. Those that remain underwritten to cover debt coverage ratio will convert as I noted above.

Overall, this will create a worse experience for residents and decrease the amount of deals that are done each year as the effect it has down the line.

Thank you.

Regards,

Jason Arechiga
210.216.4600

6b

BOARD ACTION REQUEST

COMPLIANCE DIVISION

APRIL 23, 2020

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; and an order adopting new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee and directing that they be published for adoption in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, at the Board meeting of January 16, 2020, the Board authorized the proposal of a repeal and new Previous Participation Rule to be published in the *Texas Register* for public comment;

WHEREAS, staff recommends to the Board that there is a continuing need for this rule to exist, which is to ensure compliance with applicable sections of Tex. Gov't Code Chapter 2306; and

WHEREAS, public comment was accepted from January 30, 2020, to March 3, 2020, and staff has provided a reasoned response to comment received.

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 adopt the repeal and new rule, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

BACKGROUND

At the meeting of January 16, 2020, the Board approved the repeal and publication of a new Previous Participation Rule for comment in the *Texas Register*. Staff has reviewed all comments and provided a reasoned response to these comments.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 1, Subchapter C Previous Participation and Executive Award Review and Advisory Committee

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter C §1.301 through §1.303 Previous Participation and Executive Award Review and Advisory Committee. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Wilkinson has determined that for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program but relates to the repeal, and simultaneous readoption making changes to an existing activity, completing previous participation reviews prior to awarding Department funds or approving ownership transfers.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, completing previous participation reviews prior to awarding Department funds or approving ownership transfers.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Robert Wilkinson, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between January 30, 2020, and March 2, 2020. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comment was received.

The Board adopted the final order adopting the repeal on April 23, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 1, Subchapter C

§1.301 Previous Participation Reviews for Multifamily Awards and Ownership Transfers

§1.302 Previous Participation reviews for Department Programs not Covered by §1.301 of this Subchapter

§1.303 Executive Award Review Advisory Committee

Attachment 2: Preamble for adopting new 10 TAC, Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC, Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee with changes to the proposed text as published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 672). The purpose of the proposed new sections is to streamline the process for conducting previous participation reviews. The new sections add a new definition for Actively Monitored Development; more closely align the consideration of control with other Department rules; clarify that if both Applicants are considered a Category 2 when evaluated separately and their Combined Portfolio is a Category 3, the Application will be considered a Category 2; provide that previously approved applicants are approved provided that conditions have not been violated and there have been no new events of noncompliance; eliminate the requirement for the compliance division to recommend denial for all Category 3 applicants; and eliminate the connection between events of noncompliance and possible conditions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Wilkinson has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, previous participation reviews prior to awarding Department funds or approving ownership transfers.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not expand, limit, or repeal an existing regulation.
7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.057.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for evaluating applicant's previous participation in Department administered programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is an owner or participant, the new rule provides for a more clear, transparent process for doing so and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the new rule because this rule is applicable only to applicants, not municipalities.

3. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule only relates to the evaluation of the past performance of owners and administrators of Department programs when they are applying for new funds, therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Robert Wilkinson, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between January 30, 2020, and March 2, 2020. Comments regarding the proposed amendments were accepted in writing and by e-mail with comments received from:

1. Lisa Stephens- Saigebrook Development
2. The Texas Affiliation of Affordable Housing Providers
3. Cynthia Bast- Locke Lord
4. San Antonio Housing Authority

§1.301(b)

COMMENT SUMMARY: Commenter 2 recommended deletion of the term Actively Monitored Development because there are times when a property may need to respond to the Department before the first monitoring visit. As drafted, the rule could be interpreted to include as an event of noncompliance non responsiveness prior to the Development being considered as part of the portfolio.

STAFF RESPONSE: To avoid confusion the definitions of Actively Monitored Development and Events of Noncompliance were updated as follows:

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection an onsite or desk a file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(6) Events of Noncompliance--Any event for which an Actively Monitored Development may be found to be in noncompliance for ~~compliance~~ monitoring purposes as further provided for in §10.803 of this Title or in the table provided at §10.625 of this Title (relating to Events of Noncompliance).

§1.301(b)

COMMENT SUMMARY: Commenter 3 noted that there may be a conflict between the rule and 2 CFR Part 180 regarding the term Affiliate.

STAFF RESPONSE:

The Department does not believe there is a conflict between the definitions because an Applicant for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA will have to meet both definitions.

§1.301(b)

COMMENT SUMMARY: Commenter 3 suggested that the definition of Person be eliminated from this rule and just refer to other sections of the TAC.

STAFF RESPONSE:

The Department believes this definition provides clarity and is retaining it.

§1.301(c)

COMMENT SUMMARY: Commenter 2 recommended that events of noncompliance remain on a Development's compliance history after correction for a period of time equal to the frequency of monitoring.

STAFF RESPONSE: The commenter noted the difference between monitoring frequency between tax-exempt bond properties and housing tax credit properties. Given that there are a number of different factors that affect the monitoring schedule, (for example, due to COVID-19 most monitoring at this time is postponed) staff does not recommend that issues remain on a Development's compliance history based on the frequency of monitoring.

§1.301(c)

COMMENT SUMMARY: Commenters 2 and 4 opposed the removal of the "control form". Commenter 3 recommended that either the form remain or the Annual Owner's Compliance Report be modified to

identify the Controlling Persons, using an organizational chart similar to the chart used if filing for an application under the current rules.

STAFF RESPONSE: Staff recommends approval of the rule allowing the use of the control form but with the following changes based on the requirements of 2 CFR Parts 180 and 200, the Uniform Grant Management Standards, and the Texas Single Audit Act.

Except for Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation. The Department may require additional information to support the Control Form including but not limited to partnership agreements or other legal documents.

§1.031(e)

COMMENT SUMMARY: Commenter 2 suggested that an applicant's category because of non-responsiveness should be a percentage of the portfolio size.

STAFF RESPONSE: Staff agrees and proposes the following language to §1.301(e)(2)(C) for Category 2:

"Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event; however, the number of times is less than 25% of the number of Actively Monitored Developments in the Combined Portfolio."

Staff agrees and proposes the following language to §1.301(e)(2)(C) for Category 3:

"Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event and the number of times is equal to or greater than 25% of the number of Actively Monitored Developments in the Combined Portfolio."

§1.301(c)

COMMENT SUMMARY: Commenter 3 suggested that "Findings, Concerns and Deficiencies" should be eliminated because they are not defined in this rule.

STAFF RESPONSE: Staff updated this rule to note that Events of Noncompliance, and Findings, Concerns and Deficiencies are further described in 10 TAC §6.2, 10 TAC §7.2, 10 TAC §10.625, and 10 TAC §10.803 or 10 TAC §20.3.

§1.301(g)(1) and §1.301(h)(1)

COMMENT SUMMARY: Commenter 3 noted that the rule was vague about which division would be making certain recommendations.

STAFF RESPONSE: The rule was written to provide some flexibility so that the most appropriate division can contact the applicant and inform them of the EARAC recommendation.

§1.303(g)(4)

COMMENT SUMMARY: Commenter 1 recommends that EARAC and an applicant meet if EARAC is going to recommend denial of an award.

STAFF RESPONSE: The rule as proposed and adopted has the possibility that an applicant and EARAC could meet if there is a dispute and EARAC is going to recommend denial. However, since it may not always be necessary or possible to have an in person meeting with all EARAC members the rule is not being changed based on this comment.

General

COMMENT SUMMARY: Commenter 3 suggested several non substantive changes throughout the rule to improve readability.

STAFF RESPONSE: Staff agrees and made the changes.

§1.301. Previous Participation Reviews for Multifamily Awards and Ownership Transfers.

(a) Purpose and Applicability. The purpose of this rule is to provide the procedures used by the Department to comply with Tex. Gov't Code §§2306.057, and 2306.6713 which require the Compliance Division to assess the compliance history of the Applicant and any Affiliate, the compliance issues associated with the proposed or existing Development, and provide such assessment to the Board. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c), and Uniform Grant Management Standards (UGMS), where applicable.

(b) Definitions. The following definitions apply only as used in this Subchapter. Other capitalized terms used in this Section have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws.

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection, ~~or an onsite or desk~~ a file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) Affiliate--Persons are Affiliates of each other or are "affiliated" if they are under common Control by each other or by one or more third parties. "Control" is as defined in §11.1 of this Title (relating to

General items relating to Pre-Application, Definitions, Threshold Requirements and Competitive Scoring). For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Affiliate is not on the Federal Suspended or Debarred Listing, Affiliate is also defined as required by 2 CFR Part 180.

(3) Applicant--In addition to the definition of applicant in §11.1 of this Title, in this Subchapter, the term applicant includes Persons requesting approval to acquire ~~purchase~~ a Department monitored Development.

(4) Combined Portfolio--Actively Monitored Developments within the Control of Persons affiliated with the Application as identified by the Previous Participation Review and as limited by Subsection (c) of this Section.

(5) Corrective Action Period--The timeframe during which an Owner may correct an Event of Noncompliance, as permitted in §10.602 or §10.803 of this Title (relating to Notice to Owners and Corrective Action Periods and Compliance and Events of Noncompliance, respectively), including any permitted extension or deficiency period.

(6) Events of Noncompliance--Any event for which an Actively Monitored Development may be found to be in noncompliance for ~~compliance~~-monitoring purposes as further provided for in §10.803 of this Title or in the table provided at §10.625 of this Title (relating to Events of Noncompliance).

(7) Monitoring Event--An onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.

(8) Person--"Person" is as defined in 10 TAC Chapter 11 (relating Qualified Allocation Plan (QAP)). For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Applicant or Affiliate is not on the Federal Suspended or Debarred Listing, Person is also defined as required by 2 CFR Part 180.

(9) Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Items Not Considered. When conducting a previous participation review the items in Paragraphs (1) through (10) of this Subsection will not be taken into consideration:

(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (as described in, 10 TAC §6.2, 10 TAC §7.2, 10 TAC §10.625, 10 TAC §10.803 and 10 TAC §20.3 under any Department program) that were corrected over three years from the date the Event is closed;

(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently corrected;

(3) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently uncorrected and the Applicant has had Control for less than one year, or if the Owner is still within the timeframe of a Department-approved corrective action from the Department's Enforcement Committee;

(4) The Event of Noncompliance "Failure to provide Fair Housing Disclosure notice";

(5) The Event of Noncompliance "Program Unit not leased to Low income Household" sometimes referred to as "Household Income above income limit upon initial Occupancy" for units at Developments participating in U.S. Department of Housing and Urban Development programs (or used as HOME Match) or U.S. Department of Agriculture, if the household resided in the unit prior to an allocation of Department resources and Federal Regulations prevent the Owner from correcting the issue;

(6) The Event of Noncompliance "Casualty loss" if the restoration period has not expired;

(7) Events of Noncompliance that the Applicant believes can never be corrected and the Department agrees in writing that such item should not be considered;

(8) Events of Noncompliance corrected within their Corrective Action Period ~~or within 10 days of the day the Owner received notice that the Corrective Action was insufficient;~~

(9) Events of failure to respond within the Corrective Action Period which have been fully corrected prior to January 1, 2019, will not be taken into consideration under Subsection (e)(2)(C) and (e)(3)(C) of this Section; ~~and~~

(10) Events of Noncompliance precluded from consideration by Tex. Gov't Code §2306.6719(e); and

(11) Except for Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811, Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation. The Department may require back up to support the Control Form including but not limited to partnership agreements or other legal documents.

(d) Applicant Process. Persons affiliated with an Application or an Ownership Transfer request must complete the Department's Uniform Previous Participation Review Form and respond timely to staff inquiries regarding apparent errors or omissions, but for Applications no later than the Administrative

Deficiency deadline. For an Ownership Transfer request, a recommendation will be delayed until the required forms or responsive information is provided.

(e) Determination of Compliance Status. Through a review of the form, Department records, and the compliance history of the Affiliated multifamily Developments, staff will determine the applicable category for the Application or Ownership Transfer request using the criteria in Paragraphs (1) through (3) of this Subsection. Combined Portfolios will not be designated as a Category 3 if both Applicants are considered a Category 2 when evaluated separately. For example, if each Applicant is a Category 2 and their Combined Portfolio is a Category 3, the Application will be considered a Category 2.

(1) Category 1. An Application will be considered a Category 1 if the Actively Monitored Developments in the Combined Portfolio have no issues that are currently uncorrected, all Monitoring Events were responded to during the Corrective Action Period, and the Application does not meet any of the criteria of Category 2 or 3.

(2) Category 2. An Application will be considered a Category 2 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period ~~totals total~~ at least three but is less than 50% of the number of Actively Monitored Developments in the Combined Portfolio; or

(B) There are uncorrected Events of Noncompliance but the number of Events of Noncompliance is 10% or less than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to the Department's Compliance Monitoring and Tracking System (CMTS) or submitted during the seven day period referenced in Subsection (f) of this Section will be reviewed and the Category determination may change as appropriate; or

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event; however, the number of times is less than 25% of the number of Actively Monitoring Developments in the Combined Portfolio ~~for three or fewer Monitoring Events~~; or

(D) The Applicant is required to have a Single Audit and a relevant ~~and germane~~ issue was identified in the Single Audit (e.g. Notes to the Financial Statements), or the required Single Audit is past due.

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of Actively Monitored Developments in the Combined Portfolio;

(B) The number of Events of Noncompliance that are currently uncorrected total 10% or more than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to CMTS or submitted during the seven day period referenced in Subsection (f) of this Section will be reviewed and the Category determination may change as appropriate;

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event and the number of times is equal to or greater than 25% of the number of Actively Monitored Developments in the Combined Portfolio ~~for more than three Monitoring Events;~~

(D) Any Development Controlled by the Applicant has been the subject of an agreed final order entered by the Board and the terms have been violated;

(E) Any Person subject to previous participation review failed to meet the terms and conditions of a prior condition of approval imposed by the EARAC, the Governing Board, voluntary compliance agreement, or court order;

(F) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable documents for any Development currently Controlled by the Applicant or that was Controlled by the Applicant at the time the payment was due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(G) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(H) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(I) Fees or other amounts owed to the Department by any Person subject to previous participation review are 30 days or more past due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(J) Despite past condition(s) agreed upon by any Person subject to previous participation review to improve their compliance operations, three or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;

(K) Any Person subject to previous participation review has or had Control of a TDHCA funded Development that has gone through a foreclosure; or

(L) Any Person subject to previous participation review or the proposed incoming owner is currently debarred by the Department or currently on the federal debarred and suspended listing.

(f) Compliance Notification to Applicant and EARAC. The Compliance Division will notify Applicants of their compliance status from the categories identified in Paragraphs (1) to (4) of this Subsection.

(1) Previously approved. If EARAC or the Board previously approved the compliance history of an Applicant, with or without conditions (including approvals resulting from a Dispute under §1.303(g) of this Subchapter (relating to Executive Award and Review Advisory Committee (EARAC))) such conditions have not been violated, and no new Events of Noncompliance ~~events~~ have occurred since the last approval, the compliance history will be deemed acceptable without further review or discussion and recommended as approved or approved with the same prior conditions.

(2) Category 1. The compliance history of Category 1 applications will be deemed acceptable (for Compliance purposes only) without further review or discussion.

(3) Category 2 and Category 3. Category 2 and 3 Applicants will be informed by the Compliance Division that the Application is a Category 2 or 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC.

(4) The Department will not make an award or approve an Ownership Transfer to any entity who has an Affiliate, Board member, or a Person identified in the Application that is currently on the Federal Debarred and Suspended Listing. An Applicant or entity requesting an Ownership Transfer will be notified of the debarred status and will be given the opportunity (subject to other Department rules) to remove and replace the Affiliate, Board member, or Person so that the transfer or award may proceed.

(g) Compliance Recommendation to EARAC for Awards.

(1) After taking into consideration the information received during the seven-day period, Category 2 Applications will be recommended for approval or approval with conditions (for compliance purposes only). Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be notified if their award is recommended for approval with conditions.

(2) After taking into consideration the information received during the seven-day period, Category 3 applications will be recommended for approval, approval with conditions (for compliance purposes only) or denial. Any recommendation for an award or ownership transfer with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be notified if their award is recommended for denial or approval with conditions.

(3) An Applicant that will be recommended for denial or awarded with conditions will be informed of their right to file a Dispute under §1.303 of this Subchapter.

(h) Compliance Recommendation for Ownership Transfers.

After taking into consideration the information received during the seven-day period the results will be reported to the Executive Director with a recommendation of approval, approval with conditions, or denial. If the Executive Director determines that the request should be denied, or approved with conditions and the requesting entity disagrees, the matter may be appealed to the Board under §1.7 of this Title (relating to Appeals).

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter.

(a) Purpose and applicability. This Section applies to program awards not covered by §1.301 of this Subchapter (relating to Previous Participation Reviews for Multifamily Awards and Ownership Transfers). With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.

(b) Capitalized terms used in this Section herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws. For this Section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract. As used in this Section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Upon Department request, Applicant will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this Subchapter (relating to Providing Contact Information to the Department), and if applicable with §6.6 of this Title (relating to Subrecipient Contact Information and Required Notifications);

(2) A list of any multifamily Developments owned or Controlled by the Applicant that are monitored by the Department;

(3) Identification of all Department programs that the Applicant has participated in within the last three years;

(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this Chapter (relating to Single Audit Requirements). If a Single Audit is required by UGMS Subpart E, a copy of the State Single Audit must be submitted to the Department;

(5) In addition to direct requests for information from the Applicant, information is considered to be requested for purposes of this Section if the requirement to submit such information is made in a NOFA or Application for funding; and

(6) Applicants will be provided a reasonable period of time, but not less than seven calendar days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:

(1) The Applicant or Affiliate entities identified by the Applicant's Single Audit owes an outstanding balance in accordance with §1.21 of this Chapter (relating to Action by Department if Outstanding Balances Exist), and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;

(2) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department; or

(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department.

(e) The Single Audit of an Applicant, or Affiliate entities identified by the Applicant's Single Audit, subject to a Single Audit, and not currently contracting for funds with the Department will be reviewed. In evaluating the Single Audit, the Department will consider both audit findings, and management responses in its review to identify concerns that may affect the organization's ability to administer the award. The Department will notify the Applicant of any Deficiencies, findings or other issues identified through the review of the Single Audit that requires additional information, clarification, or documentation, and will provide a deadline to respond.

(f) The Compliance Division will make a recommendation of award, award with conditions, or denial based on:

(1) The information provided by the Applicant;

(2) Information contained in the most recent Single Audit;

(3) Issues identified in Subsection (d) of this Section;

(4) The Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the Corrective Action Period); and

(5) The Department's record of complaints concerning the Applicant.

(g) Compliance Recommendation to EARAC.

(1) If the Applicant has no history with Department programs, and Compliance staff has not identified any issues with the Single Audit or other required disclosures, the Application will be deemed acceptable (for Compliance purposes) without EARAC review or discussion.

(2) An Applicant with no history of monitoring Findings, Concerns, and/or Deficiencies or with a history of monitoring Findings, Concerns, and/or Deficiencies that have been awarded without conditions subsequent to those identified Findings, Concerns, and/or Deficiencies, will be deemed acceptable without EARAC review or discussion for Compliance purposes, if there are no new monitoring Findings, Concerns, or Deficiencies or complaint history, and if the Compliance Division determines that the most recent Single Audit or other required disclosures indicate that there is no significant risk to the Department funds being considered for award.

(3) The Compliance Division will notify the Applicant when an intended recommendation is an award with conditions or denial. Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration by the Board.

(4) After review of materials submitted by the Applicant during the seven day period, the Compliance Division will make a final recommendation regarding the award. If recommending denial or award with conditions, the Applicant will be notified of their right to file a dispute under §1.303 of this Subchapter.

(h) Consistent with §1.403 of Subchapter D of this Chapter, (relating to Single Audit Requirements), the Department may not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any Applicant or entity who has an Affiliate, Board member, or person identified in the Application that is currently debarred by the Department or is currently on the Federal Suspended or Debarred Listing. Applicants will be notified of the debarred status of an Affiliate, Board Member or Person and will be given an opportunity to remove and replace that Affiliate, Board Member or Person so that funding may proceed. However, individual Board Member's participation in other Department programs is not required to be disclosed, and will not be taken into consideration by EARAC.

(j) Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law, unless the submission is made, and the Single Audit has been reviewed and found acceptable by the Department.

(k) For CSBG funds required to be distributed to Eligible Entities by formula, the recommendation of the Compliance Division will only take into consideration Subsection (i) of this Section.

(l) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve.

§1.303.Executive Award and Review Advisory Committee (EARAC).

(a) Authority and Purpose. The Executive Award and Review Advisory Committee (EARAC) is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Per Tex. Gov't Code §2306.1112(c), EARAC is not subject to Tex. Gov't Code, Chapter 2110. The Department also utilizes EARAC as the body to consider funding and allocation recommendations to the Board related to other programs, and to consider an awardee under the requirements of 2 CFR §200.331(b) and (c), and UGMS, which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs and as described in §1.403 of Subchapter D of this Chapter. It is also the purpose of this rule to provide for the operation of the EARAC, to provide for considerations and processes of EARAC, and to address actions of the Board relating to EARAC recommendations. Capitalized terms used in this Section herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws.

(b) EARAC may meet in person or by email to make recommendations on awards, discuss deficiencies needed to make recommendations, discuss Disputes, and address inquiries by Applicants or responses to a negative recommendation.

(c) EARAC Recommendation Process.

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, EARAC has not identified a rule or statutory-based impediment that would prohibit the Board from making an award.

(2) A positive recommendation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in Subsection (e) of this Section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of proposed conditions. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an opportunity to dispute the conditions as described in Subsection (g) of this Section, regarding EARAC Disputes.

(4) Category 3 applicants that will be recommended for denial will be notified and informed of their right to dispute the negative EARAC recommendation as described in Subsection (g) of this Section, regarding EARAC Disputes.

(d) Conditions to an award may be placed on a single Development property, a Combined Portfolio portfolio of properties, or a portion of a Combined Portfolio portfolio of properties if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in Subsection (e) of this Section may be customized to provide specificity regarding affected Developments ~~properties~~, Persons or dates for meeting conditions. Category 2 or Category 3

Applications may be awarded with the imposition of one or more of the conditions listed in Subsection (e) of this Section.

(e) Possible Conditions.

(1) Applicant/Owner is required to ensure that each Person subject to previous participation review for the Combined Portfolio will correct all applicable issues of non-compliance identified by the previous participation review on or before a specified date and provide the Department with evidence of such correction within 30 calendar days of that date.

(2) Owner is required to have qualified personnel or a qualified third party perform a one-time review of an agreed upon percentage of files and complete the recommended actions of the reviewer on or before a specified deadline for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(3) The Applicant or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department upon request or by a specified date.

(4) Owner agrees to hire a third party to perform reviews of an agreed upon percentage of their resident files on a quarterly basis, and complete the recommended actions of the reviewer for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(5) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise Control.

(6) Owner agrees to replace the existing management company, consultant, or management personnel, with another of its choosing.

(7) Owner agrees to establish an email distribution group in CMTS, to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated Applicant members.

(8) Owner is required to revise or develop policies regarding the way that it will handle situations where persons under its control engage in falsification of documents. This policy must be submitted to TDHCA on or before a specified date and revised as required by the Department.

(9) Owner or Subrecipient is required to ensure that agreed upon persons attend and/or review the trainings listed in (A), (B), (C) and/or (D) of this Paragraph (only for Applications made and reviewed under §1.301 of this Subchapter) and/or (E) for applications made and reviewed under §1.302 of this Subchapter and provide TDHCA with certification of attendance or completion no later than a given date.

- (A) Housing Tax Credit Training sponsored by the Texas Apartment Association;
- (B) 1st Thursday Income Eligibility Training conducted by TDHCA staff;
- (C) Review one or more of the TDHCA Compliance Training Presentation webinars:
 - (i) 2012 Income and Rent Limits Webinar Video;
 - (ii) 2012 Supportive Services Webinar Video;
 - (iii) Income Eligibility Presentation Video;
 - (iv) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;
 - (v) Most current Tenant Selection Criteria Presentation;
 - (vi) Most current Affirmative Marketing Requirements Presentation;
 - (vii) Fair Housing Webinars (including but not limited to the 2017 FH webinars);
- (D) Training for Certified Occupancy Specialist or Blended Occupancy Specialist; or
- (E) Any other training deemed applicable and appropriate by the Department, which may include but is not limited to, weatherization related specific trainings such as OSHA, Lead Renovator, or Building Analyst training.
- (10) Owner is required to submit the written policies and procedures for all Developments subject to a TDHCA LURA for review and will correct them as directed by the Department.
- (11) Owner is required to have qualified personnel or a qualified third party perform Uniform Physical Condition Standards inspections of 5% of their Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted to the Department upon request.
- (12) Within 60 days of the condition issuance date the Owner will contract for a third party Property Needs Assessment and will submit to the Department a plan for addressing noted issues along with a budget and timeframe for completion.
- (13) Owner agrees to have a third party accessibility review of the Development completed at a time to be determined by the Applicant but no later than prior to requesting a TDHCA final construction inspection. Evidence of review must be submitted to the Department upon request.
- (14) Applicant/Owner is required to provide all documentation relating to a Single Audit on or before a specified date.

(15) Any of the conditions identified in 2 CFR §200.207 which may include but are not limited to requiring additional, more detailed financial reports; requiring additional project monitoring; or establishing additional prior approvals. If such conditions are utilized, the Department will adhere to the notification requirements noted in 2 CFR §200.207(b).

(16) Applicant is required to have qualified personnel or a qualified third party perform an assessment of its operations and/or processes and complete the recommended actions of the reviewer on or before a specified deadline.

(17) Applicant is required to have qualified personnel or a qualified third party performs DOE required Quality Control Inspections of 5% of its Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted upon request.

(18) Applicant is required to provide evidence that reserves for physical repairs are fully funded as required by §10.404 of this Title (relating to Replacement Reserves).

(19) In the case of a Development being funded with direct loan funds, Applicant is required to provide evidence of invoices and a lien waiver from the contractor, subcontractor, materials supplier, equipment lessor or other party to the construction project stating they have received payment and waive any future lien rights to the property for the amount paid at the time of every draw request submitted.

(f) Failure to meet conditions.

(1) The Executive Director may, for good cause and as limited by federal commitment, expenditure, or other deadlines, grant one extension to a deadline specified in a condition, with no fee required, for up to six months, if requested prior to the deadline. Any subsequent extension, or extensions requested after the deadline, must be approved by the Board.

(2) If any condition agreed upon by the Applicant and imposed by the Board is not met as determined by the evidence submitted (or lack thereof) when requested, the Applicant may be referred to the Enforcement Committee for debarment.

(g) Dispute of EARAC Recommendations.

(1) The Appeal provisions in §1.7 of this Title relating to the appeals of a staff decision to the Executive Director, are not applicable.

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute that may be considered by EARAC or may be presented to the Board without further EARAC consideration consistent with Paragraph (3) of this Subsection.

(A) Their category as determined under §1.301(f) of this Subchapter;

(B) Any conditions proposed by EARAC; or

(C) A negative recommendation by EARAC.

(3) Prior to the Board meeting at which the EARAC recommendation is scheduled to be made, an Applicant or potential Subrecipient may submit to the Department (to the attention of the Chair of EARAC), their Dispute detailing:

(A) The condition or determination with which the Applicant or potential Subrecipient disagrees;

(B) The reason(s) why the Applicant/potential Subrecipient disagrees with EARAC's recommendation or conditions;

(C) If the Dispute relates to conditions, any suggested alternate condition language;

(D) If the Dispute relates to a negative recommendation, any suggested conditions that the Applicant believes would allow a positive recommendation to be made; and

(E) Any supporting documentation not already submitted to EARAC.

(4) An Applicant must file a written Dispute not later than the seventh calendar day after notice recommendation of denial or award with conditions has been provided. The Dispute must include any materials that the Applicant wishes EARAC and/or the Board to consider. An Applicant may request to meet with EARAC and EARAC is not obligated to meet with the Applicant.

(5) EARAC is not required to consider a Dispute prior to making its recommendation to the Board.

(6) If an Applicant proposes alternative conditions EARAC may provide the Board with a recommendation to accept, reject, or modify such proposed alternative conditions.

(7) A Dispute will be included on the Board agenda if received at least seven calendar days prior to the required posting date of that agenda. If the Applicant desires to submit additional materials for Board consideration, it may provide the Department with such materials, provided in pdf form, to be included in the presentation of the matter to the Board if those materials are provided not later than close of business of the fifth calendar day before the date on which notice of the relevant Board meeting materials must be posted, allowing staff sufficient time to review the Applicant's materials and prepare a presentation to the Board reflecting staff's assessment and recommendation. The agenda item will include the materials provided by the Applicant and may include a staff response to the dispute and/or materials. It is within the Board board chair's discretion whether or not to allow an applicant to supplement its response. An Applicant who wishes to provide supplemental materials at the time of the Board meeting must comply with the requirements of §1.10 of this Chapter (relating to Public Comment Procedures). There is no assurance the Board board chair will permit the submission, inclusion, or consideration of any such supplemental materials.

(8) The Board and EARAC will make reasonable efforts to accommodate properly and timely filed Disputes under this Subsection.

(h) Board Discretion. Subject to limitations in federal statute or regulation or in UGMS, the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to a recommendation for an award or in response to a Dispute. The Board may impose other conditions not noted or contemplated in this rule as recommended by EARAC, or as requested by the Applicant; in such cases the conditions noted will have the force and effect of an order of the Board.

From: [Lisa Stephens](#)
To: [Patricia Murphy](#)
Subject: FW: Previous Participation Rule posted - comment
Date: Friday, January 31, 2020 2:23:09 PM
Attachments: [image002.png](#)

Hi Patricia. I am re-submitting this as public comment for the PPR/EARAC rules.

My only comments to the rule changes for Previous Participation/EARAC regards an applicant dispute and requested meeting with EARAC. If EARAC is making a recommendation to deny an award, then I think it is incumbent upon everyone to make sure there is a full understanding of the situation. Many times things are lost in interpretation in email or writing that are better explained in person. Additionally if there is a disputed matter, I think staff is in a better position having reviewed that material when it comes up in front of the board. I understand there are often time constraints in these issues that make meetings and/or reviewing materials difficult but denying an award is a serious matter and I think it is worthy of some extra attention.

I appreciate your consideration of this. Hope all is well.

Lisa



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March 2, 2020

TAAHP Compliance and Post Award Rules Committee Comment

Ms. Murphy,

Thank you for the opportunity to provide comment to the proposed amendments to 10 TAC, Chapter 1, Subchapter C, Previous Participation (PPR) and Executive Award Review Advisory Committee (EARAC) Rule. Please note that this comment was the 100% consensus of a group of 42 people whose names and place of business is attached. Please consider that information when considering this comment, as we believe that this group represents a large part of the industry here in Texas who do the day to day operations that this rule impacts.

§1.301(b)(1)- Currently, the evaluation of the size of a portfolio is related to developments within the control of persons affiliated with the application. The proposed change would limit the portfolio to only include "Actively Monitored Developments" defined as:

A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection or a file monitoring review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

TAAHP disagrees with the proposed definition and request that it not be adopted in any form. A PPR includes an evaluation of an event of noncompliance that results from a "Monitoring Event", which includes activities, in addition, to a UPCS Inspection or a file monitoring review:

§1.301(b)(5)- *Monitoring Event An onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.*

A PPR would include any event of noncompliance resulting from any Monitoring Event. 10TAC10, §10.607(b), related to Reporting Requirements, requires that the first Annual Owner's Compliance Report (AOCR) be submitted the second year after the year of award, even if leasing has not yet commenced. This would occur prior to the first UPCS inspection and/or file monitoring review. Failure to submit the first AOCR by the end of the second calendar year does result in an Event of Noncompliance. For example, ABC Development received an allocation of tax credits in July 2018. The first AOCR is due April 30, 2020, even if the development is still under construction and has

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Bank of America Merrill Lynch
- ROGER ARRIAGA
TAAHP Executive Director



Not yet commenced leasing. ABC Development is still under construction in April 2020 and failed to submit the AOCR. That is an event of noncompliance that would require corrective action. Since ABC Development is still under construction, it has not had a “Monitoring Event” under the proposed definition.

It is clear that the ABC Development would not be counted as a development determining the size of the portfolio, but it is unclear as to if this Event of Noncompliance would be included in the PPR. Conversely, ABC Development does timely submit the AOCR in 2020 and no Event of Noncompliance is cited. Action was still required on the part of the owner and, as such, the development should be included in the size of the portfolio.

The focus of a PPR has been on the responsiveness of an owner to the Department’s notifications. TAAHP contends that there are possibilities for Event of Noncompliance prior to the first UPCS Inspection and/or file monitoring review that requires action. As such, any development under the control of an applicant should continue to be included in establishing the applicant’s portfolio size.

There is no need have a separate definition for an “Actively Monitored Development” when the definition for a Monitoring Event already exists.

§1.301(c)(1)- Events of Noncompliance, Findings, Concerns, and Deficiencies (under any Department program) that were corrected over three years from the date the Event is closed unless required to be taken into consideration by federal or state law, by court order, or voluntary compliance agreement.

The three year timeline is because Housing Tax Credit (HTC) properties, are required under IRC §42 to be monitored every three years. However, properties with Tax Exempt Bond (bond) financing are monitored every two years. This means that a 4% HTC property where the Department is the bond issuer has a UPCS inspection and a file monitoring review every two years; whereas, a property with just HTCs will be monitored every three years.

For example, ABC Development is a 4% with the following dates of a Tenant File Review because the development is monitored every two years under the bond program:

Tenant File Review	Date Corrected	Date Removed from PPR
February 20, 2016	July 15, 2017	July 15, 2020
February 20, 2018	June 15, 2018	June 15, 2021
February 20, 2020	July 1, 2020	July 1, 2023

If this property was included in a portfolio for an application that applied June 5, 2020, there would be three events considered in a PPR.

Conversely, if this was just a HTC property, because it is only monitored every three years, there would only be two events considered in a PPR.



Tenant File Review	Date Corrected	Date Removed from PPR
February 20, 2016	July 15, 2017	July 15, 2020
February 20, 2019	June 15, 2018	June 15, 2021

If the timeframe in which events are considered for bond properties was changed from three years to two years, the event resulting from the tenant file review conducted February 20, 2016 would no longer be considered in the PPR. This change would result in two events considered in a PPR, which is more in line with a PPR for a property that does not have bonds:

Tenant File Review	Date Corrected	Date Removed from PPR
February 20, 2016	July 15, 2017	July 15, 2019
February 20, 2018	June 15, 2018	June 15, 2020
February 20, 2020	July 1, 2020	July 1, 2022

It is unreasonable that an applicant be penalized at a disproportionate rate because the properties in their portfolio are monitored more frequently as a result of funding. TAAHP strongly recommends aligning the time frame in which an event described in §1.301(c)(1) is considered with the frequency in which the property is monitored.

While TAAHP understands that the Department is moving to a three year monitoring frequency for their Tax Exempt Bond properties, and TAAHP supports that change, it has not yet occurred. As such, existing PPRs are being unreasonably impacted.

§1.301(c)(9)- Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation

TAAHP strongly opposed the elimination of this provision and believes that the Department has failed to clearly identify the need for the change. The background to the Board Action Item for the January 16, 2020 TDHCA Governing Board meeting simply stated “The Department has one definition of control for the Department’s multifamily programs. This amendment will align this rule with other Department rules.” While the current Qualified Allocation Plan (QAP) better defines control than in previous years, the definition has changed over the years. Removing this provision eliminates the only mechanism through which owners affected prior to 2019 can effectuate an accurate PPR.

§1.301(e)- Determination of Compliance Status.

With the change to the rule December 30, 2018, an application is considered a Category 2 under §1.303(e)(2) when (list not inclusive):

- (A) *The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three but is less than 50% of the number of properties in the Combined Portfolio (§1.303(e)(2)(A)); or*



- (B) *There are uncorrected Events of Noncompliance but the number of Events of Noncompliance is 10% or less than the number of properties in the Combined Portfolio. If corrective action has been uploaded to the Department's Compliance Monitoring and Tracking System (CMTS) or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in Subsection (f) of this section it will be reviewed and the Category determination may change as appropriate*
- (C) *Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for three or fewer Monitoring Events; or*

An application is considered a Category 3 under §1.303(e)(3) when (list non inclusive):

- (A) *The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of properties in the Combined Portfolio;*
- (B) *The number of Events of Noncompliance that are currently uncorrected total 10% or more than the number of properties in the Combined Portfolio. If corrective action has been uploaded to CMTS or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in Subsection (f) of this section it will be reviewed and the Category determination may change as appropriate;*
- (C) *Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for more than three Monitoring Events;*

TAAHP appreciates the change to the rule specific to how events of noncompliance impact an applicant's portfolio in that it is a percentage of the number of properties in the portfolio. This was a reasonable and practical change as it created proportionality between the events of noncompliance and the size of the portfolio. However, the same concept was not applied to when an owner fails to respond in a corrective action period. A portfolio is a Category 2 if the applicant failed to respond during the Corrective Action Period for three or fewer Monitoring Events and a Category 3 if the applicant failed to respond during the Corrective Action Period for more than three Monitoring Events. While TAAHP fully supports the responsibility of the applicant to respond to Monitoring Events, establishing a number threshold that is not proportionate to the size of the portfolio is not an accurate illustration of the applicant's compliance history.

For example, an application with a portfolio size of five properties that fails to respond to four Monitoring Events is a significantly different picture than a portfolio size of 35 properties in which there was a failure to respond to four Monitoring Events, but in either scenario, the application would be deemed a Category 3 under the current rule.

TAAHP suggests that the determination of an applicant's category because of a failure to respond to a Monitoring Event be a percentage of the portfolio size. by proposing the following language:



Category 2 §1.303(e)(2)(C):

Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for ~~three~~ 25% of the number of properties in the Combined Portfolio or fewer Monitoring Events.

For example, the Combined Portfolio is 10 properties. The Application would be a Category 2 if any Person subject to previous participation review failed to respond during the Corrective Action Period for 3 times (10 properties x 25% = 2.5 properties, rounded up to 3)

Conversely, if the Combined Portfolio is 50 properties, the Application would be a Category 2 if any Person subject to previous participation review failed to respond during the Corrective Action Period for 13 times (50 properties x 25% = 12.5 properties, rounded up to 13)

Category 3 §1.303(e)(2)(C):

Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for more than 25% of the number of properties in the Combined Portfolio ~~three~~ Monitoring Events.

For example, the Combined Portfolio is 10 properties. The Application would be a Category 3 if any Person subject to previous participation review failed to respond during the Corrective Action Period for more than 3 times (10 properties x 25% = 2.5 properties, rounded up to 3).

Conversely, if the Combined Portfolio is 50 properties, the Application would be a Category 3 if any Person subject to previous participation review failed to respond during the Corrective Action Period for more than 13 times (50 properties x 25% = 12.5 properties, rounded up to 13)

This change will create the same proportionality provided for with the evaluation of Events of Noncompliance



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MEMORANDUM

TO: Texas Department of Housing and Community Affairs
Attention: Patricia Murphy

FROM: Cynthia Bast

DATE: MARCH 2, 2020

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 1, PREVIOUS PARTICIPATION RULES**

On behalf of Locke Lord LLP, please find comments to draft 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee.

§ 1.301(b)(2) Definitions – Affiliate.

Comment: The second sentence says that for applications involving y Direct Loans and 811 PRA, the defined term "Affiliate" is also defined as required by 2 CFR Part 180. What if there is a conflict between the definition in 10 TAC § 11.1 and 2 CFR Part 180? Should this definition clarify which prevails?

§ 1.301(b)(3) Definitions – Applicant.

Recommendation: Change the word "purchase" to "acquire." Many ownership transfer requests involve an acquisition without an actual purchase price, so "acquire" is a more appropriate word.

§ 1.301(b)(7) Definitions – Monitoring Event.

Comment: Compare the definition of "Actively Monitored Development" to the definition of "Monitoring Event." The definition of "Monitoring Event" refers to an "onsite or desk monitoring review" while the definition of

"Actively Monitored Development" refers to a "file monitoring review." I believe those two phrases are intended to refer to the same thing. Should one of the definitions be changed to be consistent with the other?

§ 1.301(b)(8) Definitions – Person.

Comment: In other places where the rules have referred to 10 TAC Chapter 11, you have changed the language to refer to a particular section of 10 TAC. Perhaps you should do that here, as well?

§ 1.301(c)(1) Items Not Considered.

Comment: The text reads – "Events of Noncompliance, Findings, Concerns, and Deficiencies." That phrase is not defined in this rule. The defined term is "Events of Noncompliance." For clarity, should the reference to Findings, Concerns, and Deficiencies be eliminated?

§ 1.301(c)(8) Items Not Considered.

Comment: you should be able to remove the phrase "or within 10 days of the day the Owner received notice that the Corrective Action was insufficient," because the concept of a permitted extension or deficiency period is already embodied in the definition of "Corrective Action Period."

§ 1.301(c)(9) Items Not Considered.

Comment: We oppose the elimination of this provision. Over the years, TDHCA has changed its rules regarding the definition of Control and how Control is identified in the Application. This has created confusion as to which Persons truly Control a Development Owner, when it comes to compliance matters. The current QAP handles this well and allows an Applicant to identify which Persons are in Control of the Development, using the organizational chart submitted in the Application. TDHCA rules prior to 2019 did not allow Applicants to identify the Controlling Persons on the organizational chart. These pre-2019 Developments need a mechanism to advise TDHCA which Persons have Control in a manner that is consistent with the current rules. This is particularly important for HUBs and non-profits, which often have positions of material participation but are not Controlling.

Recommendation: Option 1: Restore the provisions are previously written.

Option 2: Modify the AOCR to allow each Development Owner to identify the Controlling Persons, using an organizational chart similar to what it would utilize if it were filing an Application under the current rules.

- § 1.301(e) Determination of Compliance Status.**
Comment: We support the addition regarding Combined Portfolios and appreciate the change.
- § 1.301(e)(2) Determination of Compliance Status.**
Comment: There is an "or" at the end of subparagraphs (B) and (C), but not at the end of subparagraph (A). It seems there should be one at the end of subparagraph (A) for consistency and avoidance of confusion.
- § 1.301(e)(2)(A) Determination of Compliance Status.**
Comment: Change "total" to "totals" grammatically.
- § 1.301(e)(2)(B) Determination of Compliance Status.**
Comment: Change "10% or less than the number" to "less than 10% of the number" to make the provision consistent with subparagraph (A).
- § 1.301(e)(2)(D) Determination of Compliance Status.**
Comment: Is "relevant and germane issue" a term of art that the public will adequately understand?
- § 1.301(f)(1) Compliance notification to Applicant and EARAC.**
Comment: We support the addition regarding previous approvals and appreciate the change. However, should the word "events" be "Events of Noncompliance" for consistency with the Definitions?
- § 1.301(g)(1) Compliance Recommendation to EARAC for Awards.**
Comment: While it may be inherent in the title of this subsection, I believe it would be beneficial to identify who is making the recommendation here. It appears to be the Compliance Division making a recommendation to EARAC. Would it be helpful to say "will be recommended by the Compliance Division to EARAC for "?
- § 1.301(h)(1) Compliance Recommendation for Ownership Transfers.**
Comment: Same concept as above. It would be helpful to say the Compliance Division is making the recommendation to the Executive Director.

§ 1.303(b)

No subheading for this one.

Comment:

As a general statement of items to be considered in EARAC meetings, you may want to specifically refer to Disputes.

§ 1.303(c)

EARAC Recommendation Process.

Comment:

We appreciate the change whereby a Category 3 portfolio is not automatically recommended for denial but can be considered on the whole of the circumstances.

§ 1.303(d)

No subheading for this one.

Comment:

Instead of referring to a "property" or a "portfolio of properties", should this subsection refer to a "Development" or a "Combined Portfolio" to be consistent with the Definitions?

§ 1.303(g)

Dispute of EARAC Recommendations.

Comment:

The word "title" should be capitalized for consistency with the rest of this rule.

§ 1.303(g)(4)

Dispute of EARAC Recommendations.

Comment:

The phrase "notice of denial" may create confusion. EARAC is making a recommendation for denial. It seems that might be a better way to refer to the action.

§ 1.303(g)(7)

Dispute of EARAC Recommendations.

Comment:

Capitalize the word "board" in the phrase "board chair."

We sincerely appreciate your consideration of these comments, and we are happy to discuss any of these matters further if needed.

From: [Timothy Alcott](#)
To: [Patricia Murphy](#); [Bobby Wilkinson](#)
Subject: Comments to the TDHCA proposed QAP rule changes
Date: Tuesday, February 25, 2020 4:13:49 PM

Patricia - Please consider this comment to the TDHCA Staff's proposed removal of Section 1.301(c)(9) from the Previous Participation Rules, which currently include the following as a matter that will not be taken into consideration in determining Previous Participation:

(9) Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation;

The reason Section 1.301(c)(9) was added was because of the negative impact it would place on Housing Authorities and cities that participate in development partnerships. In San Antonio both the San Antonio Housing Authority (SAHA) and the San Antonio Housing Trust (SAHT) develop with multiple development partners. These development partners are some of the largest developers in the State.

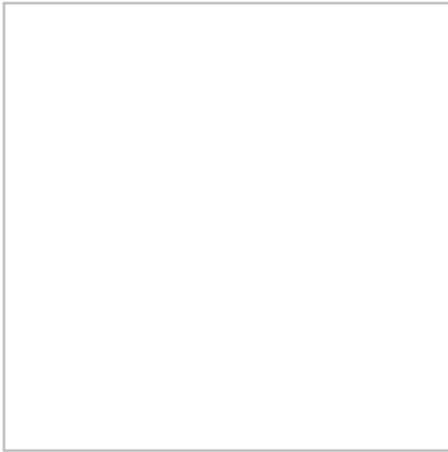
Each of these developers may theoretically have 1 or 2 compliance issues. If Section 1.301(c)(9) is deleted, all of those compliance issues will roll up to SAHA as the co-development partner. SAHA has little control over the compliance of properties for the initial tax credit compliance period. Our development partners provide the guarantees, so they are responsible for managing the properties and timely responding to compliance issues.

It is possible that SAHA's development partners, who are responsible for tax credit compliance, each will be able to participate in the LIHTC programs because they have very few compliance issues. However, SAHA could be penalized because the cumulative nature of the issues over multiple development partners would make SAHA ineligible to participate in the tax credit program.

Section 1.301(c)(9) was added to the QAP to tackle that issue. Our development partners would execute a TDHCA department form to designate who is responsible for compliance issues.

We ask that this Section 1.301(c)(9) not be deleted. It puts governmental institutions across the state at risk. Indeed, these are the institutions that provide the deepest affordable housing to the lowest and most at risk population in the state.

Thank you for your consideration.



TIMOTHY ALCOTT

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BOARD ACTION REQUEST

FAIR HOUSING, DATA MANAGEMENT AND REPORTING

APRIL 23, 2020

Presentation, discussion, and possible action on an order adopting new 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, and directing its publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, oversight of the multifamily affirmative marketing requirements and the written policies and procedures (sometimes called tenant selection criteria), and the associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit, and as a result the two sections of the Compliance rule that govern those processes (10 TAC §10.610 and 10 TAC §10.617) are presented for Board approval to be repealed under separate action;

WHEREAS, those sections are being simultaneously adopted within a new subchapter within 10 TAC Chapter 10 and reflecting some revisions; and

WHEREAS, public comment on the proposed new subchapter was open from December 27, 2019, to January 27, 2020, and comments were received from four organizations;

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 adoption of 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, in the form 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, including the preparation of the subchapter specific preamble.

BACKGROUND

Recently, the oversight of the affirmative marketing requirements on the Department's multifamily portfolio and the written policies and procedures pertaining to that portfolio (often called tenant selection criteria), and the associated review process, have been reassigned organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit. As a result, these two processes, previously addressed in the Compliance rule, are being repealed under separate Board

action and, with this Board action, are seeking adoption within a new section of the rules at Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures.

Significant items initially proposed in the draft 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures included modification to the Department's Occupancy Standards in response to concerns from Development Owners, as a result of tenant complaints, to respond to comments made at the November board meeting, and to be more in line with how the U.S. Department of Housing and Urban Development (HUD) is currently enforcing a December 1998 HUD Notice of Statement of Policy regarding Occupancy Standards as a Fair Housing enforcement consideration (also called the Keating memorandum, as it was authored by HUD's General Counsel at the time, Frank Keating). The Department is also highlighting particular requirements for Multifamily Direct Loan-funded Developments.

A roundtable was held on October 21, 2019, to explain proposed amendments to the Compliance Monitoring Rules and the proposed new Subchapter G, relating to Affirmative Marketing and Tenant Selection Criteria requirements. Following Board approval on December 12, 2019, the proposed new Subchapter G was published in the *Texas Register* edition dated December 27, 2019. Public comment was accepted on the new Subchapter G from December 27, 2019, through January 27, 2020, and the Department received comments from four organizations.

Staff recommends changes to the rule as published in the *Texas Register* in order to address some of the public comments. The rule is attached in blackline form to indicate the changes since the time of publication for public comment.

Attachment A: Preamble for adopting new 10 TAC Subchapter G Affirmative Marketing Requirements and Written Policies and Procedures

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Subchapter G Affirmative Marketing Requirements and Written Policies and Procedures, with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8165). The purpose of the new section, in accordance with Tex. Gov't Code §2306.053, is to update the rules to move requirements on the Department's multifamily portfolio relating to Affirmative Marketing and Written Policies and Procedures out of Subchapter F, detailing Compliance Monitoring requirements, and into a new subchapter to consolidate Fair Housing related requirements on the Department's multifamily portfolio into one separate location within the Uniform Multifamily Rules.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted for action because it was determined that no changes to the rule generate costs to the properties in the Department's multifamily portfolio, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program. This rule provides for an assurance that Fair Housing requirements relating to Affirmative Marketing and Written Policies and Procedures for Multifamily Activities are clearly relayed to participating properties in the Department's portfolio.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is moving a rule from one existing Subchapter to a new Subchapter and making minor revisions. The existing Subchapter is being amended to delete sections relating to Affirmative Marketing and Written Policies and Procedures for Multifamily Activities and those sections are being adopted as a new rulemaking simultaneously to provide for revisions.
6. The new rule will not expand, limit, or repeal an existing regulation.
7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.053.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. To the extent that multifamily properties in the Department's portfolio are considered small or micro-businesses, the economic impact of the rule on them is projected to be \$0 as the revisions being adopted are minor and add no costs to the property's operations. There are no rural communities subject to the proposed rule as these properties are not owned directly by municipalities; therefore, the economic impact of the rule on rural communities is projected to be \$0.

3. The Department has determined that because the rules apply to existing multifamily developments, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule has no economic effect on local employment because the rules relate only to a process which has already been in effect for existing multifamily properties in the Department's portfolio; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this new rule only administratively consolidates an existing set of rules relating to Fair Housing requirements into one separate Subchapter of the Uniform Multifamily Rules, while making minimal revisions, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a consolidation of Fair Housing related requirements into one separate Subchapter of the Uniform Multifamily Rules. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at Subchapter F of this Chapter, relating to Uniform Multifamily Rules.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule has already been in effect elsewhere in rule.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between December 27, 2019, and January 27, 2020. Comments regarding the proposed new rule were accepted in writing and by e-mail with comments received from: (1) Lauren Loney of Texas Housers, (2) Juanita Jeanie Sanchez of Sanchez Compliance, (3) Jen Brewerton of the Texas Affiliation of Affordable Housing Providers, on behalf of a 42 member TAAHP Compliance and Post Award Rules Committee, and (4) Dena Moreland of Accolade Property Management.

General Comments

COMMENT SUMMARY: Commenter 3 generally supports and appreciates the Department's decision to shift oversight of the affirmative marketing requirements on the Department's multifamily portfolio and the written policies and procedures from Compliance to the Fair Housing section.

STAFF RESPONSE: Staff appreciates this comment. No changes have been made as a result of this comment.

COMMENT SUMMARY: Commenter 4 requests that all rules under Subchapter G be opened up for comment, not just the rules that the Department would like to change.

STAFF RESPONSE: As this is a wholly new subchapter in the Departments rules, the entire proposed new Subchapter G was released for public comment. No changes have been made as a result of this comment.

§10.801 Affirmative Marketing Requirements

§10.801(b)-(c) and (d)(2)

COMMENT SUMMARY:

Commenter 3 provides information on the history of how the Department has required the identification of "Least Likely to Apply" populations in previous versions of this rule requirement and requests that the Department reinstate the online Affirmative Marketing Web Tool. Commenter 1 recommends that the Department require affirmative marketing efforts by TDHCA region, and not limit efforts to a property's market area. Commenter 1 also recommends that advertising requirements include information about property and neighborhood characteristics such as school performance; proximity of grocery stores, community centers, public transportation, and other shopping centers; and, contact information for churches and neighborhood organizations in the neighborhood.

STAFF RESPONSE:

Staff appreciates these comments and recognizes the efforts Owners take to identify and market to "Least Likely to Apply" populations. As identified on HUD Form 935.2A, a housing market area is the area from which a multifamily housing project owner/agent may reasonably expect to draw a substantial number of its tenants. This could be a county or Metropolitan Division. An expanded housing market area is a larger geographic area, such as a Metropolitan Division or a Metropolitan Statistical Area (MSA), which may provide additional demographic diversity in terms of race, color, national origin, religion, sex, familial status, or disability.

Staff is currently exploring options to re-release a simplified multifamily affirmative marketing tool that provides data in expanded housing market areas such as MSAs. Until a new tool is available, Owners shall continue to develop Affirmative Marketing Plans as required by this rule.

No changes have been made as a result of these comments.

§10.801(d)(1)(C)

COMMENT SUMMARY:

Commenter 3 requests clarification on requirements to provide property contact information in English, Spanish, and any other languages that may be required in accordance with Limited English Proficiency Requirements. Specifically:

“Clarification1: How would contact information differ from English to Spanish, or any languages?

Clarification 2: If the Hispanic or Latino population is not identified as least likely to apply, what is the value in including contact information in Spanish? For example, if the Asian population is identified as LLA [least likely to apply], what value does having contact information in Spanish add?

Clarification 3: What is expected to evidence compliance with Limited English Proficiency Requirements? LEP is a 4 Factor Analysis that result in a Language Assistance Plan and is only required for programs receiving federal funds. The 4 Factor Analysis is a different process than the identification of LLA populations. In other words, the 4 Factor Analysis could result in the identification of LEP populations that are not least likely to apply and vice versa.”

STAFF RESPONSE:

Property contact information may differ in English, Spanish, or other identified languages, if the property contact information includes helpful information such as an indication of what the contact information is for (“Información de contacto de la propiedad” in Spanish) or if different numbers are provided, for example, if there is a local versus toll free number.

Even if the Hispanic or Latino population is not identified as least likely to apply, all populations must still be provided meaningful access to properties in the TDHCA portfolio, regardless of national origin or level of English proficiency. Populations not identified as least like to apply may also have Limited English Proficiency. The commenter stated that limited English Proficiency requirements were only required for Developments that received federal funds. HUD has issued guidance that this is also a requirement under the Fair Housing Act, <https://www.hud.gov/sites/documents/LEPMEMO091516.PDF>. The Department has determined through its Limited English Proficiency analysis that Spanish is a language for every county where potential low-income tenants may have limited English proficiency.

As adopted, Owners must still adhere to both requirements of Affirmatively Marketing to Least Likely to Apply populations and requirements to take reasonable steps to ensure meaningful access to properties in the TDHCA portfolio for individuals who as a result of national origin are limited in their English proficiency.

No changes have been made as a result of these comments.

§10.801(e)(1)

COMMENT SUMMARY:

Commenter 1 cites affirmative marketing related research and best practices for longer affirmative marketing practices; opposes proposed changes to this rule, reducing the required affirmative marketing timeline to 90-days prior to the anticipated date the first building is to be available for occupancy; and, requests that the Department revert to the 6-month timeline requirements.

STAFF RESPONSE:

Staff had proposed reducing the 6-month timeframe to 90 days as 90 days is the minimum requirement for HUD funded developments. The Department recognizes research cited that suggests that a 90-day marketing period is too short and may exclude those who need more advanced notice to plan to move, get out of current leases, enroll their kids into a new school, or even simply have the opportunity to sign up on a waiting list. Changes have been made as a result of this comment, reverting the affirmative marketing timeline back to 6 months.

§10.801(g)

COMMENT SUMMARY:

Commenter 1 recommends removal of the exception to the Affirmative Marketing requirements in this rule, which exempts Development Owners from conducting Affirmative Marketing if the waiting list for their property is closed.

STAFF RESPONSE:

As the rule is currently written, Affirmative Marketing is required as long as the Owner is accepting applications, has an open waiting list, or is marketing prior to placement in service as required under subsection §10.801(e)(1). As indicated in the staff response to comments relating to §10.801(e)(1), staff recommends reverting the affirmative marketing timeline back to 6-months prior to the anticipated date the first building is to be available for occupancy. Staff recommends maintaining the exception to the Affirmative Marketing requirements when a waitlist is closed so that potential applicants are not discouraged to find a closed waitlist at a property. No changes have been made as a result of these comments.

§10.802 Written Policies and Procedures

§10.802(a)(2)

COMMENT SUMMARY:

Commenter 2 requests clarification of required locations for posting written policies and procedures and the following two forms: 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." Commenter 2 also requests clarification on the monitoring of this requirement.

STAFF RESPONSE:

All written policies and procedures and the two aforementioned forms must be available in the leasing office and anywhere else where applications are taken. Additionally, Developments that accept electronic applications must maintain on their website these written policies and procedures and the same noted forms. Evaluation of this requirement will be done in accordance with provisions detailed §10.803 Compliance and Events of Noncompliance. No changes have been made as a result of these comments.

§10.802(a)(3)

COMMENT SUMMARY:

Commenter 1 provides support and Commenters 2, 3, and 4 request clarification on the added requirement to inform all tenants in writing of the availability of new written policies and procedures.

Commenter 3 indicates that informing tenants in writing would be administratively burdensome and requests removing the written notification requirement all together or limiting written notification to posting in a common area for one month to satisfy the requirement. Commenter 4 requests that Owners only need to convey changes to Waitlist policies to tenants, as Commenter 4 asserts that no other policies would affect current residents.

STAFF RESPONSE:

Several policies may exist outside of a Waitlist policy that would affect tenants, including but not limited to policies addressing occupancy standards, reasonable accommodations, transfers, changes in household designation, etc. Changes to any of these policies may affect current tenants. Therefore, the Department maintains the requirement that tenants must be notified of the availability of new written policies and procedures. Evaluation of this requirement will be done in accordance with provisions detailed in 10 TAC §10.803 Compliance and Events of Noncompliance.

Acceptable forms of notification in writing include but are not limited to an email to all residents, a note on all occupied unit doors, a posting in a mailroom or other central location, etc. Staff appreciates the suggestion to accept written notification to posting in a common area for one month as a method to satisfy the requirement and has added clarifying language to the final rule.

Changes have been made to this rule as a result of this comment to clarify acceptable forms of notification.

§10.802(b)(1)

COMMENT SUMMARY:

Commenter 3 requests confirmation that only the items outlined in this section are required, and that owners are not required to add additional items outside of the rule.

STAFF RESPONSE:

Staff has clarified what items in this section are required in a Development's Tenant Selection Criteria. Specifically, rent and income limits are not required to be included in the Tenant Selection Criteria, although the Development must identify what unit designations are available. Changes have been made as a result of this comment to clarify what information must be included in a Development's Tenant Selection Criteria.

§10.802(b)(4)(c)

COMMENT SUMMARY:

Commenter 1 supports changes to this rule that prevent possible lease violations should children join the household after the start of a lease term.

STAFF RESPONSE:

Staff appreciates this comment. No changes have been made as a result of this comment.

§10.802(g)(2)(A)

COMMENT SUMMARY:

Commenter 2 requests clarification on providing the following two forms along with their 3-day notices to pay and 30-day quit notices: 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."

STAFF RESPONSE:

Changes to this rule only clarify what is meant by "under applicable program rules" in the previous version, as it appeared in the Compliance rules. The requirement to provide the two noted Violence Against Women Act (VAWA) forms along with Non-renewal and/or Termination Notices has not changed from the Compliance rules to the new Subchapter G rules, as provided in §10.801(g)(2)(B). No changes have been made as a result of these comments.

§10.802(h)

COMMENT SUMMARY:

Commenter 3 provides history of the Departments rulemaking actions and requirements for providing VAWA forms to applicants and residents. Commenter 3 also requests that this rule be stricken, as the commenter indicates that applicants are provided ample notification of VAWA protections through other required notifications; further, additional lengthy forms at the time of application may discourage applicants from participating in Multifamily programs.

STAFF RESPONSE:

Staff maintains the belief that individuals affected by domestic violence may be discouraged from applying if they are unaware of their rights. Providing these VAWA forms at application ensures applicants are aware of their rights. No changes have been made as a result of this comment.

§10.802(i)

COMMENT SUMMARY:

Commenter 4 requests that the Department provide only technical assistance, and not findings of non-compliance, when policies are reviewed before becoming effective.

STAFF RESPONSE:

As indicated by §10.802(i), "Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, as a result of complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to fair.housing@tdhca.state.tx.us." During the review process, Fair Housing staff intends to provide technical assistance for affirmative marketing and written policies and procedures whenever possible. However, if an owner or affiliated party fails to cooperate with the review, is not responsive to the input provided during the technical assistance process, or triggers provisions detailed in §10.803, findings may result. No changes have been made as a result of this comment.

The Board adopted the final order adopting the new rules on March 26, 2020.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

Chapter 10 Uniform Multifamily Rules

Subchapter G Affirmative Marketing Requirements and Written Policies and Procedures

§10.800. Definitions.

The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), Chapter 11 (relating to the Qualified Action Plan), Chapter 12 (relating to the Multifamily Housing Revenue Bond Rules), Chapter 13 (relating to the Multifamily Direct Loan Rule), or Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable.

§10.801. Affirmative Marketing Requirements.

(a) **Applicability.** Compliance with this section is required for all Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) **General.** A Development Owner with five or more total Units must affirmatively market the Units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." To determine the "least likely to apply" populations, a Development Owner is encouraged to use Worksheet 1 of HUD Form 935.2A, but at a minimum the Owner must document that they have compared the demographic composition of the Development to the market area to determine the populations least likely to apply. All Affirmative Marketing Plans must provide for affirmative marketing to Persons with Disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) **Plan format.** A Development Owner must prepare, have in its onsite records, and submit to the Department upon request, a written Affirmative Marketing Plan. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. An Owner participating in a HUD funded program administered by the Department must use the version utilized by the program.

(d) **Marketing and Outreach.**

(1) The plan must include special outreach efforts to the "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. The outreach efforts identified in the Affirmative Marketing Plan must be performed by the Development at least once per calendar year.

(2) To the extent that advertisements and/or marketing materials are utilized for the Development, those materials must contain:

(A) The Fair Housing logo;

(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process; and

(C) Property contact information must be provided in both English and Spanish, and may be required to be provided in other languages in accordance with Limited English Proficiency Requirements.

(e) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations least likely to apply at least six months ~~90-calendar days~~ prior to the anticipated date the first building is to be available for occupancy.

(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.

(f) Recordkeeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(g) Exception to Affirmative Marketing. If the Development has closed its waitlist, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waitlist, or is marketing prior to placement in service as required under subsection (e)(1) of this section.

§10.802. Written Policies and Procedures.

(a) The purpose of this section is to outline the policies and/or procedures of the Department (also called tenant section criteria) that are required to have written documentation. If an Owner fails to have such written policies and procedures, or fails to follow their written policies and procedures it will be handled as an Event of Noncompliance as further provided in §10.803 of this subchapter (relating to Compliance and Events of Noncompliance).

(1) Owners must inform applicants/tenants in writing, at the time of application, or at the time of other actions described in this section, that such policies/procedures as described in this section 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 and 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" available in the leasing office and anywhere else where applications are taken; Developments that accept electronic applications must maintain on their website these written policies and procedures and the same noted forms.

(3) All policies must have an effective date. Any changes made to the policies require a new effective date, and a notice regarding the availability of new policies must be communicated to tenants in writing. Acceptable forms of notification in writing are: an email or letter to all tenants, a note on all occupied Unit doors, or posting for at least 30 calendar days in a mailroom or other central common area, accessible to tenants. Other acceptable forms of notification may be approved by the Department, upon request in advance of the policy's effective date.

(4) In general, policies addressing credit, criminal history, and occupancy standards cannot be applied retroactively. Tenants who already reside in the Development or applicants on the waitlist at the time new or revised tenant selection criteria are applied, and who are otherwise in good standing under the lease or waitlist, 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 waitlist. However, criteria related to program eligibility may be applied retroactively when a market [rate](#) 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. A Development Owner must maintain current and prior versions of the written Tenant Selection Criteria, for the longer of the records retention period that applies to the program, or for as long as tenants who were screened under the historical criteria are occupying the Development.

(1) The criteria identified by a Development must be reasonably related to an applicant's ability to perform under the lease (for a Development with MFDL funding this means to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants) and include at a minimum:

(A) Requirements that determine an applicant's basic eligibility for the Development, including any preferences, restrictions ([such as the Occupancy Standard Policy](#)), [the Waitlist Policy](#), [Changes in Housing Designation Policy](#), [low income unit designations utilized](#), and any other tenancy requirements. Any restrictions on student occupancy and any exceptions to those restrictions, as documented in the tenant file as provided for in 10 TAC §10.612(b)(2) of this chapter (relating to Tenant File Requirements) must be stated in the policies;

(B) Applicant screening criteria, including what applicant attributes are screened and what scores or findings would result in ineligibility;

(C) The following statement: 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 TDHCA's rules;

(D) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibility criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission, unless it is in a recorded LURA which has been approved by the Department (preferences are required to be in a LURA when a Development has MFDL funding, except for the preference allowed by paragraph (3) of this subsection), is required by a program in which the Owner is participating which requires the preference, or is allowed by paragraph (3) of this subsection. Owners that include preferences in their leasing criteria due to other federal financing must provide to the Department either written approval from HUD, USDA, or VA for such preference, or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this 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, TCAP RF, 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.

(4) Occupancy Standard Policy.

(A) If the Development restricts the number of occupants in a Unit in a more restrictive manner than found in Section 92.010 of the Texas Property Code, the Occupancy Standard Policy must allow at least two persons per Bedroom plus one additional person per Unit. An Efficiency Unit that is greater than 600 square feet, must also have an Occupancy Standard Policy of at least three persons per Unit. In an SRO or in an Efficiency that is less than 600 square feet, the Occupancy Standard Policy must allow at least two persons per Unit. Supportive [housing](#) ~~Housing~~ or [transitional housing](#) ~~Transitional Housing~~ Developments where all Units in the Development are SROs or Efficiencies, are not required by the Department to have an Occupancy Standard Policy, except as required for the 811 PRA Program or as reflected in the Development's LURA.

(B) A Development may adopt a more restrictive standard than described in subparagraph (A) of this paragraph, if the Development is required to utilize a more restrictive standard by a local governmental entity, or a federal funding source. However, the Development must have this information available onsite for Department review.

(C) Except for an Elderly Development that meets the requirements of the Housing for Older Persons Act exception under the Fair Housing Act, the Occupancy Standard Policy must state that children that join the household after the start of a lease term will not cause a household to be in violation of the lease.

(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;

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

(C) A timeframe in which the Owner will respond to a request that is compliant with §1.204(b)(3) and (d) of this title (relating to Reasonable Accommodations).

(2) The policy must not:

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

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) 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;

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

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

(d) Waitlist Policy. Owners must maintain a written waitlist policy, regardless of current Unit availability. The policy must be maintained at the Development. The policy must include procedures the Development uses in:

(1) Opening, closing, and selecting applicants from the waitlist, including but not limited to the requirements in §10.615(b) of this title (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments);

(2) Determining how lawful preferences are applied; and

(3) Procedures for prioritizing applicants needing accessible Units in accordance with 24 CFR §8.27, and Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations).

(e) Changes in Household Designation Policy. This is applicable if a Development has adopted a policy in accordance with §10.611(c) of this subchapter (relating to Determination, Documentation and Certification of Annual Income).

(f) Denied Application Policies. Owners must maintain a written policy regarding the procedures they will follow when denying an application and when notifying denied applicants of their rights.

(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 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. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Units at Developments that lease Units under the Department's Section 811 PRA program. The appeals process must provide a 14-day period for the applicant to contest the reason for the denial, and comply with other requirements of the HUD Handbook 4350.3 4-9; 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 and may periodically be requested to submit to the Department 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; and

(B) The specific reason for which an applicant was denied.

(4) If an 811 applicant is being denied, within three calendar days of the denial the Department's 811 PRA Program point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. A Development Owner 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 and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules and the lease. For HOME, TCAP RF, NHTF, NSP, HTC, TCAP and Exchange Developments, see 10 TAC §10.613(a) - (b) of this chapter (relating to Lease Requirements). For Section 811 PRA, see 24 CFR §247.4(a) - (f);

(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 Development (this is required under some LURAs, for HOME Developments that are owned by Community Housing Development

Organizations, and for 811 PRA units).

(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) Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, as a result of complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to fair.housing@tdhca.state.tx.us. After review by the Department, an Owner may make non-substantive changes to the policies.

(j) Development Owners must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

§10.803. Compliance and Events of Noncompliance.

(a) The Department will provide written notice to the Owner if the Department discovers through monitoring, review, resident complaint, or any other manner that the Development is not in compliance with the provisions of this subchapter. A 90 day Corrective Action Period will be provided. Documentation of correction must be received during the Corrective Action Period for an Event of Noncompliance to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: fair.housing@tdhca.state.tx.us.

(b) If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each issue, but does not fully address all issues, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action.

(c) If communications to the Owner under this subchapter have a pattern of being returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) The Department will rely solely on the information supplied by the Owner in the Department's web-

based Compliance Monitoring and Tracking System (CMTS) for notifications under this subchapter. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Events of Noncompliance identified in the evaluation of the requirements of this subchapter will be those specified in §10.625 of this title (relating to Events of Noncompliance).

7a

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 23, 2020

Presentation, Discussion and Possible Action on the Programming of Community Services Block Grant funds available to Texas through the Coronavirus Aid, Relief, and Economic Security Act and Authorization to Award Such Funds

RECOMMENDED ACTION

WHEREAS, on March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law which provides relief for individuals and businesses negatively impacted by COVID-19;

WHEREAS, Title IX of the CARES Act provides supplemental formula funding in the amount of \$1 billion to states to carry out activities under Section 674 through 679 of the Community Services Block Grant (CSBG) to prevent, prepare for, and respond to COVID-19;

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is designated as the CSBG Lead Agency for Texas and administers the regular CSBG thereby making the Department the recipient of the CARES Act CSBG funding for the State of Texas;

WHEREAS, although allocation amounts for each CSBG Lead Agency have yet to be announced, the Department's portion of the funding is estimated to be approximately \$47,456,000 and is required to be expended by September 30, 2022;

WHEREAS, consistent with the expectations of the U.S. Department of Health and Human Services (USHHS) who provides these funds, the Department is recommending to the Board to allocate 90% of CARES Act CSBG funding to the 40 CSBG eligible entities to provide services and assistance to the low-income population in all 254 counties to prevent, prepare for, and respond to COVID-19; 7% to be held in reserve for any future allowable emergency use or incentive awards; 2% to the Texas Homeless Network; and the remaining 1% for state administration;

WHEREAS, responding to the needs of Texans impacted by COVID-19 will demand that the Department take extraordinary measures necessary to ensure the funding is deployed as quickly, effectively and fully as possible;

WHEREAS, the Department is recommending under the authority granted by the CARES Act to CSBG Lead Agencies that household eligibility for assistance as of March 27, 2020, will be set at 200% Federal Poverty Income Guidelines (FPIG) for those impacted by COVID-19, instead of the 125% FPIG typically applicable to CSBG, and that such household eligibility guidelines will be used for CARES Act CSBG funds, any remaining 2019 CSBG funds if

allowable by USHHS, the 2019 and 2020 CSBG-D awards awarded at the Board meeting of March 26, 2020, and the annual CSBG 2020 and 2021 formula funds approved by the Board on July 25, 2019, to provide greater efficiencies in subrecipient administration and reporting;

WHEREAS, in accordance with CSBG Information Memorandum #154 Disaster Flexibilities Waiver, in cases where households have been made low-income (defined as 200% FPIG) as a result of the emergency, in this case the COVID-19 pandemic, the Department wishes to establish emergency procedures that streamline the eligibility determination process by allowing eligibility to be based on immediate household need and by allowing signed statements from the family attesting to COVID-19's impact April 24, 2020, through 30 days after the expiration of the state disaster declaration for CARES Act CSBG supplemental funds, the annual 2020 and 2021 CSBG formula funds, any remaining 2019 CSBG funds if allowable by USHHS, and the 2019 and 2020 CSBG-D awards awarded at the Board meeting of March 26, 2020, pending availability of necessary documents and providing that the disaster event itself has made a family eligible;

WHEREAS, the speed with which COVID-19 may spread through the low-income population of Texas may require responsiveness for which a prompt decision by the Executive Director can be made without the ability to go through the processes typically employed to obtain Board authorization;

WHEREAS, there are 40 CSBG eligible entities within the CSBG network that are eligible to receive these additional funds, which together with the Texas Homeless Network (THN) are being recommended for an award of these funds subject to a positive recommendation from EARAC and subject to any EARAC conditions; and

WHEREAS, to the extent required by USHHS the Department will pursue applicable waivers if needed to program the funds as reflected in this action item;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees and each of them be and they hereby are authorized, empowered and directed, for and on behalf of this Board to execute, deliver, and cause to be performed such amendments, documents, and other writings such as anticipated grant guidance on implementation of the CARES Act CSBG funding received from USHHS and to make decisions as they or any of them may deem necessary or advisable to effectuate the foregoing;

FURTHER RESOLVED, that the Executive Director and his designees each of them be and they hereby are, authorized, empowered, and directed, for and on behalf of this Board, to issue contracts for these funds, only upon confirmation of previous participation review by the Compliance Division and subject to a positive recommendation from EARAC and subject to any EARAC conditions, consistent with the policy noted herein;

FURTHER RESOLVED, that should any funds designated for the 7% reserve remain unobligated by August 31, 2020, all or part of this amount may also be redistributed to the CSBG eligible entities that have up to that date expended the highest proportional amounts of their CARES Act CSBG allocation as determined by and at the discretion of the Executive Director or designee (with a positive recommendation or a recommendation with conditions by EARAC);

FURTHER RESOLVED, that for program participants that initially qualified for direct services as of April 24, 2020, through 30 days after the expiration of the state disaster declaration, for purposes of COVID-19 relief only, the CARES Act CSBG supplemental funds, any remaining 2019 CSBG formula funds if allowable by USHHS, the CSBG-D funds awarded for COVID-19 activities at the Board meeting of March 26, 2020 (if allowed for 2019 CSBG by USHHS), and the annual 2020 and 2021 CSBG formula funds, the Department is authorized to apply the 200% FPIG low-income threshold for purposes of COVID-19 relief;

FURTHER RESOLVED, that for the CARES ACT supplemental funds, the annual 2020 and 2021 CSBG formula funds, any remaining 2019 CSBG funds if allowable by USHHS, and the 2019 and 2020 CSBG-D awards awarded for COVID-19 activities at the Board meeting of March 26, 2020, and if a Subrecipient is using the higher income limit for other CSBG funding as described herein to assist with the purposes of COVID-19 relief, as of April 24, 2020, through 30 days after the expiration of the state disaster declaration, for the purposes of COVID-19 relief only, the Department will allow self-attestation of being economically impacted by COVID-19 to meet immediate emergency needs pending available necessary documents; and

FURTHER RESOLVED, that subject to a submission to a revision of the CSBG Annual Plan or if HHS requires a submission of a CARES Act Annual Plan, the alternative definition and calculation of income as described herein will be used for the award to THN.

BACKGROUND

President Trump signed the CARES Act into law on March 27, 2020, which provides \$1 billion in supplemental CSBG funding to states for relief of low-income individuals economically impacted by COVID-19. Because the Department is designated the CSBG Lead Agency for the State of Texas and administers the regular CSBG, the Department expects to receive guidance and a Notice of Grant Award for approximately \$47,456,000 from USHHS, the federal government proponent of these funds, in the weeks ahead. Once received, the Department wishes to immediately issue contracts and distribute the bulk of the supplemental CSBG funds to all 40 eligible entities covering all 254 counties of the state so that eligible entities can begin serving low-income Texans economically affected by COVID-19.

Normally, the Department reserves 90% of the regular CSBG annual award for CSBG eligible entities and 10% for state administration expenses and discretionary use; however, the Department recommends distributing the CARES Act CSBG supplemental funds in the following manner:

- 90% of the allotment for the 40 eligible entities to provide services/assistance to the low-income population economically impacted by COVID-19 to be distributed proportionally using the distribution formula in 10 TAC §6.203.
- 7% held in reserve until August 31, 2020, for any future allowable emergency use that is presently unidentifiable (e.g., COVID-19 hot spots). If this reserve remains unobligated through August 31, 2020, these funds may be redistributed, to those eligible entities which have expended the CARES Act CSBG funds at the highest rate as of August 31, 2020 (with a positive recommendation or recommendation with conditions from EARAC).
- 2% of CSBG-D to the Texas Homeless Network for activities to address homelessness and at-risk of homelessness in the Balance of State Continuum of Care and to provide capacity building assistance to subrecipients of Emergency Solutions Grant CARES Act and 2020 Emergency Solutions Grant funds as a result of COVID-19; and
- 1% for state administration expenses including possible procurement of an Article IX Full Time Equivalent position(s) for increased reporting functions which require that these funds be tracked separately from other funding sources.

The Department is committed to assisting eligible entities serving the low-income population of Texas during this pandemic and must take extraordinary allowable measures to reduce COVID-19's impact. As such, the Department will determine household eligibility for assistance using 200% FPIG (up from 125% for the annual CSBG award) for those impacted by COVID-19 for CARES Act CSBG funds, any remaining 2019 CSBG funds if allowable by USHHS, the 2019 and 2020 CSBG-D awards awarded for COVID-19 activities at the Board meeting of March 26, 2020, and the annual 2020 and 2021 CSBG formula funds approved by the Board on July 25, 2019. This would allow more households impacted by COVID-19 to become eligible for CSBG assistance. For the CSBG CARES Act funds, the Department will confirm with USHHS that pre-agreement costs related to preparing for COVID-19 activities dated from March 13, 2020, the date on which Governor Abbot issued a disaster declaration, are allowed. For CSBG CARES Act funds, any remaining 2019 CSBG formula funds if allowable by USHHS, the 2019 and 2020 CSBG-D awards awarded for COVID-19 activities at the Board meeting of March 26, 2020, and the annual 2020 and 2021 CSBG formula funds approved by the Board on July 25, 2019, the Department will past allow subrecipients to assist households impacted from COVID-19 from March 27, 2020 (the date the President signed the CARES Act) at 200% FPIG.

In addition, in order to meet the emergency needs of low-income Texans and streamline the eligibility determination process, the Department recommends allowing eligible entities to accept signed statements from households attesting to having been economically impacted by COVID-19 (e.g., disaster related unemployment or increased household costs) during the eligibility screening process beginning on April 24, 2020, and lasting through 30 days after the expiration of the state disaster declaration. This action aligns with CSBG Information Memorandum #154 Disaster Flexibilities Waiver and will help households overcome financial hardships related to COVID-19 in a timelier manner.

As it relates to the funds being awarded to the THN, the funds will be used in two primary ways:

- A full time employee to provide capacity building assistance among homelessness providers across the state who are seeing unprecedented levels of need, and are receiving significant amounts of funds, with an emphasis on those subrecipients of ESG CARES funds through the Department, and

- Establishment of a Barrier’s Fund for use within the Balance of State Continuum of Care (COC) which will be used as a fund of last resort to be accessed when no other funding or resources are available in the community to ensure housing stability for people experiencing or at-risk of homelessness (with the household income limit for at-risk of homelessness being the lesser of 200% FPIG and 50% Area Median Income). The fund will be managed by the Barrier’s Fund Coordinator, who will be funded through CSBG funding.

Also, for the CSBG Cares Act funds being awarded to THN, to reduce the administrative burden on THN and its potential subrecipients, and subject to an amendment to the CSBG Annual Plan or the submittal of the CSBG CARES Act Plan as may be required by HHS, the definition and calculation of income will be done under 24 CFR Part 5 instead of 10 TAC §6.4, as that is the method used by a preponderance of THN and COC funding recipients. This Contract Term will be through March 30, 2022, subject to extension by the Executive Director for good cause.

Throughout the life of this pandemic, staff will continue to assess different ways in which the Department can assist eligible entities and the low-income Texans they serve. Approving this action will assist in reducing the virus’s negative effects on the poverty populations of Texas by delivering Federal funds to the intended population in need of assistance while granting the Department and the network of eligible entities the necessary flexibility and a more streamlined approach to react to COVID-19.

To the extent that the federal grant award of funds to the Department is in a different amount than contemplated, all amounts herein will be adjusted accordingly. Additionally, any further limitations or guidance applicable to these funds will be included as required in contracts to subrecipients.

The list of the 40 entities recommended to receive the CARES Act CSBG supplemental funds is in the table below; additionally the Texas Homeless Network will be awarded at the same time, in the estimated amount of \$949,120. The Previous Participation Rule (10 TAC, Chapter 1, Subchapter C, §1.302) requires a review of CSBG awards prior to contract execution. At the time of Board Book posting, all awards described herein are still in the Previous Participation Review process. Staff is requesting authorization of awards contingent upon a positive EARAC recommendation and subject to any EARAC conditions. This is so that contracts can be executed as quickly as possible. If the entity disagrees with an EARAC condition or recommendation, it should follow the Dispute process in 10 TAC §1.303.

	ELIGIBLE ENTITY*	AMOUNT
1	Aspermont Small Business Development Center, Inc.	\$150,000
2	Big Bend Community Action Committee, Inc.	\$174,939
3	Brazos Valley Community Action Programs	\$1,522,480
4	Cameron and Willacy Counties Community Projects, Inc.	\$1,259,995
5	Central Texas Opportunities, Inc.	\$232,185
6	City of Austin Health and Human Services Department	\$1,477,193
7	City of Fort Worth Neighborhood Services Department	\$2,532,450
8	City of Lubbock Community Development Department	\$542,995

9	City of San Antonio Department of Community Initiatives	\$2,896,096
10	Combined Community Action, Inc.	\$258,151
11	Community Action Committee of Victoria, Texas	\$377,868
12	Community Action Corporation of South Texas	\$423,394
13	Community Action Inc. of Central Texas	\$382,679
14	Community Action Social Services and Education	\$175,609
15	Community Council of Greater Dallas	\$4,358,531
16	Community Council of South Central Texas, Inc.	\$1,008,312
17	Community Services of Northeast Texas, Inc.	\$570,250
18	Community Services, Inc.	\$2,121,375
19	Concho Valley Community Action Agency	\$293,385
20	Economic Action Committee of the Gulf Coast	\$150,000
21	Economic Opportunities Advancement Corporation of Planning Region XI	\$657,788
22	El Paso Community Action Program-Project BRAVO	\$1,676,638
23	Galveston County Community Action Council, Inc.	\$1,329,308
24	Greater East Texas Community Action Program	\$1,273,615
25	Gulf Coast Community Services Association	\$6,992,963
26	Hidalgo County Community Services Agency	\$2,388,766
27	Hill Country Community Action Association, Inc.	\$705,907
28	Nueces County Community Action Agency	\$594,325
29	Panhandle Community Services	\$762,569
30	Pecos County Community Action Agency	\$150,000
31	Rolling Plains Management Corporation	\$626,167
32	South Plains Community Action Association, Inc.	\$341,556
33	South Texas Development Council	\$297,754
34	Southeast Texas Regional Planning Commission	\$640,825
35	Texas Neighborhood Services	\$613,232
36	Texoma Council Of Governments	\$317,412
37	Tri-County Community Action, Inc.	\$434,193
38	Webb County Community Action Agency	\$786,983
39	West Texas Opportunities, Inc.	\$774,394
40	Williamson-Burnet County Opportunities, Inc.	\$438,117
	CSBG ELIGIBLE ENTITY TOTAL	\$42,710,399

*Award conditioned on a positive recommendation or a recommendation with conditions from EARAC.

7b

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 23, 2020

Presentation, Discussion and Possible Action on the Programming of Low Income Home Energy Assistance Program funds available to Texas through the Coronavirus Aid, Relief, and Economic Security Act and Authorization to Award Such Funds and Update on Administrative Flexibilities

RECOMMENDED ACTION

WHEREAS, on March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law which provides relief for individuals and businesses negatively impacted by COVID-19;

WHEREAS, Title VIII of the CARES Act provides supplemental formula funding in the amount of \$900,000,000 to states for making Low Income Home Energy Assistance (LIHEAP) payments under subsection (b) of section 2602 of the Low-Income Home Energy Assistance Act of 1981 to prevent, prepare for, or respond to COVID-19;

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is designated the recipient of the CARES Act LIHEAP funding for the State of Texas and is expected to receive approximately \$89,267,000 which must be expended by September 30, 2021;

WHEREAS, the Department is recommending that 90% of CARES Act LIHEAP funding be allocated to 37 subrecipients to provide utility assistance to the low-income population in all 254 counties to prevent, prepare for, or respond to COVID-19 (contingent upon a positive recommendation from EARAC and subject to EARAC Conditions); 9% be held temporarily as an Emergency Reserve for any future allowable emergency use; and the remaining 1% be available for state administration;

WHEREAS, responding to the needs of Texans impacted by COVID-19 will demand that the Department take extraordinary measures necessary to ensure the funding is deployed as effectively and fully as possible;

WHEREAS, LIHEAP-DCL-2020-07, released on April 1, 2020, declares COVID-19 a disaster and allows the State to employ certain disaster flexibilities;

WHEREAS, in accordance with the authority granted to the Executive Director under 10 TAC §1.5, the Department has temporarily provided alternative guidance as of April 7, 2020, under 10 TAC §1.410(h) to applicants that represent they or a household member is a U.S. Citizen, but does not currently have a U.S. Passport, or access to a birth certificate and cannot obtain their birth record due to records office closures;

WHEREAS, the CARES Act has waived the requirements of 42 U.S.C. 8626(b)(2)(B) for CARES Act LIHEAP funds, and because the CARES Act describes these funds as a supplemental allocation, the Executive Director has determined under the authority of 10 TAC §1.5, that 10 TAC §6.304 does not apply to these funds;

WHEREAS, in accordance with the Board's approval on March 26, 2020, granting authority to the Executive Director to request federal waivers, the Department may pursue a waiver from the U.S. Department of Health and Human Services (USHHS) allowing subrecipients to forego the acquisition of household billing history, in their entirety, or at a minimum prior to making utility assistance payments;

WHEREAS, the speed with which COVID-19 may spread through the low-income population of Texas may require responsiveness for which a prompt decision by the Executive Director can be made without the ability to go through the processes typically employed to obtain Board authorization; and

WHEREAS, there are 37 LIHEAP subrecipients that are potentially eligible to receive these additional funds and are being recommended for an award of these funds subject to a positive recommendation from EARAC and subject to any EARAC conditions;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees and each of them be and they hereby are authorized, empowered and directed, for and on behalf of this Board to execute, deliver, and cause to be performed such amendments, documents, and other writings such as anticipated grant guidance on implementation of the CARES Act LIHEAP funding received from USHHS and to make decisions as they or any of them may deem necessary or advisable to effectuate the foregoing;

FURTHER RESOLVED, that the Executive Director and his designees each of them be and they hereby are, authorized, empowered, and directed, for and on behalf of this Board, to issue contracts for these funds, only upon confirmation of previous participation review by the Compliance Division and subject to a positive recommendation from EARAC and subject to any EARAC conditions, consistent with the policy noted herein;

FURTHER RESOLVED, that should any of the Emergency Reserve funds remain unobligated by August 31, 2020, these funds may also be redistributed for eligible contract uses to the LIHEAP subrecipients that have up to that date expended the highest proportional amounts of their CARES Act LIHEAP allocation as determined by and at the discretion of the Executive Director or designee; and

FURTHER RESOLVED, that in cases where it becomes apparent a subrecipient is unable to expend the CARES Act LIHEAP funds evidenced by a Subrecipient missing one or more CARES Act Contract milestones, the Executive Director or his designee is granted authority to

deobligate funds from all or part of any CARES Act LIHEAP budget category and reobligate such funds to subrecipients showing the highest rate of expenditure of their CARES Act LIHEAP allocation, to ensure full utilization by September 30, 2021.

BACKGROUND

President Trump on March 27, 2020, signed the CARES Act into law which provides \$900 million in supplemental LIHEAP funding to states for relief of low-income individuals economically impacted by COVID-19. Because the Department is designated the recipient of LIHEAP funds for the State of Texas, the Department expects to receive further guidance and a Notice of Grant Award for approximately \$89 million from USHHS, the federal government agency responsible for these funds, in the weeks ahead. Once received, the Department wishes to quickly issue contracts and distribute the supplemental LIHEAP funds to all 37 subrecipients (contingent upon a positive EARAC recommendation and subject to EARAC conditions) covering all 254 counties of the state so that subrecipients can begin providing utility assistance to low-income Texans economically affected by COVID-19.

Normally, the Department reserves 90% of the regular LIHEAP annual award for subrecipients of which 75% is utilized for Comprehensive Energy Assistance Program (CEAP) utility assistance and 15% is utilized for weatherization assistance. The remaining 10% is for Department and subrecipient administration. For CARES Act LIHEAP supplemental funds, the Department recommends the following distribution:

- 90% of the allotment to CEAP subrecipients (inclusive of 7% subrecipient administration) to provide utility assistance to eligible households economically impacted by COVID-19, including crisis assistance and services to reduce home energy needs. These funds will be distributed proportionally to all eligible subrecipients using the distribution formula in 10 TAC §6.303;
- 9% held in an Emergency Reserve until August 31, 2020, for any future allowable emergency use that is presently unidentifiable (e.g., COVID-19 hot spots). If this reserve remains unobligated through August 31, 2020, these funds will be redistributed proportionally to those eligible entities which have expended the CARES Act LIHEAP funds at the highest rate as of August 31, 2020; and
- 1% for state administration expenses including but not limited to possible procurement of Article IX Full Time Equivalent positions for the increased reporting functions or increased onsite training assistance required by subrecipients to expend the supplemental funds.

The Department is committed to assisting subrecipients serving the low-income population of Texas during this pandemic and must take extraordinary allowable measures to reduce COVID-19's impact. As such, the Department has already made accommodations to the eligibility determination process at the subrecipient and household level by temporarily revising the guidance for CEAP to allow utility assistance to be provided to those applicants who represent that they or other household members are U.S. Citizens, but do not have access to a U.S. passport and cannot obtain birth records due to records office closures. This temporary guidance is effective from April 7, 2020, through August 7, 2020, although subject to extension by the Executive Director, and streamlines the application and eligibility determination process during a time where some U.S. Citizens would not otherwise be able to receive assistance because they cannot obtain their birth record due to records office closures. U.S. Citizens without documents to prove citizenship must still provide identification documents and a signed attestation form certifying that they are indeed a lawful U.S. Citizen.

Additionally, in order to meet the emergency needs of low-income Texans and to further streamline the eligibility determination process, the Department may pursue a waiver from USHHS which would allow subrecipients to forego the acquisition of household billing history required by USHHS for performance measures. For households that are unable to present an annual billing history, subrecipients would utilize an alternative billing method to establish energy burden which would result in distorted performance measures. Obtaining billing history on each applicant for utility assistance historically slows the eligibility determination process as the requesting subrecipient may not receive it for days from the utility company for a particular household; this process is only further exacerbated under shelter in place circumstances with clients finding it even more challenging to attain such documents. Such a waiver would free up valuable time so the subrecipients can focus on making utility assistance payments rather than collecting billing history.

In addition, based on Department experience from receiving other large infusions of funds during the American Recovery and Reinvestment Act of 2009, it can occur that not all subrecipients in a network are able to adjust to such large volume increases in their funding. Therefore, staff recommends instituting a policy to strive to expend all funds in spite of some subrecipients' possible inability to expend the CARES Act LIHEAP funds either due to operational challenges in disseminating funds or lack of need in the area served. The Department recommends granting the Executive Director or his designee the authority to deobligate funds from all or part of CARES Act LIHEAP budget categories of a subrecipient if they either are not spending funds in a timely manner to serve the low-income population in their service area, or there is a lack of need in the service area, as evidenced by missing one or more CEAP CARES Act Contract milestones. Funds deobligated will be reobligated to the subrecipients showing the highest rate of expenditure based on their estimated ability to spend available funding. Granting the Executive Director this authority will further promote timely utility assistance for low-income Texans, reduce bureaucracy and administrative burden, and ensure full utilization of funds by September 30, 2021.

Throughout the duration of this pandemic, staff will continue to assess different ways in which the Department can assist subrecipients and the low-income Texans they serve. Approving this action will assist in reducing a collateral negative effect of the pandemic on the poverty populations of Texas by delivering Federal funds to the intended population in need of timely assistance, while granting the Department and its subrecipients the necessary flexibility and a more streamlined approach to react to COVID-19.

The list of the 37 subrecipients EARAC will consider to receive the CARES Act LIHEAP supplemental funds is in the table below. The Previous Participation Rule (10 TAC, Chapter 1, Subchapter C, §1.302) requires a review of LIHEAP awards prior to contract execution. At the time of Board Book posting, all awards are still in the Previous Participation Review process. Staff is requesting authorization of awards contingent upon a positive EARAC recommendation and subject to any EARAC conditions. This is so that contracts can be executed as quickly as possible. If the entity disagrees with an EARAC condition or recommendation, it will be allowed to follow the Dispute process in 10 TAC §1.303.

	SUBRECIPIENT*	ALLOCATION
1	Aspermont Small Business Development Center, Inc.	\$556,465
2	BakerRipley	\$10,261,221
3	Bexar County Community and Development Programs	\$5,267,021
4	Big Bend Community Action Committee, Inc.	\$651,297
5	Brazos Valley Community Action Programs	\$2,636,903
6	Central Texas Opportunities, Inc.	\$859,431
7	City of Fort Worth Neighborhood Services Department	\$3,922,223
8	City of Lubbock Community Development Department	\$921,344
9	Combined Community Action, Inc.	\$581,194
10	Community Action Committee of Victoria, Texas	\$999,871
11	Community Action Corporation of South Texas	\$3,316,697
12	Community Action Inc. of Central Texas	\$548,561
13	Community Council of South Central Texas, Inc.	\$3,315,952
14	Community Services Northeast Texas, Inc.	\$1,710,152
15	Concho Valley Community Action Agency	\$1,091,914
16	County of Hidalgo Community Services Agency	\$3,785,488
17	Dallas County Health and Human Services	\$6,449,363
18	Economic Action Committee of the Gulf Coast	\$171,274
19	Economic Opportunities Advancement Corporation of Planning Region XI	\$1,957,185
20	El Paso Community Action Program-Project BRAVO	\$3,643,747
21	Galveston County Community Action Council, Inc.	\$2,018,176
22	Greater East Texas Community Action Program	\$5,504,969
23	Hill Country Community Action Association, Inc.	\$1,362,160
24	Kleberg County Human Services	\$437,878
25	Nueces County Community Action Agency	\$1,254,614
26	Panhandle Community Services	\$2,166,613
27	Pecos County Community Action Agency	\$427,213
28	Rolling Plains Management Corporation	\$1,789,456
29	South Plains Community Action Association, Inc.	\$1,036,456
30	South Texas Development Council	\$674,156
31	Texas Neighborhood Services	\$1,018,644
32	Texoma Council Of Governments	\$2,540,308
33	Travis County Health and Human Services	\$2,394,907
34	Tri-County Community Action, Inc.	\$1,300,514
35	Webb County Community Action Agency	\$1,071,440
36	West Texas Opportunities, Inc.	\$2,142,777
37	Williamson-Burnet County Opportunities, Inc.	\$552,716
	TOTAL	\$80,340,300

*To the extent that any of the subrecipients initially decline their award or do not have a positive recommendation from EARAC or do not agree to comply with EARAC conditions, after all appeal periods have run, the Department will redistribute the allocation proportionally using the allocation formula described in 10 TAC §6.303.

7c

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

7d

BOARD ACTION REQUEST
SINGLE FAMILY AND HOMELESS PROGRAMS
APRIL 23, 2020

Presentation, Discussion and Possible Action on the Programming of Emergency Solutions Grant (ESG) Program funds in the first allocation available to Texas through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Authorization to Award Such Funds, and if necessary an emergency rulemaking to accomplish this action

RECOMMENDED ACTION

WHEREAS, on March 27, 2020, the CARES Act was signed into law to provide government support as a result of the novel coronavirus (COVID-19) public health crisis;

WHEREAS, on April 2, 2020, the U.S. Department of Housing and Urban Development (HUD) released \$1 billion of the \$4 billion available through the CARES Act for the Emergency Solutions Grants Program (ESG) nationally, of which \$33,254,679 was allocated to the Texas Department of Housing and Community Affairs (the Department);

WHEREAS, 10 TAC §§7.33-7.34, and §§7.36-7.41(a) do not apply to the ESG CARES Act funding because this additional allocation has activity restrictions and the Department is not taking Applications directly, thus a programming plan is needed to quickly contract the first allocation of ESG CARES Act funding;

WHEREAS, the programming plan is being presented in this action, which may vary by approximately 25% from the proposed use at the discretion of the Executive Director;

WHEREAS, an estimated \$13,329,434 is proposed to be offered in new ESG CARES Act Contracts to existing ESG Subrecipients (contingent upon a positive EARAC recommendation and subject to EARAC conditions);

WHEREAS, an estimated \$16,377,511 is proposed to be recommended for award by Continuum of Care (CoC) lead agencies through a Local award process, or be offered by the Department to CoC awardees that have services-only CoC contracts for emergency shelter/street outreach or CoC rapid re-housing (contingent upon a positive EARAC recommendation and subject to EARAC conditions);

WHEREAS, approximately \$1,885,000 is anticipated to be used for Homeless Management Information System (HMIS) coordination, coordination of ESG CARES Act awards, and legal services on a broad scale;

WHEREAS, the ESG CARES Act Contracts will incorporate the waivers and flexibilities allowable for ESG as outlined in the CARES Act and granted by HUD;

WHEREAS, \$1,662,734 is anticipated to be retained by TDHCA as administration, which may be reprogrammed to other activities irrespective of the 25% limitation outlined above;

WHEREAS, in many cases, immediate and short term assistance may require rapid responsiveness for which a prompt decision by the Executive Director can be made without the ability to go through the processes typically employed to obtain Board authorization; and

WHEREAS, the Department may seek waivers to federal regulations or state statutes in order to more effectively provide services to eligible individuals and families economically impacted by COVID-19 and to ensure that local Subrecipients are able to focus on their COVID-19 response;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate awards, pending EARAC approval and subject to EARAC conditions of ESG CARES Act funding of an estimated \$13,329,434 to existing ESG Subrecipients;

FURTHER RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to release funding of the remaining estimated \$16,377,511 available through the ESG CARES Act; and

FURTHER RESOLVED, that in carrying out the foregoing, the Executive Director will provide a report to the Board at subsequent Board meetings of any actions taken under the authority of this approval.

BACKGROUND

On March 27, 2020, the CARES Act was signed into law. The CARES Act provides for \$4 billion to be distributed through the ESG Program nationally, and includes waivers of certain provisions of the ESG regulations. The first allocation of ESG CARES Act funding released by HUD allocated \$33,254,679 to the Texas Department of Housing and Community Affairs. For perspective, the 2020 ESG annual allocation is \$9,643,857. It should be noted that \$38,525,059 in ESG CARES was distributed by HUD directly to several cities and counties in Texas. The remaining \$3 billion will be distributed by HUD utilizing an allocation formula to be determined at a later date, as approved by the HUD Secretary.

The ESG Program is a HUD-funded program designed to assist people experiencing homelessness or at-risk of homelessness to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. The program components under ESG include street outreach, emergency shelter, rapid re-housing, homelessness prevention, Homeless Management Information System (HMIS), and administration. Rapid re-housing and homelessness prevention may be used for housing relocation and stabilization services and short-term and medium-term rental assistance.

ESG CARES Act funding is available until September 30, 2022. Several changes to ESG regulations are outlined in the CARES Act. The Department is seeking additional ESG waivers from HUD to better serve the needs of Texans that are homeless or at-risk of homelessness.

ESG CARES Act	ESG Annual Allocation
Income limit of 50% Area Median Income to receive or continue to receive homelessness prevention, or to continue receiving rapid re-housing assistance.	Income limit of 30% Area Median Income to receive or continue to receive homelessness prevention, or to continue receiving rapid re-housing assistance.
No cap on the use of ESG CARES funds for emergency shelter and street outreach.	Cap of 60% for emergency shelter and street outreach with ESG funding.
No match requirement.	100% match requirement.
Pre-contracting costs will be allowed from the first COVID-19 response, which in Texas is March 13, 2020, with the state-declared disaster, though certain costs earlier than March 13 th may be eligible if staff approved.	Pre-contracting costs are only allowed to the date for which HUD signed the ESG grant agreement with the Department.
Environmental and habitability reviews for temporary shelters are not required.	Environmental clearance and habitability reviews need to be conducted before any funds are expended on temporary shelters
Administrative percentage is 10%, distributed between the recipient (the Department) and ESG Subrecipients.	Administrative percentage is 7.5%, distributed between the recipient (the Department) and ESG Subrecipients

In addition, HUD released waivers for ESG annual allocations and ESG CARES funds in a Memo released April 1, 2020. TDHCA staff confirmed acceptance of these waivers on April 3, 2020, to be effective April 5, 2020, and which have subsequently been approved by the Executive Director to allow staff the ability to offer these waivers to existing ESG Subrecipients (because it may involve amending existing ESG Contracts) under the authority found in 10 TAC §1.5, in cases where they were reiterated in the Department’s regulation. These waivers of federal regulations and state rules will be incorporated into ESG Cares Act Contracts, and may include any other extensions to these dates that HUD may grant. These include:

- Expansion of HMIS eligible uses. HUD waived 24 CFR §576.107(a)(2) which authorizes use of ESG funds for managing and operating the Homeless Management Information System (HMIS) funds if the recipient is the HMIS lead agency. This waiver allows ESG Subrecipients to use ESG funding for the provisions in 24 CFR §576.107(a)(2), even if the ESG Subrecipient is not an HMIS lead agency. Expanding HMIS eligible activities allows more ESG Subrecipients to use ESG funding to upgrade or enhance the HMIS as needed to incorporate ESG program data related to COVID-19. The waiver to expand HMIS eligible activities will be in effect from April 5, 2020, to September 30, 2020.
- Change re-evaluations from three to six months for homelessness prevention. HUD waived 24 CFR §576.401(b) which requires a re-evaluation of the Program Participant's eligibility and the types/amounts of assistance to occur not less than once every three months. With the waiver, re-evaluations for homelessness prevention will be required not less than once every six months. Waiving three-month re-evaluation requirement for homelessness prevention assistance is necessary to help program participants remain stable in housing during the economic uncertainty caused by COVID-19. This waiver applies from April 5, 2020, to March 31, 2022.
- Monthly case management suspended until June. HUD waived 24 CFR §567.401(e), which requires Program Participants to meet with a case manager not less than once per month, unless the Violence Against Women Act of 1994 or Family Violence Prevention and Services Act prohibits the shelter or housing being conditional on the Program Participant's acceptance of services. Waiving the monthly case management requirement until June will allow ESG Subrecipients to provide case management on an as-needed basis and reduce the possible spread and harm of COVID-19. This waiver is in effect from April 5, 2020, to May 31, 2020.
- Waiver of Fair Market Rent (FMR) requirement. HUD waived 24 CFR §576.106(d)(1), which requires total gross rent to be equal or less than the FMR established by HUD. Moving people into permanent housing is especially critical to prevent COVID-19, and this waiver will assist providers to more quickly locate additional units to house persons experiencing homelessness. The rent reasonableness standard still applies. The FMR requirement is waived from April 5, 2020, to September 30, 2020.

On April 7 and 8, 2020, the Department held virtual meetings with the Continuum of Care (CoC) lead agencies related to ESG CARES funding. A CoC is a group composed of representatives of local governments and service providers organized to plan for and provide a system of outreach, emergency shelter, and housing strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area. A CoC lead agency is the CoC collaborative applicant in the HUD CoC Program per 24 CFR §578.3. Grantee recipients of ESG are required to coordinate their ESG programming with CoC organizations per 24 CFR §576.400(a). There are 11 CoCs in Texas, as illustrated in Appendix A. There were nine CoC leads in attendance from TX-500 San Antonio Bexar County; TX-503 Austin/Travis County; TX-600 Dallas City and County/Irving CoC; TX-601 Fort Worth, Arlington/Tarrant County; TX-603 El Paso City and County; TX-604 Waco/McLennan County; TX-607 Texas Balance of State; TX-611 Amarillo; and TX-700 Houston, Pasadena, Conroe/Harris, Fort Bend, Montgomery counties. Common immediate needs shared with the Department by many of the CoC regions included funds for emergency shelter and temporary shelters, which are needed because social distancing requirements

reduced the number of persons that are allowed within existing facilities; funds for rapid re-housing to move persons from places not meant for human habitation or emergency shelter into housing in order to reduce risk of contracting COVID-19; and funding for homelessness prevention to address economic losses occurring from social distancing.

On April 13 and 14, 2020, the Department held virtual meetings with poverty and homeless service providers across the state regarding their priorities for the ESG CARES funding. One hundred sixty nine people attended the virtual meetings from organizations including local governments, and nonprofit organizations. Staff received input on the immediate and forecasted needs in Texas communities related to homelessness, which included immediate needs for street outreach, emergency shelter and rapid re-housing, and forecasted need for rapid re-housing and homelessness prevention. Participants suggested several factors which may be used for ESG CARES allocations or applications; in response staff will look into the availability and viability of varied data sources for the second round of ESG CARES funding. Staff received input on potential performance targets, with the common theme that longer stays in the ESG program may be required for many Program Participants due to unemployment, and a housing market in which few people are vacating units.

ESG CARES ACT PROGRAMMING

The first round of ESG CARES funds to TDHCA is recommended to be allocated as follows (contingent upon a positive EARAC recommendation and subject to any EARAC conditions), with possible variance of up to 25% in each line item subject to the authorization of the Executive Director. Administration expenses for Subrecipients or subgrantees are reflected within each Activity.

ESTIMATED ALLOCATION OF THE FIRST ALLOCATION OF ESG CARES FUNDS

Activity	Funds
New ESG CARES Contracts for current ESG Subrecipients (includes 5% Administrative Funds for Subrecipients)	\$13,329,434*
Recommended through ESG Coordinator or based on CoC Funds (includes 5% Administrative Funds for Subrecipients)	\$16,377,511*
HMIS and Award Recommendation Coordination and Legal Services Contracts (includes Administrative Funds which will be negotiated for Subrecipients)	\$1,885,000
Administration for TDHCA (5%)	\$1,662,734
Total funds	\$33,254,679

*The amount to be awarded for new ESG CARES Contracts to current ESG Subrecipients is based on their current expenditure rates, and subject to change with the submission of the Monthly Performance Report due April 30. Recommendations through COC Lead Entities or based on CoC funds, and Coordination/Legal Services Contracts are subject to change based on amount offered to current ESG Subrecipients.

NEW ESG CARES ACT CONTRACTS FOR CURRENT ESG SUBRECIPIENTS

One of the most important considerations for the new ESG funding is to allocate the funds in ways that get the needed resources into communities and serving Texans impacted by COVID-19. The Department has 50 ESG Subrecipients with current 2019 ESG Contracts. In addition, there is one Subrecipient with an active 2018 ESG Contract that does not have an active 2019 ESG Contract. The 51 active ESG

Subrecipients were awarded a total of \$8,891,465 in ESG funds. Offering each ESG Subrecipient the option to accept an ESG CARES Contract of at least the amount of their original award would allocate approximately \$8,891,465 to these 51 organizations.

Additional funds of up to 100% of the original contract amount (for a total of 200% above the existing original award) will be offered to existing ESG Subrecipients based on their expenditure rate in proportion to the total awarded amount as of April 30, 2020. Expenditure rates of existing Contracts which determine eligibility for increased CARES Act funding will be published on the Department's website after April 30, 2020, when the monthly reports for March 2020 are due. The amount for new ESG CARES Contracts with existing ESG Subrecipients provided in the table above is an estimate based on expenditures as of the date of this board book posting, and is subject to increase if additional ESG Subrecipients with active Contracts reach a proportionate expenditure as of that date.

Awards of ESG CARES Act funding to existing ESG Subrecipients are contingent upon a positive Executive Advisory Review Award Committee (EARAC) recommendation and subject to any EARAC Conditions. The amount of the existing original Contract with each ESG Subrecipient is provided in Appendix B for reference, and the award amount may be up to double the amount of the current award as described above. If the entity disagrees with an EARAC condition or recommendation, it has the opportunity to utilize the Dispute process in 10 TAC §1.303. Upon notice of a potential award, entities will have no more than 15 calendar days to submit a previous participation review form; this may be extended for up to a seven calendar day period by the Single Family and Homelessness Programs Division Director for good cause.

RECOMMENDATIONS THROUGH CoC LEAD AGENCIES OR BASED ON COC FUNDING

Approximately \$16,377,511 is proposed to be allocated through either recommendations of the CoC Lead Agencies, or by the Department based on CoC funding awards, dependent on the total amount ultimately awarded to existing ESG Subrecipients. The Department intends to utilize an approximate allocation formula in 10 TAC §7.33(b) to determine the allocation of funds to each CoC region, and an illustrative amount is reflected in Appendix C.

In order to facilitate better local coordination and collaboration through the CoCs in the regular annual allocation of ESG, TDHCA procures an entity within the CoCs to contract with the Department to administer a local process for making award recommendations for up to the funding amount. The nature of the relationship between TDHCA and a procured provider previously has precluded the ESG Coordinator from participating in the local consideration for funding; this has led quite a few CoC lead entities to opt to not serve in this role so that they can access funding.

For ESG CARES funding, staff is recommending that the CoC Lead Agency for the CoC Region, be allowed to perform the role of an ESG Coordinator, but as a Subrecipient. This would require that a CoC Agency accept ESG CARES Act funding directly through the Department for providing Program Participant services, or to accept funding for HMIS activities under the CARES Act (CoC Lead Agencies may elect to do both). The CoC Lead Agency role for the CARES Act funds would also be responsible for the development of an abbreviated and streamlined application format and process, application review and evaluation, and recommendation of awards to the Department. Recommendations by the CoC Lead

Agency will be reviewed by TDHCA, and are also subject to approval by EARAC, and subject to EARAC conditions.

If a CoC Lead Agency does not opt to serve this role within a CoC region, TDHCA will reach out to eligible organizations that were awarded certain types of CoC funding (awards made prior to the CARES Act funds directly by HUD to the organizations) per the most recent CoC HUD competition. Methods of distributing funds to CoC awardees in areas in which there is no ESG Coordinator will be published on the Department's website after April 30, 2020, when the amounts for each CoC region are finalized. If there are no CoC awardees in the region that wish to accept ESG CARES funding, the funds will be held for not less than 60 calendar days, dependent on the number of CoC awardees in the region, while TDHCA reaches out to other organizations within the CoC region that may be able to accept the ESG CARES Act funds.

Any organization recommended by the CoC Lead Agency or any CoC area awardee offered ESG CARES funding must meet minimum threshold criteria. An entity must be an organization identified in 10 TAC §7.35(a), i.e. a Unit of Local Government or a Private Nonprofit Organization. Housing authorities are not currently eligible entities for ESG CARES Act funding through TDHCA, Section 414(c) of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act 42 U.S.C 11373(c)). Both the Unit of Local Government and Private Nonprofit Organization must:

- Have registered for a Unique Entity Identifier Number (formerly a Data Universal Numbers System (DUNS) number);
- Have registered in the System for Award Management (SAM). The SAM is the primary registrant database for the U.S. Federal Government; and
- Be willing to certify to ESG regulations.

The Private Nonprofit Organization must also meet the following minimum threshold items:

- Have been incorporated as a nonprofit for two years, with a 501(c) tax exemption;
- Have a history of serving the community within which the ESG CARES Act award will be made;
- Have standards of financial accountability that conform to 2 CFR §200.302, Financial Management, and 2 CFR §200.303, Internal Controls; and
- Have one paid staff member.

Upon notice of a potential award, entities will have no more than 15 calendar days to submit a previous participation review form; this may be extended for up to a seven calendar day period by the Single Family and Homelessness Programs Division Director for good cause. If an entity disagrees with an EARAC recommendation or condition, it has the opportunity to utilize the Dispute process in 10 TAC §1.303.

CoC COORDINATION AND SERVICES

TDHCA anticipates subgranting ESG CARES funding to HMIS lead agencies to facilitate Monthly Performance Report (MPR) entry, funding to CoC Lead Agencies to facilitate award recommendations within their respective CoC regions, and to expand the availability of legal services throughout the state.

TDHCA anticipates changes to the MPR required by ESG Subrecipients to track use of waivers and other criteria due to COVID-19. In order to reduce the amount of time spent reporting, TDHCA anticipates subgranting HMIS funds to HMIS lead agencies to create an ESG report from their HMIS operating systems. In addition, CoC Lead agencies may be offered additional funds, to be negotiated, to coordinate award recommendations of ESG CARES Act funds, as described under Recommendations Through CoC Lead Agencies above. It is estimated that approximately \$385,000 will be utilized for this activity.

It is also expected that there will be a greater need for legal assistance for renters after the eviction suspension ends in Texas, locally, or expires nationally for rental properties in Texas covered by the eviction moratorium under the CARES Act. TDHCA anticipates subgranting (to eligible Subrecipients) or procuring legal service providers for rapid re-housing and homelessness prevention. ESG Subrecipients will be instructed to refer their Program Participant's receiving rapid re-housing and homelessness prevention with legal issues to the provider(s) subgranted or procured by TDHCA. The legal services will be limited to the services outlined in 24 CFR §576.105(b)(4) for the rapid re-housing and homelessness prevention component. Legal services for emergency shelter Program Participants will be allowed and encouraged to be subgranted through the Subrecipient's ESG CARES Act Contracts, or potentially through existing 2018/2019 Subrecipients through an award of voluntarily deobligated funds and also through the authority of 10 TAC §7.42(d) . It is estimated that approximately \$1,500,000 will be utilized for this activity.

Upon notice of a potential award, entities will have no more than 15 calendar days to submit a previous participation review form; this may be extended for up to a seven calendar day period by the Single Family and Homeless Programs Division Director for good cause. If an entity disagrees with an EARAC recommendation or condition, it has the opportunity to utilize the Dispute process in 10 TAC §1.303.

CARES Act First Round ESG Contracting

The CARES ESG funding expires September 30, 2022. The CARES ESG Contracts for Subrecipients except for CoC Lead Agencies and Legal Services will have the following terms:

- Will vary in start date and extend until July 31, 2021, and could be amended to extend to the expiration of the grant for good cause, but the Department will maintain the authority to deny amendments, suspend or terminate contracts, or deobligate funding as described by rule or Contract, including but not limited to the authorities described in 10 TAC §§1.403(k), 7.4(e), 7.5(g), 7.9, and 7.41(f).
- Pre-Contracting costs will be available from March 13, 2020, with staff approval.
- Up to 5% administrative funds allowed.
- Subgrants of ESG CARES Act funding will be allowed for food service providers for emergency shelters and to legal service providers.
- Temporary structures for emergency shelters must meet any applicable guidance as released by HUD and per 24 CFR §576.407(d), unless otherwise waived. Each temporary structure may be subject to review to make sure it meets HUD and state requirements.

The service area must include at least one county of the CoC in which the funds were allocated (except for the Amarillo COC, which must cover at least the entire CoC area), but may be expanded into more than one CoC region as long as the geographic area is continuous.

With the first round of ESG CARES Act funding, TDHCA will not accept Applications directly from organizations wishing to administer ESG CARES Act funding, and hence 10 TAC §7.36 through §7.41(a) will not apply to these funds. TDHCA will consider accepting Applications directly during the anticipated second round of ESG CARES funding.

The Department may require the items in 10 TAC §7.36(a)(13), or other items as allowed or required by TDHCA's Legal Division, as part of pre-Contract or other due diligence to establish the legal authority under state law to enter into Contracts or to perform certain contract activities. The Department may incorporate Expenditure benchmarks and other criteria for redistributing additional funds deobligated from ESG CARES Contracts in the Contract under the authority of 10 TAC §7.41(c) and §7.41(g).

ADMINISTRATION FOR TDHCA

Up to 10% of the ESG CARES grant is authorized to be utilized for administration expenses. Half of that amount will be offered for the administration by the Subrecipients and is reflected within the activity level line item in the funding allocation table. Up to 5% of the funds is set aside for Department administration expenses and includes the possible utilization of Article IX Full Time Equivalent positions.

OTHER ITEMS

As requested by Subrecipients, the Department is also exploring ways to adjust existing 2018/2019 ESG annual allocation Contracts to allow a more coordinated response with the ESG Cares Act flexibilities, and to seek further waivers of ESG statues and regulations as allowed for in the CARES Act. This may involve asking the Governor to waive certain state law Uniform Grant Management Standards for Units of Local Government to be able take advantage of new federal flexibilities. It may also involve adding contiguous service areas to existing ESG Contracts (within NOFA and rule allowances, including but not limited to the authority in 10 TAC §7.42(d)), or repurposing voluntarily deobligated funding to other activities as allowed by 10 TAC §7.33(e). The Department may also allow existing ESG Subrecipients to perform new activities that were not available federally under the 2018/2019 ESG annual allocation rules, under the authority in 10 TAC §7.31(d). The Department will report back to the Board on these steps at a future meeting.

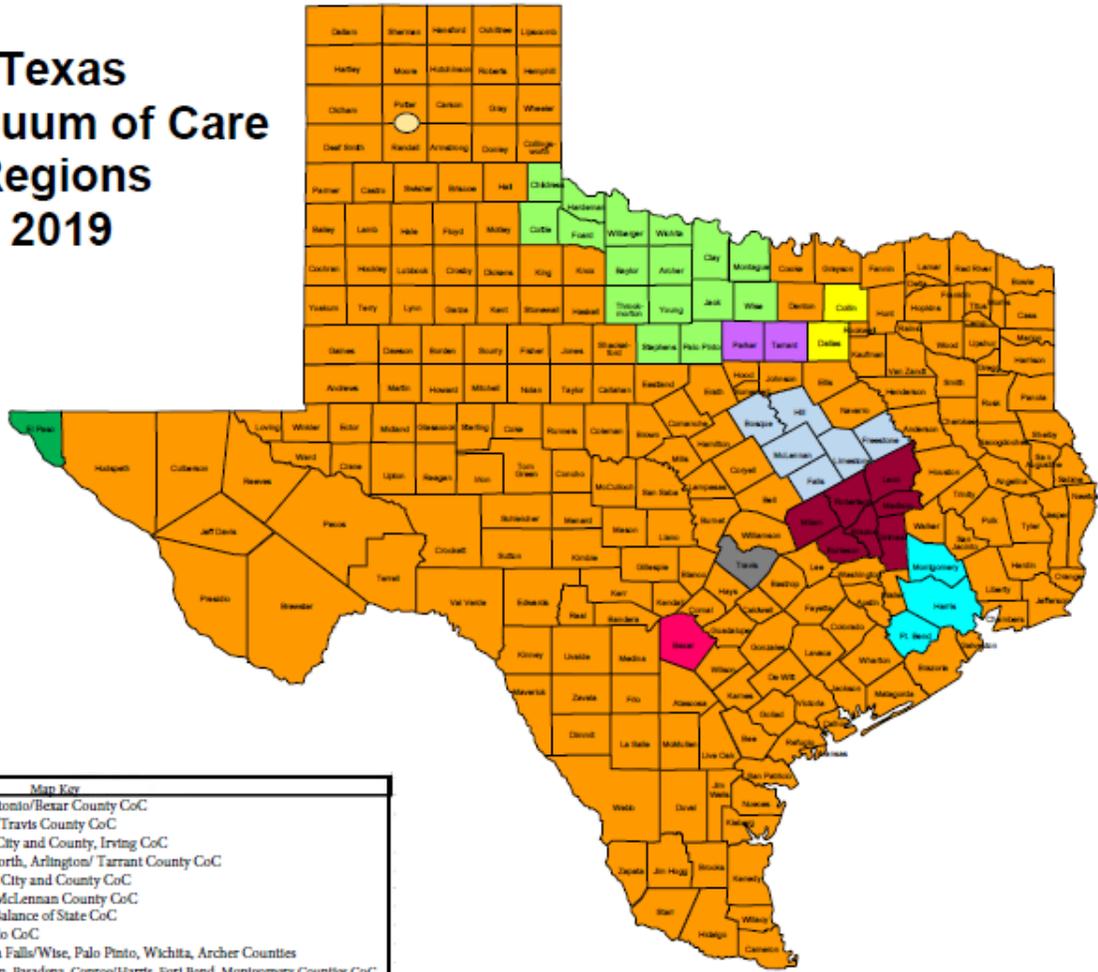
Once this programming is completed as described herein, the Department will make any necessary minor amendments to a HUD Action or Consolidated Plan, as required without further Board approval. At this time the Department does not believe a material amendment to a HUD Action or Consolidated Plan is needed, but if it is determined that it is needed, the Department may in order to contract these funds quickly submit a substantial amendment to HUD (in accordance with the CARES Act and HUD waiver flexibilities) in line with this programming action without Board Approval, but will not take any contractual action under that substantial amendment before Board ratification.

Finally, although the title of this Board action suggested that it might contain an emergency rulemaking, ultimately it was decided that this was not required at this time. In addition to the above requests for approval of an ESG CARES programming plan, staff requests that authority be granted to the Executive Director, or his designees, to execute certain necessary and lawful actions to properly respond to the COVID-19 disaster as they relate to the ESG Program, both under the CARES Act and through the regular

allocation of ESG funding for funding years 2019 and 2020. Such actions may involve granting extensions to program requirements and existing contracts, waiving certain rules within 10 TAC Chapter 7, Homeless Program Rules, and waiving certain contractual requirements between the Department and its Subrecipients.

Appendix A – Continuum of Care Regions

Texas Continuum of Care Regions 2019



Appendix B –Existing ESG Subrecipients – Current Award Amounts (Not ESG CARES Awards)

Continuum of Care Region	ESG Subrecipient	Current ESG Original Awarded Contract Amount
TX-500	Family Violence Prevention Services, Inc	\$202,925
TX-500	Haven for Hope of Bexar County	\$144,200
TX-500	San Antonio Metropolitan Ministry, Inc (SAMM)	\$248,500
TX-500	St. Vincent de Paul	\$84,090
TX-503	The SAFE Alliance	\$153,369
TX-503	Youth and Family Alliance dba LifeWorks	\$344,998
TX-600	Bridge Steps dba The Bridge	\$329,000
TX-600	City House	\$46,089
TX-600	CitySquare	\$250,000
TX-600	Family Gateway, Inc.	\$299,487
TX-600	Hope's Door Plano	\$61,800
TX-600	Promise House	\$75,354
TX-600	Shared Housing Center, Inc	\$64,994
TX-600	Shelter Ministries of Dallas dba Austin Street Center	\$296,774
TX-600	The Family Place, Inc	\$141,144
TX-601	Center for Transforming Lives	\$93,378
TX-601	Presbyterian Night Shelter	\$93,730
TX-601	SafeHaven of Tarrant County	\$101,784
TX-601	Tarrant County Hands of Hope	\$140,080
TX-601	The Salvation Army Fort Worth	\$169,021
TX-603	El Paso Center for Children	\$107,022
TX-603	El Paso Human Services, Inc	\$160,533
TX-604	The Salvation Army - Waco	\$127,804
TX-607	Abilene Hope Haven, Inc	\$172,215
TX-607	Advocacy Outreach	\$169,690
TX-607	Ark-Tex Council of Governments	\$150,000
TX-607	Combined Community Action	\$35,000
TX-607	Community Action Committee of Victoria, Texas	\$199,203
TX-607	Mid-Coast Family Services	\$344,998
TX-607	Corpus Christi Hope House, Inc	\$50,000
TX-607	Denton County Friends of the Family Inc	\$225,055
TX-607	Families In Crisis, Inc	\$51,500
TX-607	Family Crisis Center, Inc	\$64,516
TX-607	Friendship of Women	\$118,771

Continuum of Care Region	ESG Subrecipient	Current ESG Original Awarded Contract Amount
TX-607	La Posada Providencia	\$116,028
TX-607	Loaves & Fishes of the Rio Grande Valley, Inc	\$304,800
TX-607	Randy Sams Outreach Shelter	\$174,393
TX-607	Resource and Crisis Center of Galveston County, Inc	\$300,000
TX-607	The Children's Center	\$344,072
TX-607	The Salvation Army - Corpus Christi	\$227,450
TX-607	The Salvation Army - Temple	\$272,717
TX-607	Women's Center of East Texas, Inc	\$186,128
TX-611	City of Amarillo	\$141,060
TX-700	Alliance of Community Assistance Ministries	\$300,000
TX-700	Bay Area Turning Point	\$214,725
TX-700	Covenant House Texas	\$125,000
TX-700	Houston Area Women's Center	\$299,801
TX-700	Magnificat Houses, Inc.	\$85,000
TX-700	SEARCH Homeless Services	\$114,245
TX-700	The Bridge Over Troubled Waters, Inc	\$69,022
TX-700	The Salvation Army - Houston	\$300,000
	Total	\$8,891,465

Appendix C – Approximate ESG CARES Act Funding by CoC Region

The following is a table that shows estimated ESG CARES Act funding allocated by CoC regions for award through the CoC Lead Agencies or based on CoC funds. The amount is estimated and subject to change.

Continuum of Care (CoC) No.	CoC Name	Estimated ESG CARES Amounts by CoC from First Allocation
TX-500	San Antonio/ Bexar County	\$1,181,308
TX-503	Austin/Travis County	\$1,028,310
TX-600	Dallas City & County/ Irving	\$2,335,994
TX-601	Fort Worth/Arlington/Tarrant County	\$1,001,354
TX-603	El Paso City & County	\$432,518
TX-604	Waco/McLennan County	\$284,842
TX-607	Texas Balance of State	\$6,928,889
TX-611	Amarillo	\$351,839
TX-624	Wichita Falls/Wise, Palo Pinto, Wichita, Archer counties	\$248,521
TX-700	City of Houston/Fort Bend, Harris, and Montgomery counties	\$2,247,830
TX-701	Bryan/College Station/Brazos Valley	\$336,106
TOTAL		\$16,377,511

7e

BOARD ACTION REQUEST
SINGLE FAMILY AND HOMELESS PROGRAMS
APRIL 23, 2020

Presentation, discussion, and possible action on waivers to certain provisions of Texas Administrative Code for HOME Tenant-Based Rental Assistance for disaster response for qualified persons and households most impacted by COVID-19.

RECOMMENDED ACTION

WHEREAS, on March 13, 2020, the Governor of the State of Texas issued a disaster declaration and certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster;

WHEREAS, responding to the needs of Texans impacted by loss of income due to COVID-19 will demand that the Department take extraordinary measures necessary to ensure that its resources are deployed as effectively and fully as possible;

WHEREAS, the Department is committed to using its resources to aid Texans affected by COVID-19, while continuing to operate its ongoing programs within the federal and state parameters of the funds;

WHEREAS, on March 26, 2020, the Board approved reprogramming of up to \$11,290,076 in deobligated HOME funding to the Disaster set-aside in order to expedite availability of funding for TBRA for COVID-19 activities;

WHEREAS, on April 13, 2020, the Department was notified of the availability of waivers to federal regulations related to the HOME Program, funded by the U.S. Department of Housing and Urban Affairs (HUD), in order to effectively administer emergency short-term Tenant-Based Rental Assistance (TBRA) under the Disaster Set-Aside;

WHEREAS, through outreach with existing HOME TBRA providers, staff has identified additional provisions of 10 TAC Chapter 23, the Single Family HOME Program Rules, that may be waived to provide more flexibility in the use of the Disaster set-aside for COVID-19 response and to allow Administrators in the existing General TBRA Program additional flexibilities; and

WHEREAS, under the authority of 10 TAC §23.1 and for good cause, staff recommends a waiver until December 31, 2020 (unless otherwise extended as described herein) of 10 TAC §23.61(e)(1), and 10 TAC §23.61(k), for Applicants for the COVID-19 Disaster set-aside, and 10 TAC §23.62(a)(8) and 10 TAC §23.62(b)(5) for all TBRA Administrators, in order to more

rapidly distribute HOME TBRA funds, and better serve the policies and purposes articulated in Tex. Gov't Code Chapter 2306;

NOW, therefore, it is hereby

RESOLVED, that the Department has permission to waive 10 TAC §23.61(e)(1), 10 TAC §23.61(k), 10 TAC §23.62(a)(8), and 10 TAC §23.62(b)(5), as described herein.

BACKGROUND

On March 13, 2020, Governor Abbott issued a statewide disaster declaration due to COVID-19, authorizing the use of all available resources to cope with the impact of the virus. The nature of this disaster is such that many persons will be financially impacted due to closure of their places of employment, or due to actually contracting the virus and being unable to work. Unlike previous disasters, the imminent threat of the spread of COVID-19 impacts all areas of the state, and is not restricted by geography.

The Department is committed to assisting in responding to this disaster. Typically, in response to disasters (hurricanes, forest fires, tornadoes, etc.), disaster responsiveness via the Department progresses through several phases and accesses various programs at different points. The COVID-19 disaster is unlike other disasters, and the focus at this point is reducing displacement as Texans experience a reduction in regular monthly income directly related to the disaster, or providing immediate shelter for homeless persons because the Center for Disease Control has determined this population is at higher-risk for developing more serious complications of COVID-19 illness.

At the Board meeting on March 26, 2020, the Board approved a plan to reprogram up to \$11,290,076 in deobligated HOME funding to the Disaster set-aside, and to waive certain provisions of 10 TAC Chapter 23, the Single Family HOME Program Rules, in order to expedite the availability and use of funding for Tenant-Based Rental Assistance (TBRA) for persons financially impacted by COVID-19.

On March 27, 2020, the Department was notified by the Office of the Governor that the Governor granted requested suspension of certain statutes related to the HOME Program, including suspension of Tex. Gov't Code Section 2306.111, which requires 95% of HOME funds to be expended in non-Participating Jurisdictions and Section 2306.1115, which requires HOME funds to be distributed according to a Regional Allocation Formula.

On April 13, 2020, HUD notified the Department of the availability of a host of waivers to the federal requirements governing the HOME Program in two letters signed by John Gibbs, Acting Assistant Secretary for Community Planning and Development, included as Attachment 1 to this item. The Department accepted all waivers offered by HUD to have the most flexibility in responding to the State's needs. For the HOME COVID-19 Disaster set-aside, the Department intends to incorporate all waivers into written agreements. For other administrators, waivers may be granted upon request on a case by case basis, as written agreements may need to be amended before waivers can be utilized.

Staff began outreach efforts to existing HOME TBRA administrators in the interim period, notifying them of the suspension of statutes authorized by Governor Abbott, and the actions taken by the Board at the March meeting. Discussion of the potential use of the funds for this special purpose with administrators resulted in this staff recommendation for additional waivers to the Single Family HOME Program Rules.

Staff requested and received waivers from the Executive Director of some provisions of the Single Family HOME Program Rules after the waivers of federal regulations were accepted in accordance with 10 TAC §1.5, Waiver Applicability in the Case of Federally Declared Disasters; however, some waivers requested by Administrators are not available under the scope of 10 TAC §1.5, and require Board action under the waiver authority in 10 TAC §23.1(a).

The provisions of 10 TAC Chapter 23 that were waived for this purpose by the Executive Director include 10 TAC §23.61(b), (d), and (f) which set forth the limitations on the amount of TBRA provided to the tenant, including the minimum tenant rent, the monthly assistance amount, and the payment standard. HUD provided a waiver of 24 CFR §92.209(a) and (h), allowing the Department to authorize payment of the entire amount of any security deposit, monthly rent, and actual utilities for any impacted household.

In order to more rapidly deploy HOME TBRA under the set-aside for COVID-19 economically impacted households, and to provide Administrators in the General set-aside existing flexibility, staff is recommending for good cause the Board approve waivers of the four following provisions of 10 TAC Chapter 23. The first two waivers are specific to the COVID-19 Disaster set-aside funds and will be incorporated into these written agreements, while the latter two waivers will be incorporated into the COVID-19 Disaster set-aside contracts, and will also be available upon request to other TBRA Administrators, as written agreements may need to be amended.

- 10 TAC §23.61(e)(1) limits the total term of assistance to TBRA assisted households to 24 months, with an additional 36 months available if the household has applied for and is waiting for more permanent housing assistance, including a Section 8 Housing Choice Voucher, Section 811 Rental Assistance, or HUD Section 202 assistance. Waiving the limitation will allow for the assistance provided under the COVID-19 Disaster set-aside for COVID response to be excluded from the cumulative assistance term limitation.
- 10 TAC §23.61(k) requires that Administrators serving a household under the Reservation System not issue a Certificate of Eligibility prior to making a reservation of funds. This protection is in place so that tenants are not able to execute a lease agreement prior to the Administrator ensuring that the funds are available to assist them; however, for the Disaster set-aside for COVID response, staff is working to streamline the documentation requirements and a Certificate of Eligibility will not be required for households that are in an existing lease agreement. This is not directly tied to, nor is it a restatement of, an existing federal requirement, but because the federal requirement for the assistance term to begin on the same date as the lease term has been waived, the waiver of this requirement for households that are in an existing lease agreement to issue a Certificate of Eligibility for households with an existing lease will help expedite the process.

- 10 TAC §23.62(a)(8) requires that administrators submit a project address within 90 days of approval of a preliminary setup for a household to be assisted under TBRA so that funds are not held indefinitely if a household does not select a unit in which to utilize their TBRA assistance. Households that were previously approved for assistance, but had not yet located a unit, may not be able to locate a unit due to stay-at-home orders or other concerns related to COVID-19.
- 10 TAC §23.62(b)(5) requires that disbursement requests for a household's monthly rental assistance be submitted not more than ten days prior to the first day of the upcoming month. Staff anticipates that the volume of rental assistance provided under the Disaster set-aside may be impacted if administrators must have cash on hand for all rental subsidy for the upcoming month. In order to ensure liquidity and allow adequate processing time, staff requests a waiver to allow administrators to request funds for the upcoming month on or after the 10th day of the preceding month

Staff is requesting that the waivers end on December 31, 2020, unless the HUD extends its TBRA waivers beyond that date. If that happens this action would give staff the ability, but not the mandate to further extend these waivers.

Attachment 1



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF THE ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

April 10, 2020

MEMORANDUM FOR: All Community Planning and Development Field Office Directors, Deputy Directors, and Program Managers

FROM: John Gibbs, Acting Assistant Secretary for Community Planning and Development (D)

SUBJECT: Availability of Waivers and Suspensions of the HOME Program Requirements in Response to COVID -19 Pandemic

This memorandum provides guidance and the necessary statutory suspensions and regulatory waivers to enable HOME participating jurisdictions (PJs) affected by the Coronavirus Disease 2019 (COVID-19) pandemic to use HOME funds to address immediate housing needs and to help prevent spread of the virus. The memorandum is divided into two sections. Section I addresses PJs located in areas covered by a major disaster declaration made under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). Section II describes regulatory waivers available to all HOME PJs, not just those included in a major disaster declaration. Provisions that are not specifically suspended or waived remain in full effect.

CPD Field Offices shall inform PJs of the availability of these suspensions and waivers. A PJ that intends to implement the HOME statutory suspensions and/or regulatory waivers identified below, must send written notification via e-mail to the CPD Division in its local HUD Field Office before it implements the waiver or suspension. This written notification must identify which suspensions and/or waivers the PJ plans to use.

Waiver and Suspension Authority

Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended, authorizes HUD to suspend HOME statutory requirements to assist PJs in addressing the damage in an area for which the President has issued a major disaster declaration under Title IV of the Stafford Act and to assist them in disaster recovery.

Upon determination of good cause, in accordance with 24 CFR 5.110, HUD may waive regulatory provisions subject to statutory limitations. These provisions provide HUD the authority to make waiver determinations for the HOME program.

I. Statutory Suspensions and Regulatory Waivers Available Only to Major Disaster Areas

Pursuant to the authority provided in Section 290 of NAHA and 24 CFR 5.110, I hereby find good cause, as stated in the justifications that follow, to suspend the statutory provisions and waive the related regulatory provisions described below for PJs covered by a major disaster declaration under Title IV of the Stafford Act as a result of the COVID-19 pandemic. These suspensions and waivers are also available to any PJ that receives a major disaster declaration related to the COVID-

19 pandemic after the date of this memorandum. These suspensions and waivers are intended to provide maximum administrative flexibility to PJs and better assist low-and very low-income households as they deal with the effects of the COVID-19 pandemic.

1. 10% Administration and Planning Cap

Requirement: Limitation on the Use of HOME Funds for Administrative Costs

Citations: Section 212(c) of NAHA and 24 CFR 92.207

Explanation: These provisions limit the amount of HOME funds that a PJ may use for administrative and planning costs associated with its HOME award. A PJ may expend up to 10 percent of its annual HOME allocation, plus any program income received, for administrative and planning costs. These provisions are suspended to enable the PJ to expend up to 25 percent of its FY 2019 and FY 2020 allocations and program income received for administrative and planning costs.

Justification: This suspension is required to provide the PJ adequate funds to pay for the increased cost of administering HOME-related activities to address the effects of COVID-19, including attempts to prevent the spread of the virus. The suspension is also intended to relieve the PJ of the burden of identifying other general funds to pay HOME administrative and planning costs at a time when the State and local tax revenues that provide general operating revenue are decreasing.

Applicability: This suspension and waiver applies to the FY 2019 and FY 2020 HOME allocations of PJs that are covered by a major disaster declaration.

2. CHDO Set-aside Requirement

Requirement: Set-aside for Community Housing Development Organizations (CHDOs)

Citations: Section 231 of NAHA and 24 CFR 92.300(a)(1)

Explanation: These provisions establish a set-aside for CHDOs. The PJ must use 15 percent of each annual allocation of HOME funds only for housing owned, developed, or sponsored by CHDOs.

Justification: The suspension and waiver are required to relieve the PJ of requirements that may impede the obligation and use of funds to expeditiously assist families affected by the COVID-19 pandemic. Suspension of the CHDO set-aside will immediately make additional HOME funds available for activities such as tenant-based rental assistance for which CHDO set-aside funds cannot be used.

Applicability: The CHDO set-aside requirement is reduced to zero percent for the fiscal year 2017, 2018, 2019, and 2020 allocations of State and local PJs.

3. Limits and Conditions on CHDO Operating Expense Assistance

Requirement: Operating Assistance for Community Housing Development Organizations (CHDOs)

Citations: Section 212(g) and 234(b) of NAHA; 24 CFR 92.208 and 24 CFR 92.300(e) and (f)

Explanation: Section 212(g) of NAHA and 24 CFR 92.208 limit the amount of CHDO operating assistance that a PJ may provide to 5% of each annual HOME allocation. Section 234(b) of NAHA and 24 CFR 92.300(f) limit the amount of CHDO operating assistance, in combination with certain other forms of assistance, that each CHDO may receive to the greater of 50% of its annual operating budget or \$50,000. 24 CFR 92.300(e) requires a CHDO receiving operating assistance that is not currently receiving CHDO set-aside funding for a specific project to be expected to receive such funding within 24 months.

These statutory provisions are suspended and regulatory provisions are waived to permit a PJ to provide up to 10% of its FY 2019 and FY 2020 HOME allocations as operating assistance to CHDOs and to permit a CHDO to receive funding to fill operating budget shortfalls, even if the amount exceeds the higher of \$50,000 or 50% of its annual operating budget. Furthermore, PJs will not be required to include a provision in the written agreement with the CHDO that the CHDO is expected to receive CHDO set-aside funds within 24 months of receiving the additional operating assistance, as required in 24 CFR 92.300(e).

Justification: The suspension and waiver of these requirements is required to ensure that CHDOs are able to maintain operations and retain staff capacity to own, develop and sponsor housing with CHDO set-aside funds to serve communities impacted by the COVID-19 pandemic.

Applicability: PJs in areas covered by a major disaster declaration may use up to 10% of their FY 2019 and FY 2020 allocations for CHDO operating assistance. A CHDO receiving increased operating assistance must use the assistance to maintain organizational capacity during the COVID-19 pandemic. CHDOs may receive increased operating assistance under these suspensions and waivers through June 30, 2021.

4. Matching Contribution Requirements

Requirement: Reduction of Matching Contributions

Citation: 24 CFR 92.218 and 92.222(b)

Explanation: The provisions of 24 CFR 92.218 and 24 CFR 92.222(b) require all HOME PJs to contribute throughout the fiscal year to housing that qualifies as affordable housing under the HOME program. The contributions must total no less than 25 percent of the HOME funds drawn from the PJ's HOME Investment Trust Fund Treasury account. The COVID-19 pandemic has drastically reduced economic activity, reducing state and local tax revenues and placing financial strain on PJs as they deliver urgently needed public health, emergency housing, education, community and social services. Reducing the matching requirement for PJs in areas covered by a major disaster declaration by 100 percent for FY 2020 and FY 2021 will ease the economic burden on PJs and eliminate the need for them to identify other sources of match for HOME activities.

Justification: Given the urgent housing and economic needs created by COVID-19, and the substantial financial impact the PJ will face in addressing those needs, waiver of these regulations will relieve the PJ from the need to identify and provide matching contributions to HOME projects.

Applicability: This match reduction applies to funds expended by a PJ located in Presidentially declared-disaster area between October 1, 2019 and September 30, 2021.

II. **Regulatory Waivers Available to All Participating Jurisdictions**

The following regulatory waivers are available to all PJs, not just those PJs covered by a major disaster declaration under Title IV of the Stafford Act. Pursuant to the authority provided in 24 CFR 5.110, I hereby waive the HOME regulatory requirements specified below for all HOME PJs.

1. Citizen Participation Reasonable Notice and Opportunity to Comment

Citation: 24 CFR 91.105(c)(2) and (k) (Local governments), 24 CFR 91.115(c)(2) and (i) (States), and, 24 CFR 91.235(e) (Insular areas) 24 CFR 91.401 (Consortia)

Explanation: The regulations at 24 CFR 91.105(c)(2) and (k) (Local governments), 24 CFR 91.115(c)(2) and (i) (States), 24 CFR 91.235(e) (Insular Areas), and 24 CFR 91.401 (Consortia) set forth the citizen participation requirements for PJs. For substantial amendments to the consolidated plan, the regulations require the PJ to follow its citizen participation plan to provide citizens with reasonable notice and opportunity to comment. The citizen participation

plan must state how reasonable notice and opportunity to comment will be given. This waiver will permit PJs amending their plans as a result of the COVID-19 pandemic to reduce the comment period to 5 days.

Justification: Given the unprecedented economic disruptions caused by the COVID-19 pandemic, PJs may need to expeditiously reprogram HOME funds to activities that more directly meet their immediate housing needs, including reprogramming funds to cover increased administrative costs or away from other development activities. Requiring these PJs to complete the required public comment period would cause undue delays in the face of urgent and growing need. PJs must have the ability to respond immediately to the unprecedented housing need caused by the COVID-19 pandemic.

Applicability: This waiver is in effect for any necessary substantial amendments to FY 2020 and earlier consolidated plans or action plans.

2. Income Documentation

Requirement: Source Documentation for Income Determinations

Citations: 24 CFR 92.203(a)(1) and (2), 24 CFR 92.64(a) (Insular Areas)

Explanation: These sections of the HOME regulation require initial income determinations for HOME beneficiaries by examining source documents covering the most recent two months. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Justification: This waiver permits the PJ to use self-certification of income, as provided at §92.203(a)(1)(ii), in lieu of source documentation to determine eligibility for HOME assistance of persons requiring emergency assistance related to COVID-19. Many families affected by actions taken to reduce the spread of COVID-19, such as business closures resulting in loss of employment or lay-offs, will not have documentation that accurately reflects current income and will not be able to qualify for HOME assistance if the requirement remains effective.

Applicability: The waiver applies to individuals and families that have lost employment or income either permanently or temporarily due to the COVID-19 pandemic and who are applying for admission to a HOME rental unit or a HOME tenant-based rental assistance program. This waiver also applies to homeless individuals and families who are applying for admission to a HOME rental unit or a HOME tenant-based rental assistance program. Timely provision of this assistance will reduce the spread of COVID-19.

If a PJ chooses to use this waiver availability, the PJ must ensure that self-certified income takes into consideration all income, including any

unemployment and emergency benefits the applicant will receive. However, for purposes of an applicant's self-certification, emergency tax relief (commonly referred to as stimulus payments) is not to be included as an emergency benefit. Also, the PJ must arrange to conduct on-site rent and income reviews within 90 days after the waiver period. The PJ must include tenant income certifications in each project file. This waiver remains in effect through December 31, 2020.

3. On-Site Inspections of HOME-assisted Rental Housing

Requirement: Ongoing Periodic Inspections of HOME-assisted Rental Housing

Citation: 24 CFR 92.504(d)(1)(ii) and 24 CFR 92.64(a) (Insular Areas)

Explanation: These provisions require that during the period of affordability PJs perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards at §92.251 and to verify the information submitted by the owners in accordance with the income and rent requirements of §92.252. On-site inspections must occur at least once every three years during the period of affordability. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Justification: Waiving the requirement to perform ongoing on-site inspections will help protect PJ staff and limit the spread of COVID-19. To protect PJ staff and reduce the spread of COVID-19, this waiver extends the timeframe for PJs to perform on-going periodic inspections and on-site reviews to determine a HOME rental project's compliance with property standards and rent and income requirements.

Applicability: The waiver is applicable to ongoing periodic inspections and does not waive the requirement to perform initial inspections of rental properties upon completion of construction or rehabilitation. Within 120 days of the end of this waiver period, PJs must physically inspect units that would have been subject to on-going inspections during the waiver period. The waiver is also applicable to on-site reviews to determine a HOME rental project's compliance with rent and income requirements if the project owner is unable to make documentation available electronically. The waiver is in effect through December 31, 2020

4. Annual Inspection of Units Occupied by Recipients of HOME Tenant-Based Rental Assistance (TBRA)

Requirement: Annual Inspections of TBRA Units

- Citation: 24 CFR 92.504(d)(1)(iii); 24 CFR 92.209(i) requirement for annual re-inspections and 24 CFR 92.64(a) (Insular Areas)
- Explanation: These provisions require PJs to annually inspect each unit occupied by a recipient of HOME TBRA. 24 CFR 92.64(a) applies these requirements to Insular Areas.
- Justification: Waiving the requirement that these annual inspections be performed according to schedule will protect the health of both inspectors and TBRA tenants by observing physical distancing recommendations to limit the spread of COVID-19.
- Applicability: The waiver is applicable to annual HQS inspections required to occur from the date of this memorandum through December 31, 2020. At the end of this waiver period, PJs must inspect units that would have been subject to HQS inspections during the waiver period within 120 days of the expiration of the waiver. In addition, PJs shall make reasonable efforts to address any tenant-reported health and safety issues during the waiver period.

5. Four-Year Project Completion Requirement

- Requirement: Four-Year Project Completion Deadline
- Citation: 24 CFR 92.205(e)(2) and 24 CFR 92.64(a) (Insular Areas)
- Explanation: The provision requires that projects assisted with HOME funds be completed within 4 years of the date that HOME funds were committed. If the project is not complete, in accordance with the definition of “project completion” at 24 CFR 92.2, by the deadline, the project is involuntarily terminated in HUD’s Integrated Data Information System (IDIS), and the PJ must repay all funds invested in the project. The regulations permit a PJ to request an extension of the deadline for up to one-year. 24 CFR 92.64(a) applies these requirements to Insular Areas.
- Justification: This waiver is necessary to provide additional time to permit completion of HOME-assisted projects that may be delayed as a result of the impact of COVID-19 on project timelines. These delays may occur as a result of worker illnesses or efforts to reduce the spread of COVID-19, such as smaller construction crews or delays in local permitting or inspections due to government office closures.
- Applicability: This waiver applies to projects for which the 4-year project completion deadline will occur on or after the date of this memorandum. The completion deadlines for covered projects are extended to December 31, 2020.

6. Nine-Month Deadline for Sale of Homebuyer Units

Requirement: Qualification as Affordable Housing: Homeownership

Citation: 24 CFR 92.254(a)(3) and 24 CFR 92.64(a) (Insular Areas)

Explanation: This provision requires that a homebuyer housing unit developed with HOME funds have a ratified contract for sale to an eligible homebuyer within 9 months of the date of completion of construction or rehabilitation. If there is no ratified sales contract with an eligible homebuyer within 9 months of completion of construction or rehabilitation, the housing must be rented to an eligible tenant in accordance with §92.252. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Justification: Many PJs will not be able to meet this deadline due to the effect the COVID-19 pandemic will have on the ability of eligible households to qualify for mortgages as a result of income losses or the inability to schedule inspections, titles searches, or closings during periods of business closures. The waiver is necessary to prevent the loss of homeownership opportunities for HOME-eligible families and temporarily suspend the required corrective action of repayment of HOME funds or conversion of the homebuyer units to rental housing.

Applicability: The waiver applies to projects for which the 9-month homebuyer sale deadline occurs on or after the date of this memorandum and extends the deadline for those projects to December 31, 2020. This waiver does not apply to the remaining requirements of the regulation, including that a homebuyer must receive housing counseling, and that a PJ must determine eligibility of a family by including the income of all persons living in the housing.

7. Use of HOME Funds for Operating Reserves for Troubled HOME Projects

Requirement: Troubled HOME Projects

Citations: 24 CFR 92.210(a) and (b) and 24 CFR 92.64(a) (Insular Areas)

Explanation: 24 CFR 92.210 establishes provisions to permit HOME rental projects that are not financially viable (i.e., projects for which operating costs significantly exceed operating revenue) to be preserved through the use of HOME funds to recapitalize project reserves. 24 CFR 92.210(a) requires HUD to review market needs, available resources, and the likelihood of long-term viability of the project before approving this use of HOME funds. 24 CFR 92.210(b) requires a written memorandum of agreement between HUD and the PJ as a precondition of this funding and certain

limitations on the amount of funding. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Justification: The waiver is necessary to enable PJs to take rapid action to preserve the financial viability of HOME-assisted affordable rental projects currently under a HOME period of affordability. Because existing tenants in HOME units may be unable to meet their rent obligations due to the economic impact of the COVID-19 pandemic, HOME rental projects may experience operating deficits due to the sudden decrease in rental revenue.

Applicability: The waiver applies to HOME-assisted rental projects currently within the period of affordability established in the HOME written agreement. PJs will not be required to obtain HUD approval or execute a memorandum of agreement with HUD before providing this assistance. PJs may only exercise this waiver authority when the project owner agrees to forego: 1) any distributions of residual receipts resulting from the project throughout the waiver period and for a period of 6 months thereafter; 2) any right under the existing lease agreement or State or local law to pursue legal action against tenants of HOME-assisted units for non-payment of rent and the collection of any fees associated with late payments without prior approval of the PJ; and 3) any adverse credit reporting against tenants of HOME-assisted units for nonpayment of rent or fees without prior approval of the PJ.

The PJ may provide additional HOME funds to recapitalize operating deficit reserves for HOME-assisted rental projects if the PJ determines that the project is experiencing operating deficits related to the economic effects of the COVID-19 pandemic during the waiver period. The PJ may only provide this assistance to projects experiencing operating deficits that will not be covered by insurance or other sources (e.g., other private, local, state, or federal funds).

The maximum amount of HOME assistance that may be provided is equal to the total of the project's operating expenses, previously scheduled payments to a replacement reserve, and actual debt service (excluding debt service of loans in forbearance) multiplied by the proportionate share of HOME-assisted units to the total number of units in the project for the period beginning on April 1, 2020 and ending on December 31, 2020. Project operating expenses may be demonstrated by one of the following:

- The Owner's most recent year to date financials for the project;
- Certified project-level accounting records covering the most recent 3 months; and
- Copies of project-level bank statements covering the most recent 3 months.

Project operating expenses may also be adjusted due to COVID-19-related expenditures and foregone expenses due to social distancing measures and other COVID-19-related impacts. An owner may demonstrate these expenses with recent receipts, copies of work orders, revised budgets that have been certified by the project owner as true, accurate representations of current expenditures.

In order to take advantage of this waiver, PJs must amend the HOME written agreement with the project owner to include the amount of HOME funds that will be provided to an operating reserve (i.e., the proportion of total costs attributable to HOME units as described in the paragraph above), the costs eligible to be paid with HOME funds in the operating reserve (i.e., operating expenses, scheduled payments to a replacement reserve, and qualifying debt service), and the documentation the PJ is required to maintain to demonstrate the allowable amounts and eligibility of costs paid with the HOME funds in the operating reserve.

The written agreement must specify that the owner must forego: 1) any distributions of residual receipts during the period this waiver is in effect and for a period of 6 months thereafter; 2) any right under the existing lease agreement or State or local law to pursue legal action against tenants of HOME-assisted units for non-payment of rent and the collection of any fees associated with late payments without prior approval of the PJ; and 3) any adverse credit reporting against tenants of HOME-assisted units for nonpayment of rent or fees without prior approval of the PJ.

Within 6 months following the waiver period, the PJ must review the project's records of actual revenue and operating expenses, total amount of HOME funds expended from the operating reserve, and the eligibility of expenses by examining invoices and receipts. The written agreement must require the project owner to repay any expenditures for costs determined to be ineligible and any balance of HOME funds remaining in the reserve after December 31, 2020. Any HOME funds repaid to the PJ must be deposited in the local HOME account and reported as program income in IDIS.

The waiver is effective through December 31, 2020.

8. Timeframe for a Participating Jurisdiction's Response to Findings of Noncompliance

Requirement: Corrective and Remedial Actions

Citations: 24 CFR 92.551(b)(1) and 24 CFR 92.64(a) (Insular Areas)

Explanation: 24 CFR 92.551(b)(1) requires that if HUD determines preliminarily that a PJ has not met a provision of the HOME regulations, the PJ must be notified and given an opportunity to respond within a time period prescribed by

HUD, not to exceed 30 days. 24 CFR 92.64(a) applies this requirement to Insular Areas.

Justification: The waiver is necessary to permit HUD to provide PJs with an extended period to respond to findings of noncompliance in recognition of the unanticipated circumstances created by the COVID-19 pandemic. While HUD must continue its oversight function for the HOME Program, requiring PJs to respond to all findings of noncompliance within 30 days may interfere with a PJ's ability to address the unprecedented housing needs caused by the COVID-19 pandemic.

Applicability: The waiver applies to all findings of HOME regulatory noncompliance issued from the date of this memorandum through December 31, 2020. In the notice of findings, HUD will specify a time period for the PJ's response based on the nature of the noncompliance and required corrective action(s). HUD may also, upon request by the PJ, extend time periods imposed before the date of this memorandum.

Questions regarding this waiver should be directed to Virginia Sardone, Director, Office of Affordable Housing Programs (OAHP), or your OAHP desk officer. Participating jurisdictions and other HOME Program participants should contact the CPD Division of their local HUD Field Office.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF THE ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

April 10, 2020

MEMORANDUM FOR: All CPD Field Division Directors, Deputy Directors, and Program Managers

FROM: John Gibbs, Acting Assistant Secretary for Community Planning and Development (D)

SUBJECT: Suspensions and Waivers to Facilitate Use of HOME-Assisted Tenant-Based Rental Assistance (TBRA) for Emergency and Short-term Assistance in Response to COVID-19 Pandemic

This memorandum provides guidance and the necessary statutory suspensions and regulatory waivers to enable HOME participating jurisdictions (PJs) affected by the Coronavirus Disease 2019 (COVID-19) pandemic to use HOME tenant-based rental assistance (TBRA) funds to facilitate urgent housing assistance to the communities and families experiencing financial hardship. The memorandum is divided into two sections. Section I addresses PJs located in the areas covered by a major disaster declaration made under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). Section II describes regulatory waivers available to all HOME PJs not just those PJs included in a major disaster declaration. Provisions that are not specifically suspended or waived remain in full effect.

While HOME program funds are primarily a resource for the physical development of affordable housing, the Department recognizes that the COVID-19 pandemic has caused widespread economic damage and created an unprecedented need for housing assistance among individuals and families directly affected by these unanticipated economic changes. The suspensions and waivers provided in this memorandum will allow PJs to use HOME funds for TBRA to individuals and families experiencing financial hardship as a result of the COVID-19 pandemic, including 1) providing immediate rental assistance to individuals and families seeking housing, 2) assisting households that have housing but face reduced or lost wages, and 3) assisting existing TBRA families that need additional assistance due to reduced or lost wages.

CPD Field Offices shall inform PJs of the availability of these suspensions and waivers. A PJ that intends to implement the HOME statutory suspensions and/or regulatory waivers identified below must send written notification via e-mail to the CPD Division in its local HUD Field Office before it implements the waiver and/or suspension. This written notification must identify which suspensions and/or waivers the PJ plans to use.

Waiver and Suspension Authority

Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended, authorizes HUD to suspend, respectively, HOME statutory requirements to assist PJs in addressing the damage in an area for which the President has issued a major disaster declaration under Title IV of the Stafford Act and to assist them in disaster recovery.

Upon determination of good cause, in accordance with 24 CFR 5.110, HUD may waive regulatory provisions subject to statutory limitations. These provisions provide HUD the authority to make waiver determinations for the HOME program.

I. Statutory Suspensions and Regulatory Waivers Available Only to Major Disaster Areas

Pursuant to the authority provided in Section 290 of NAHA and 24 CFR 5.110, I hereby find good cause, as stated in the justifications that follow, to suspend HOME statutory requirements and waive related regulatory requirements specified below for PJs covered by a major disaster declaration under the Title IV of the Stafford Act as a result of the COVID-19 pandemic.

Consolidated Plan – HOME Certification, Analysis of Local Market Conditions, and Citizen Participation

Citations: Section 212(a)(3)(A)(i) of NAHA and 24 CFR 92.209(b)
24 CFR 91.105(c)(2) and (k), 24 CFR 91.215(b)(1) and (e) and 24 CFR 91.225(d)(1) (Local governments),
24 CFR 91.115(c)(2) and (i), 24 CFR 91.315(b)(1) and (e) and 24 CFR 91.325(d)(1) (States),
24 CFR 91.401, 24 CFR 91.415 and 24 CFR 91.425(2)(i) (Consortia), and
24 CFR 91.235(e) and 24 CFR 92.61 (Insular Areas)

Explanation: Section 212(a)(3)(A)(i) of NAHA requires that a PJ that intends to use HOME funds for TBRA certify that the provision of such assistance is an essential part of its Consolidated Plan based on an analysis of local market conditions. This requirement is codified in 24 CFR 92.209(b) and for Insular Areas 24 CFR 92.61, as well as in the Consolidated Submissions for Community Planning and Development Programs regulations at 24 CFR 91.215(b)(1) and (e) and 91.225(d)(1) (for local governments), 24 CFR 91.315(b)(1) and (e) and 91.325(d)(1) (for States), and 24 CFR 91.415 and 91.425(2)(i) (for Consortia). When amending its Consolidated Plan, a PJ must follow the citizen participation plan it developed and adopted in accordance with 24 CFR 91.105(c)(2) and (k) (for local governments), 24 CFR 91.115(c)(2) and (i) (for States), 24 CFR 91.235(e) (Insular Areas), and 24 CFR 91.401 (for Consortia). The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given and provide a period of not less than 30 calendar days to allow citizens to submit comments.

This suspension will eliminate: 1) the requirement for PJs to amend their Consolidated Plans to include or revise an analysis of local market conditions before implementing a TBRA program; and 2) the requirement that PJs certify that the use of HOME funds for TBRA is an essential element of the Consolidated Plan and that it has conducted an analysis of local needs. PJs that choose to use HOME TBRA to

address the urgent housing needs resulting from the COVID-19 pandemic may do so by amending their Annual Action Plan to reflect the use of HOME funds for TBRA without meeting these requirements.

Justification: Given the unprecedented economic disruptions and associated job losses caused by the COVID-19 pandemic, there is an urgent need for TBRA assistance in communities across the country. Requiring PJs to conduct an analysis of local market conditions, amend their Consolidated Plan, and complete the required public comment period would cause undue delays in commencing TBRA programs to address the urgent and growing need. PJs must have the ability to respond immediately to the unprecedented housing needs created by the COVID-19 pandemic.

Applicability: This suspension and regulatory waiver is applicable to a PJ's current 5-year Consolidated Plan and any Consolidated/Action Plans being amended to reprogram funds to TBRA to address housing needs related to the COVID-19 pandemic.

Tenant Selection and Targeted Assistance

Citation: Section 212(a)(3)(A)(ii) of NAHA, 24 CFR 92.209(c) and 24 CFR 92.64(a) (Insular Areas)

Explanation: Section 212(a)(3)(A)(ii) of NAHA requires a PJ to establish written tenant selection criteria for its TBRA program. In accordance with 24 CFR 92.209(c), or 24 CFR 92.64(a) for Insular Areas, those criteria must be consistent with the local housing needs and priorities established in the PJ's Consolidated Plan. This suspension will eliminate the need for PJs to develop or revise written tenant selection criteria and will allow PJs to assist individuals requiring immediate housing assistance as a result of the COVID-19 pandemic.

Justification: Given the sudden onset and severe effects of the COVID-19 pandemic, PJs could not anticipate the urgent, widespread housing needs created by the pandemic or reflect those needs and priorities in the Consolidated Plan. Suspending this provision will provide PJs with greater flexibility to expeditiously use TBRA as a resource to assist individuals and families affected by the COVID-19 pandemic.

Applicability: Suspending Section 212(a)(3)(A)(ii) of NAHA and waiving 24 CFR 92.209(c) and 24 CFR 92.64(a) for Insular Areas eliminates the requirement for PJs to establish new or revise existing tenant selection criteria for the HOME TBRA program. The statutory suspension and regulatory waiver are in effect through December 31, 2020, for TBRA provided in response to the COVID-19 pandemic. However, a PJ must document its criteria for selecting individuals and families to be assisted by the TBRA program.

II. Regulatory Waivers Available to All Participating Jurisdictions

The following regulatory waivers are available to all PJs, not just those PJs covered by a major disaster declaration under Title IV of the Stafford Act. Pursuant to the authority provided in 24 CFR 5.110, I hereby waive the HOME regulatory requirements specified below for all HOME PJs.

Citizen Participation Reasonable Notice and Opportunity to Comment

Citation: 24 CFR 91.105(c)(2) and (k) (Local governments), 24 CFR 91.115(c)(2) and (i) (States), 24 CFR 91.235(e) (Insular Areas), and 24 CFR 91.401 (Consortia)

Explanation: The regulations at 24 CFR 91.105(c)(2) and (k) (Local governments), 24 CFR 91.115(c)(2) and (i) (States), 24 CFR 91.235(e) (Insular Areas), and 24 CFR 91.401 (Consortia) set forth the citizen participation requirements for PJs. For substantial amendments to the Consolidated Plan, the regulations require the PJ to follow its citizen participation plan to provide citizens with reasonable notice and opportunity to comment. The citizen participation plan must state how reasonable notice and opportunity to comment will be given. This waiver will permit PJs amending their plans as a result of the COVID-19 pandemic to reduce the comment period to 5 days.

Justification: Given the unprecedented economic disruptions caused by the COVID-19 pandemic, the need for this type of assistance in communities across the country is clear. Requiring these PJs to complete the required public comment period would cause undue delays in commencing TBRA programs to address an urgent and growing need. PJs must have the ability to respond immediately to the unprecedented housing need caused by the COVID-19 pandemic.

Applicability: This waiver applies to any approved Annual Action Plan being amended to reprogram funds to TBRA to address housing needs related to the COVID-19 pandemic.

Rent Reasonableness

Citations: 24 CFR 92.209(f) and 24 CFR 92.64(a) (Insular Areas)

Explanation: In accordance with the HOME regulations at 24 CFR 92.209(f), a PJ must disapprove a lease if the rent is not reasonable, based on an assessment of rents charged for comparable unassisted rental units. The HOME regulations at 24 CFR 92.64(a) applies this requirement to Insular Areas. This waiver will permit PJs to provide immediate rental assistance to individuals and families seeking housing and assist individuals and families that have housing but are experiencing reduced or lost wages, without requiring an assessment of rents charged for comparable unassisted rental units.

Justification: Given the unprecedented need for rental assistance for individuals facing financial hardship during the pandemic, requiring PJs to conduct a rent comparison prior to providing rental assistance presents an undue administrative burden. PJs must focus on providing immediate housing for income-eligible individuals currently not in stable housing, as well as assistance to income-eligible individuals that currently have housing, but are unable to pay rent and/or utilities due to lost or reduced wages. In the latter case, some households affected by sudden economic disruptions may be occupying housing with rents that would exceed a PJ's established rent reasonableness standard. Without this waiver, those households could not be assisted with HOME TBRA.

Applicability: This waiver is applicable to TBRA provided to individuals and tenant households experiencing financial hardship because of a reduction or loss of income. This requirement is waived through December 31, 2020, for TBRA provided in response to the COVID-19 pandemic. PJs using this waiver authority must execute a rental assistance contract with the owner or tenant.

Eligible Tenant-based Rental Assistance Costs and Maximum TBRA Subsidy

Citation: 24 CFR 92.209(a) and (h) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 92.209(a) state that eligible TBRA costs include rental assistance and security deposit payments made to income-eligible households. PJs can also use HOME funds to provide utility deposit assistance if such assistance is provided in conjunction with TBRA or a security deposit payment. The amount of monthly utility costs included in HOME TBRA is limited by the utility allowance established by the PJ for its TBRA program, irrespective of whether those utilities are paid by the landlord or the tenant.

In accordance with 24 CFR 92.209(h), the maximum amount of monthly assistance a PJ may pay to, or on behalf of, a tenant, may not exceed the difference between the PJ's rent standard and 30 percent of the tenant's monthly adjusted income. The PJ must establish a minimum tenant contribution to rent, and a rent standard that is based on local market conditions or the subsidy standards under the Section 8 Housing Choice Voucher Program. The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas.

This waiver will allow PJs to pay the full cost of monthly utilities in addition to rental assistance and security deposit payments for new and existing TBRA families affected by the COVID-19 pandemic. PJs may provide up to 100 percent subsidy for rent, security deposit payments, and utility bills paid by tenants affected by a reduction or loss of income from the COVID-19 pandemic. The waiver also eliminates the need for the PJ to establish utility allowances for different types and sizes of units for its TBRA program, which eliminates a significant administrative burden.

Justification: The COVID-19 pandemic has caused widespread loss or reduction of income, significantly affecting the financial stability of households, including existing TBRA families, and rendering many unable to pay rent and/or utilities. Households must be able to maintain the basic utilities required to ensure housing remains safe and sanitary. Permitting PJs to use HOME funds to pay for utilities will enable affected households to maintain decent, safe and sanitary housing, which necessarily requires electricity, water, and/or gas service during the pandemic.

As individuals experience financial hardship, the amount of assistance required to ensure they remain housed will often exceed the PJ's payment standard. In addition, individuals may be unable to pay the PJ's minimum required tenant contribution toward rent. Requiring PJ's to establish or revise payment standards and the minimum tenant contribution to rent policies in the current emergency would be burdensome and delay the provision of TBRA in response to the pandemic.

Applicability: This waiver is applicable to TBRA provided to individuals or families experiencing financial hardship, including existing TBRA families that have experienced a loss or reduction in income due to the COVID-19 pandemic. This requirement is waived through December 31, 2020, for rental assistance provided in response to the COVID-19 pandemic. PJs using this waiver authority must execute a rental assistance contract with the owner or tenant for a term mutually agreed upon by all parties, but not to exceed the December 31, 2020, waiver period. The PJ may make utility payments directly to the tenant or utility company based on utility bills submitted for the assisted unit, either by mail or electronically.

Term of Rental Assistance Contract

Citation: 24 CFR 209(e) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 209(e) state that the term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a PJ and an owner, the term of the contract must terminate upon termination of the lease. For a rental assistance contract between a PJ and a family, the term of the contract is not required to terminate upon the termination of the lease, but no payments may be made after lease termination until the family executes a new lease. The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas. This waiver eliminates the requirement that the rental assistance contract must begin on the first day of the term of lease.

Justification: This waiver is necessary to enable PJs to assist tenants that are currently housed, including existing TBRA households, but have experienced sudden financial hardship as a result of the COVID-19 pandemic. Because affected households already have an executed lease, it is impossible for the TBRA contract to begin on the first day of the term of the lease

Applicability: This requirement is waived through December 31, 2020, for TBRA provided in

response to the COVID-19 pandemic. The PJ's requirement to execute a rental assistance contract with the owner or tenant is not waived. PJs using this waiver authority must execute a rental assistance contract with the owner or tenant for a term mutually agreed upon by all parties, but not to exceed the December 31, 2020, waiver period.

Tenant Protections – Lease

Citation: 24 CFR 92.209(g) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 92.209(g) require that each HOME-assisted tenant have a lease that complies with the tenant protection requirements of 24 CFR 92.253(a) and (b). In accordance with 24 CFR 92.253(a), there must be a lease between the tenant and the owner of rental housing assisted with HOME TBRA. The lease must have a term of not less than one year, unless both parties mutually agree to a shorter period. The lease cannot contain any of the prohibited lease terms defined in 24 CFR 92.253(b). The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas. This waiver will permit PJs to assist individuals currently housed but facing financial hardship, where an executed lease is already in place.

Justification: During the COVID-19 pandemic, PJs may assist individuals that are already in rental units but are unable to pay rent and/or utilities due to job loss or reduced wages. These individuals already have an executed lease that may include one or more of the prohibited lease terms included in 24 CFR 92.253(b). Requiring PJs to immediately execute or amend leases creates an undue administrative burden and may disqualify some in-place tenants from receiving TBRA.

Applicability: In response to the COVID-19 pandemic, the requirement that a tenant assisted by TBRA have a lease that complies with the requirements of 24 CFR 92.253(a) and (b) is waived through December 31, 2020, for rental assistance provided to tenants already housed who have an executed lease. PJs using this waiver authority are required to execute a rental assistance contract with the tenant for a term mutually agreed upon by all parties, but not to exceed the waiver period ending on December 31, 2020. PJs must still comply with all VAWA requirements contained in 24 CFR 92.359 by including, at a minimum, a lease addendum that addresses all VAWA requirements.

Housing Quality Standards

Citation: 24 CFR 92.209(i) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 92.209(i) require that all housing occupied by households receiving HOME TBRA must meet the housing quality standards (HQS) at 24 CFR 982.401. The PJ is required to inspect the unit for compliance prior to occupancy and annually thereafter. The HOME regulations at 24 CFR 92.64(a)

apply these requirements to Insular Areas. This waiver will permit the PJ to rapidly house or assist individuals affected by the COVID-19 pandemic without requiring an initial HQS inspection.

Justification: The COVID-19 pandemic has created an unprecedented need for rental assistance for tenant households facing financial hardship. PJs must act quickly to address these needs and requiring HQS inspections of all units where HOME TBRA assistance is provided would create an administrative burden and reduce PJs' ability to respond timely to the housing needs created by the pandemic. In addition, requiring initial HQS inspections would increase housing inspectors' risk of contracting or spreading the COVID-19 virus.

Applicability: This waiver is applicable to TBRA provided to tenant households experiencing financial hardship. This requirement is waived through December 31, 2020, for rental assistance provided in response to the COVID-19 pandemic. The lead-safe housing requirements of 24 CFR part 35, subpart M, made applicable to units leased by recipients of HOME TBRA by the HOME regulation at 24 CFR 92.355, cannot be waived. Consequently, units built before 1978 must undergo visual evaluation and paint repair in accordance with 24 CFR Part 35, subpart M. PJs using this waiver authority must establish procedures to minimize the risk that tenants are in housing that does not meet HQS, as well as procedures for conducting physical inspections within 120 days following the end of the December 31, 2020, waiver period.

Annual Inspection of Units Occupied by Recipients of HOME TBRA

Citation: 24 CFR 92.504(d)(1)(iii); 24 CFR 92.209(i) and 24 CFR 92.64(a) (Insular Areas)

Explanation: Provisions require PJs to annually inspect each unit occupied by a recipient of HOME TBRA.

Justification: Waiving the requirement that these annual inspections be performed according to schedule will protect the health of both inspectors and tenants by observing physical distancing recommendations to limit the spread of COVID-19.

Applicability: The waiver is applicable to annual HQS re-inspections required to occur from the date of this memorandum through December 31, 2020. Within 120 days of the end of this waiver period, PJs must physically inspect units that would have been subject to HQS inspections during the waiver period.

Income Determinations

Citations: 24 CFR 92.203(a)(2) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 92.203(a)(2) require the PJ to determine a TBRA tenant's annual income by examining at least 2 months of source

documentation evidencing income and projecting anticipated income forward for the next 12 months. The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas. This waiver will permit PJs to follow the regulations at 24 CFR 92.203(a)(1)(ii) in lieu of requiring a review of source documentation. The HOME regulations at 24 CFR 92.203(a)(1)(ii) allow the PJ to obtain a written statement of the amount of the family's anticipated annual income and household size, along with a certification that the information is complete and accurate.

Justification: Given the rapid and unanticipated economic disruptions caused by the COVID-19 pandemic, source documentation from the past two months may not reflect the current financial circumstances of many households. Requiring PJs to determine an individual's annual income using source documentation would be administratively burdensome, may not reflect current or anticipated income, and may result in individuals or families being incorrectly disqualified from receiving TBRA.

Applicability: This waiver is applicable to TBRA provided to individuals or families experiencing financial hardship. This requirement is waived through December 31, 2020, for rental assistance provided in response to the COVID-19 pandemic. The PJ must ensure that the tenant's self-certification indicates how the tenant's financial situation has changed, (i.e., job loss or reduced wages), and includes all income, including any unemployment or emergency benefits received by the tenant as a result of the pandemic. However, for purposes of a tenant's self-certification, emergency tax relief (commonly referred to as stimulus payments) should not be included as an emergency benefit. The PJ must include tenant income certifications in each project file.

Questions regarding this waiver should be directed to Virginia Sardone, Director, Office of Affordable Housing Programs (OAHP), or your OAHP desk officer. Participating jurisdictions and other HOME Program participants should contact the CPD Division of their local HUD Field Office.

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**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

7g

BOARD ACTION REQUEST
MULTIFAMILY FINANCE
APRIL 23, 2020

Presentation, discussion and possible action on waivers relating to certain requirements under 10 TAC Chapter 11, the Qualified Allocation Plan (QAP) and 10 TAC Chapter 13, the Multifamily Direct Loan (MFDL) Rule in relation to the Department's response to the COVID-19 pandemic

RECOMMENDED ACTION

WHEREAS, on March 13, 2020, the Governor of the State of Texas issued a disaster declaration and certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster;

WHEREAS, responding to the needs of Texans impacted by COVID-19 will demand that the Department take extraordinary measures necessary to ensure that its resources are deployed as effectively and fully as possible;

WHEREAS, the Department is committed to using its resources to aid Texans economically affected by COVID-19, while continuing to operate its ongoing programs within the federal and state parameters of the funds;

WHEREAS, the Department manages its multifamily programs through multiple rules and those specific to Board action today include 10 TAC Chapter 11 (the QAP) and 10 TAC Chapter 13 (the MFDL Rule);

WHEREAS, there are certain eligibility and threshold requirements that applicants for 4% Housing Tax Credits or Direct Loan funds may not be able to meet due to the effect COVID-19 is having on local governments and other entities of which are required to provide specific information; and

WHEREAS, staff recommends that the requirement for mitigation for applications for 4% Housing Tax Credits or Direct Loan funds under 10 TAC §11.101(a)(3)(D)(iv) of the QAP relating to school performance be waived for the remainder of the 2020 program year and information required under 10 TAC §11.204(14) of the QAP relating to nonprofit ownership be acceptable as stated herein;

NOW, therefore, it is hereby

RESOLVED, that the requirement for mitigation for applications for 4% Housing Tax Credits or Direct Loan funds under 10 TAC §11.101(a)(3)(D)(iv) of the QAP relating to school performance is waived for the remainder of the 2020 program year and

information required under 10 TAC §11.204(14) of the QAP relating to nonprofit ownership is considered acceptable as stated herein;

BACKGROUND

On March 13, 2020, Governor Abbott issued a statewide disaster declaration due to COVID-19, authorizing the use of all available resources to cope with the spread of the virus. The nature of this disaster is such that many persons will be impacted, including both those served by Department programs, as well as those who apply for funds from the Department (Applicants or Developers).

10 TAC Chapter 11, the QAP and 10 TAC Chapter 13, the MFDL Rule include eligibility and threshold requirements that applications must meet, as such requirements are applicable to the proposed development. Typically, where a specific requirement cannot be met, staff would present the matter before the Board for a determination.

As it relates to mitigation under 10 TAC §11.101(a)(3)(D)(iv) of the QAP relating to schools in the attendance zone that have a 2019 TEA Accountability Rating of D and 2018 Improvement Required Rating or a 2019 TEA Accountability Rating of F and a 2018 Met Standard Rating, the rule provides for the following to be submitted as acceptable mitigation:

“(I) Documentation from a person authorized to speak on behalf of the school district with oversight of the school in question that indicates the specific plans in place and current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan and in restoring the school(s) to an acceptable rating status. The documentation should include actual data from progress already made under such plan(s) to date demonstrating favorable trends and should speak to the authorized persons assessment that the plan(s) and the data supports a reasonable conclusion that the school(s) will have an acceptable rating by the time the proposed Development places into service. The letter may, to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long-term trends that would point toward their achieving an A, B, or C Rating by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful.”

Due to the unpredictable and fast-moving nature of the COVID-19 pandemic, staff believes there will be applications submitted where obtaining such information from a school official may be difficult, and considering action taken by Governor Abbott and the TEA Commissioner relating to cancelling the standardized testing and that there will be no 2020 Accountability Rating, staff does not believe school

officials will be able to provide actual data and progress that has been made under any Campus Improvement Plans currently in effect.

A waiver to consider development sites eligible despite the presence of this Neighborhood Risk Factor would be applied to applications submitted under the 2020 QAP which would include those 4% Housing Tax Credit Applications that receive a Certificate of Reservation from the Bond Review Board in the 2020 calendar year. Staff notes that this action does not extend to 10 TAC §11.101(b)(1)(C) relating to Ineligibility of Developments within Certain School Attendance Zones, specifically that developments proposed in areas where a school in the attendance zone has a 2019 Accountability Rating of F and a 2018 Improvement Required rating would still be considered ineligible with no opportunity for mitigation.

As it relates to 10 TAC §11.204(14) of the QAP regarding nonprofit ownership, the QAP requires the following:

“Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness of the organization’s participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided.”

Recognizing that such meetings may not be possible given COVID-19, staff recommends that the Board allow, in lieu of the resolution, a certification from an individual who is authorized to act on behalf of the nonprofit that includes the aforementioned information required by the QAP. This would be applied to applications submitted under the 2020 QAP which would include those 4% Housing Tax Credit Applications that receive a Certificate of Reservation from the Bond Review Board in the 2020 calendar year or any Direct Loan only applications. However, such a resolution will be required for all Direct Loan transactions prior to Contract Execution.

As it relates to other requirements identified in the QAP that applicants are unable to meet or information from certain parties that is not obtainable, those applications should include a waiver request that meets the requirements of 10 TAC §11.207, and specifically how COVID-19 has impacted the ability to submit the required information.