

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Ric Williamson Hearing Room
Dewitt C. Greer Building
125 East 11th Street
Austin, Texas

Thursday,
March 12, 2015
9:30 a.m.

MEMBERS:

J. PAUL OXER, Chair
JUAN MUÑOZ, Vice Chair
LESLIE BINGHAM ESCAREÑO, Member
T. TOLBERT CHISUM, Member
TOM GANN, Member
J.B. GOODWIN, Member

STAFF:

TIMOTHY K. IRVINE, Executive Director

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<u>AGENDA ITEM</u>	<u>PAGE</u>
CALL TO ORDER, ROLL CALL CERTIFICATION OF QUORUM	
ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	9
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a) Presentation, Discussion, and Possible Action regarding adoption of Agreed Final CMTS 30), Island Palms Apartments (HTC 95034/CMTS 1341), Vida Que Canta Apartments (HTC 05091/CMTS 4257), La Estancia Apartments (HTC 1031/CMTS 274), and La Herencia Apartments (HTC 97047/ CMTS 1697)	
b) Presentation, Discussion, and Possible Action regarding adoption of Agreed Final Order concerning Southeast Texas Community Development Corporation (HOME 537606/CMTS 2680)	
c) Presentation Discussion, and Possible Action regarding adoption of Agreed Final Order concerning Bread of Life, Inc. (Emergency Shelter Grants Contract # 42110001270)	
COMMUNITY AFFAIRS	
d) Presentation, Discussion, and Possible Action on Approval of Draft Federal Fiscal Year ("FFY") 2015 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan for Public Comment	
ASSET MANAGEMENT	
e) Presentation, Discussion, and Possible Action regarding Housing Tax Credits Application Amendments	
11202 Hunter's Chase Rockdale	
12065 La Ventana Abilene	
14150 Eagles Rest San Antonio	
HOME PROGRAM	
f) Presentation, Discussion, and Possible Action regarding amendment to HOME CHDO Single Family Development Contract Number 1001522 for development of eight single family homes by Architecture for Charity of Texas located in Los Fresnos, Cameron County	
RULES	
g) Presentation, Discussion, and Possible	

Action regarding adoption of the final 2015 State of Texas Low Income Housing Plan and Annual Report, and order adopting amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures '1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication In the *Texas Register*

CONSENT AGENDA REPORT ITEMS:

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MR. OXER: All right. Good morning, everyone.
I'd like to welcome you to the -- what day is this --
March 12th meeting of the Texas Department of Housing and
Community Affairs. So let's begin with our call to order
and the roll call.

So Ms. Bingham.

MS. BINGHAM: Here.

MR. OXER: Mr. Chisum.

MR. CHISUM: Present.

MR. OXER: Mr. Thomas is not with us -- I'm
sorry, Mr. Gann is not with us today. Mr. Goodwin.

MR. GOODWIN: Here.

MR. OXER: Dr. Muñoz.

MR. MUÑOZ: Present.

MR. OXER: I am here. That gives us five, we
have a quorum. We are in business. So Tim, lead us in
the flag.

(Pledge of Allegiance was recited.)

MR. OXER: Okay, I think we have a recognition
this morning, do we know, Tim?

MR. IRVINE: We actually do. I am both sorry
and glad to say that Eric Pike, after 30 years of service
to the State of Texas, has decided to retire. And Eric is
one of those incomparable folks who's done not a little of

1 everything but a lot of everything. He's worked at the
2 Department in a number of programs, he's worked in the
3 HOME Program, the CDBG, he's experienced it all.

4 But the last, what, 10 years or so he's taken
5 over First-Time Homebuyers activities, Texas
6 Homeownership, which of course is a core value of Texas
7 and that is we all aspire to responsible home ownership.
8 And he's helped, according to my tally, over 31,000 Texas
9 households become Texas homeowners. Pretty darned
10 impressive.

11 Eric has weathered, you know, financial turmoil
12 beyond recognition, keeping the programs rocking and
13 rolling under, you know, stable bond conditions, under
14 volatile bond conditions, under the creation of the
15 taxable mortgage product. He's built our Mortgage Credit
16 Certificate Programs to phenomenally strong and effective
17 levels and a great tool for responsible homeowners.

18 And, man, you're going to be missed. And I got
19 to say that not only has Eric accomplished a ton and given
20 a ton, he has really personified and embodied what it
21 means to be a team player. Eric has mobilized Cathy and
22 Sharon and Dena to just go above and beyond to do
23 phenomenal things when unique opportunities and challenges
24 presented themselves. They've been the crowd down there
25 working 24/7 to get extraordinary funding opportunities

1 realized, and people don't do that kind of thing unless
2 the guy that's asking them to do it really speaks with
3 passion and cooperation and that team sensibility.

4 He's also sitting there next to our Director of
5 Bond Finance, because these two have been just very much
6 joined in everything that they do, working to take the
7 complexities of the financial equation and put it together
8 in a way that makes sense and maximizes the benefit for
9 Texans.

10 So, Eric, I thank you for your service, and I
11 applaud you.

12 (Applause.)

13 MR. PIKE: Good morning. It's a lot for me to
14 just state my name and what department I'm with, but I
15 think everyone knows by now. I wanted to take a few
16 moments to thank everyone for their kinds words.

17 MR. OXER: Eric, hold on a second. Turn the
18 microphone on. Get the mike on. Got it? There you go.

19 MR. PIKE: Well, good morning. And again I
20 just wanted to thank everyone for the kind words. I also
21 wanted to thank the Board as well as the executive
22 management of the Department for its continued support of
23 our Homeownership Programs over the past years. Together
24 we have been able to create two very successful programs,
25 our Mortgage Loan and Down Payment Assistance Program as

1 well as our Mortgage Credit Certificate Program, which Tim
2 referred to earlier. It happens to be one of the largest
3 and most successful in the country. And I'm very proud of
4 both of these two accomplishments.

5 None of this, obviously, would have been
6 possible without the superb staff that I have been
7 fortunate to work with over the past number of years. As
8 you know, none of us succeeds on our own without the help
9 of others. So at this time I would like to recognize each
10 of them for their continued support and dedication.

11 If I might, Cathy Gutierrez, if you can stand.

12 (Applause.)

13 Sharon Everett.

14 (Applause.)

15 And Dina Gonzalez here in the front of the
16 room.

17 (Applause.)

18 Thank you, all. I will always look back fondly
19 upon my days at TDHCA and cherish the experience and
20 memories it has provided me. I sincerely hope the success
21 of the home ownership programs as well as the other
22 programs and operations of the Department continue for
23 many more years to come. Again thank you all. Appreciate
24 it.

25 MR. OXER: Thanks for what you did, Eric.

1 (Applause.)

2 MR. IRVINE: And even though he's not here
3 officially to be recognized, I would like to call out Joe
4 Burkhart with Information Systems. Joe is a public
5 servant who's given, what, 14-plus years to the State of
6 Texas, and he's been just the most incredible resource
7 managing our website and also helping to ensure that it's
8 accessible so that all Texans can access our information.

9 And I would like to thank Joe for his incredible service
10 and wish him all the very best in the next stage, so.

11 (Applause.)

12 MR. IRVINE: Mr. Chairman, I would also ask
13 that with regard to the consent agenda, when you take that
14 up, if we could pull off and deliver orally the reports
15 under consent reports 28 and 2(d), Charlie and Delta.

16 MR. OXER: Okay. All right. With respect to
17 the consent agenda, are there any other items that a Board
18 member wishes to pull?

19 (No response.)

20 MR. OXER: Do you all have a motion to
21 consider?

22 MS. BINGHAM: Mr. Chairman, I move approval of
23 the consent agenda with the pulling of Item 28 and 2(d) to
24 the active agenda.

25 MR. OXER: Okay. Motion by Ms. Bingham. Is

1 there a second?

2 MR. CHISUM: Second.

3 MR. OXER: And a second by Mr. Chisum. No
4 comment requested? All in favor?

5 (A chorus of ayes.)

6 MR. OXER: Opposed?

7 (No response.)

8 MR. OXER: There are none. That's unanimous.
9 All right. We'll start with 28. Tim?

10 MR. IRVINE: Actually if I could cover 28, and
11 this is sort of a first taste of the National Housing
12 Trust Fund. And we don't really have a lot to report
13 today other than get ready for a lot of activity over the
14 coming months.

15 The National Housing Trust Fund was created in
16 2008 by the Housing and Economic Recovery Act, and it
17 provided for funding to be coming from Fannie and Freddie.

18 And there have been some hiccups on the launch pad, but
19 now I think we're to the point where the funding issues
20 have been pretty much settled. We would anticipate that
21 once this fund is up and running Texas could be receiving
22 on the magnitude of \$50 million a year.

23 But, you know, that's probably a year or two
24 down the road, but right now we're in the process of
25 digging in and understanding the newly promulgated interim

1 rule that HUD has put out there to provide guidance on
2 this program. This program primarily is to serve
3 extremely low and very low income households, especially
4 with regard to rental property development and
5 rehabilitation.

6 So yeah, I think that the National Housing
7 Trust Fund will be a great complementary source to our
8 other activities. With regard to its rules, it will
9 probably be structured pretty much along the lines of the
10 HOME Program. But, you know, HUD is kind of notorious for
11 having special tweaking that it gives to each program that
12 rolls out.

13 So I would anticipate that National Housing
14 Trust Fund will offer its own unique compliance
15 challenges. But I think it's a cool new source of
16 funding, and we're kind of excited that the State of Texas
17 will be receiving these funds.

18 MR. OXER: And it's targeted to or at the
19 rental side?

20 MR. IRVINE: The rental side and to very low
21 and extremely low income households. It's, as I recall
22 it's 75 percent very low and below, so it's going to --
23 that will line up with the 50 percent and under. And a
24 significant portion of that will go to extremely low,
25 which is is the 30 percent and under. These have

1 traditionally been very hard populations to serve in our
2 rental housing activities, so this is a very positive
3 step.

4 MR. OXER: Will it allow for a refurbishment of
5 existing housing for those?

6 MR. IRVINE: I believe it does not -- Megan's
7 the --

8 MR. OXER: Megan, come talk to us.

9 MR. IRVINE: -- the guru in all things federal.

10 MR. OXER: Give us a quick summary.

11 MS. SYLVESTER: For rental housing it will
12 indeed --

13 MR. OXER: Tell us who you are.

14 MS. SYLVESTER: Megan Sylvester with the Legal
15 Department.

16 MR. OXER: Thanks. Good morning.

17 MS. SYLVESTER: Hi. For rental housing it will
18 allow for the refurbishment of existing properties, but
19 for home ownership it is only for first-time homebuyers.
20 And you can do rehab in association with that first-time
21 homebuyer purchase but it's not eligible as a standalone
22 activity.

23 MR. OXER: Okay.

24 MS. SYLVESTER: Are there any other questions?

25 MR. IRVINE: And these properties assisted such

1 as the first-time homebuyer would have extended
2 affordability restrictions. So, you know, I think one of
3 the big challenges is going to be putting this all
4 together in a way where down payment assistance works
5 along with, in a complementary manner with first lien
6 assistance. And we, frankly protect ourselves against
7 having to repay HUD should a deal not achieve its required
8 affordability, so.

9 MR. OXER: Good. Sounds like a nice new
10 program to add to the portfolio.

11 MR. IRVINE: Totally.

12 MR. OXER: Okay. Brooke, do you have anything
13 you want to add to that or you want to take up Item 2(d)?

14 Okay. Is there anything we need to -- it's
15 only a report of --

16 MR. IRVINE: It' a report.

17 MR. OXER: Great. Okay, Brooke.

18 MS. BOSTON: Brooke Boston, one of our Deputy
19 Executive Directors. I'd like to share with you some of
20 the accomplishments of the agency. For you new Board
21 members, I periodically come up to share some of the parts
22 of the agency that you guys don't see. You know, a huge
23 part of what we do just goes on behind the scenes and
24 doesn't necessarily ever come to need Board action. And
25 so I like to come and brag about that occasionally.

1 One thing I wanted to mention about Eric and
2 his area, two things that particularly stand out over some
3 of his tenure are the -- as foreclosure issues were really
4 coming to a peak he had taken on the funding for five
5 different iterations of national foreclosure mitigation
6 counseling. It was a huge effort. It was similar to the
7 idea of train the trainer, and it was a partnership with
8 Neighbor Works. And so that was an amazing effort.

9 He was also on the Foreclosure Mitigation Task
10 Force, which was a big group across the state trying to
11 work on issues to mitigate foreclosures. But also, as you
12 guys may remember, during the Recovery Act programs there
13 was a short period where households could access a \$8,000
14 tax credit for home ownership.

15 And it was this tiny window, and he and his
16 folks found a way to monetize that so that we could
17 actually help them access that as dollars as opposed to a
18 credit. So and they -- there's no way they could have
19 done it in that small of a window of time, but he found a
20 way to ramp up, get some temp help, and plough through it
21 and help a lot of people. So that's something else that
22 really stands out for Eric too.

23 One of the other things I wanted to talk about
24 is the 811 Program. We've had a lot of great activity
25 with that program. First, there's been a management

1 change in that area. Kate Moore, who had been the manager
2 of 811 for -- since its inception, she left in January and
3 she's done a phenomenal job getting us to where we were.
4 We're very sad to see her go.

5 In her place Spencer Duran has been named the
6 manager. He's actually not here because he's at a
7 conference with, a meeting with the disability, one of the
8 disability groups trying to get more money. So wish him
9 the best of luck.

10 And one of the next things about 811 is after
11 several years we have actually executed a contract. It
12 sounds surprising that it took several years but with a
13 lot of back and forth iteration and our attorneys making
14 sure we felt really comfortable that it had the right
15 perspective and that it was looking at things the right
16 way for Texas, we were able to do that. So that was a
17 huge accomplishment.

18 Then another big thing that has happened very
19 recently is, as you recall, the QAP has points for
20 participation in the 811 Program. And one of the ways
21 that tax credit applicants are able to pursue that is
22 through using existing properties in their portfolio. So
23 instead of putting it on their new 2015 application, if
24 they're successful they can say hey, I'm going to do 811
25 units on this other property that I already have. One of

1 our tax credit applicants -- and they get this, excuse me,
2 they get those approved in advanced.

3 So one of our tax credit applicants had gotten
4 several properties approved in advance and has actually
5 decided that regardless of their success on the tax credit
6 award they are going to participate in 811. So Tropicana
7 and Bobby Bolding are doing a huge service for us, they're
8 providing 42 811 units in El Paso Metropolitan Area as our
9 first 811 participant, so.

10 MR. OXER: Very good. Kudos for all.

11 MR. CHISUM: Hear, hear,

12 MS. BOSTON: And the last thing about 811 but
13 definitely not least is that we recently found out that a
14 subsequent 811 grant that we had been pursuing we were
15 awarded that, so we now have an additional 12 million. We
16 have a 24 million program now that we think will be able
17 to serve about 600 people, so.

18 So a few other areas. I'm going to take
19 advantage of being up here. Within our Section 8 Program,
20 as some of you know we're a public housing authority and
21 we provide tenant-based vouchers in certain parts of the
22 state that don't have other coverage. That's been led
23 recently by a manager named Andre Adams, who's done a
24 wonderful job of improving efficiencies, modernizing the
25 program, switching to direct deposit, which may have

1 seemed intuitive, but has really moved towards a lot of
2 improvements and is actually able to staff down while
3 increasing the work that we're doing.

4 But one of the activities in Section 8 is
5 called the Project Access Program. I know I've been up
6 here and talked to you about it in the past, but Project
7 Access provides vouchers for persons with disabilities who
8 are exiting institutions. They essentially have their
9 services all lined up but they need a way to exit into
10 housing. And so we have paired up over the years with
11 several of the Health and Human Service agencies to try
12 and make sure that we can partner up and make that happen.

13 We have always had Board support and authority
14 to do -- or recently we've had Board support and authority
15 to do up to 140 of those vouchers. But that's a degree of
16 authority and not necessarily that the funds exist within
17 the Section 8 pot all the time. But through some
18 innovations that Andre and Cathy Collingsworth, who's our
19 kind of number guru in the Community Affairs Division, and
20 of course Megan, we have found a way to actually issue all
21 140 vouchers.

22 So that has been a huge accomplishment. And I
23 think we're at a point where we'll be able to keep doing
24 that and as the waiting list goes we can keep depleting
25 it, so.

1 Another person that I'd like to give some
2 accolades to is Sharon Gamble. She has oversight for all
3 of the planning and training aspects of our Community
4 Affairs Division. One of the activities in that program
5 is the Emergency Solutions Grant Program, which is a
6 homeless funding source that we receive federally and then
7 pass it down to our communities. We usually do that by
8 funding local nonprofits.

9 HUD and homeless advocates believe it's more
10 advantageous for those funds to go to what we call
11 Continuum of Care. Those are the actual local entities
12 who are responsible for making sure the local efforts are
13 coordinated, and that is HUD's preference that we fund
14 them. And so even though this isn't Continuum of Care
15 money, it's a totally different program, we are working to
16 fund CoC directly.

17 And it's been a huge undertaking. The program
18 isn't really easily designed to do this. So it's ideal
19 to do it but it's definitely not easy to do. And so she
20 and the Fort Worth Continuum of Care have done an amazing
21 job of working on that. And -- excuse me, Tarrant County.
22 So we are very excited about that, and she's done a ton
23 of work on it.

24 Another thing -- and I'm almost done, I
25 promise -- is our Housing Trust Fund Program. It's one of

1 our general revenue programs. And over the years we have
2 tried our best to get our fund balances kind of depleted.
3 Especially as we're going into a session we always want
4 to be able to show that we are spending our general
5 revenue quickly.

6 The two activities that we do with our trust
7 fund are Amy Young Barrier Removal and Bootstrap Program,
8 two really unique programs that serve harder to serve
9 populations. And in the recent past -- and staff just
10 updated me on this yesterday so I had to get it in here --
11 we have spent all of our funds, including 2014 funds. So
12 the only money we still need to allocate of our trust fund
13 is 2015 dollars, which is just amazing.

14 So with that I will wrap up all my bags. Thank
15 you for letting me come up here. And thanks to everyone
16 at TDHCA.

17 MR. OXER: Wait, not yet.

18 Are there any questions from the Board?

19 (No response.)

20 MR. OXER: I have a couple.

21 MS. BOSTON: Okay.

22 MR. OXER: All right. You said you had an
23 innovative, a unique way of getting through, get the 140
24 vouchers.

25 MS. BOSTON: I knew you were going to ask me

1 about that.

2 MR. OXER: I am predictable if nothing else,
3 but.

4 MS. BOSTON: We -- there's two things. One is
5 we're always kind of trying to find this sweet spot of not
6 exceeding the amount of vouchers we are allowed to issue
7 in terms of dollars. HUD gives us money and not vouchers.
8 And so we always need to figure out just how much we can
9 spend so we don't overspend and put ourselves in a bind,
10 but that we don't underspend. Because if we spend just
11 under what we're allowed to, then the next year HUD
12 actually takes away money because we weren't high
13 spenders.

14 So it's just like a tiny window. And several
15 months ago you guys had approved the authority that we
16 could use a small amount of community services block grant
17 money to cover the window --

18 MR. OXER: Cover the gap?

19 MS. BOSTON: -- if we go over a tiny bit.

20 MR. OXER: Right.

21 MS. BOSTON: So we finally were at a point
22 where we had the confidence to go over without putting
23 ourselves in any kind of jeopardy. We actually haven't
24 had to draw against that. The other activity that we've
25 been doing that has helped is our HOME funds that we use

1 for tenant-based rental assistance.

2 And through some creative work of Jennifer
3 Molinari, our HOME Director, and several of her staff and
4 then Spencer, the 811 manager, they were able to find a
5 way that a Project Access client could exit into a short-
6 term tenant-based rental assistance home voucher and then
7 when the Project Access voucher through Section 8 became
8 available we transition them over. So they ultimately end
9 up with a permanent Section 8 voucher but we can get them
10 off more quickly by putting them into this temporary
11 voucher.

12 MR. OXER: Cool.

13 MS. BOSTON: Yes.

14 MR. OXER: Well, one of my best held little
15 pithy little aphorisms is it's only those who are willing
16 to risk going too far that will ever learn how far they
17 can go. So the quality of the management you guys have
18 been doing on this, we're willing to give you as much
19 latitude as you need to make that keep going on well.

20 MS. BOSTON: Good. We kind of minimize the
21 risk.

22 MR. OXER: And just, you know, you're doing a
23 good job for it. On the 811 program you said that
24 there's -- what was the total volume in it? You had a \$12
25 million that you were going to serve a total of 600?

1 MS. BOSTON: Well, it will be 24 million. We
2 have the first 12 million award that we got several years
3 ago, and then we have a new \$12 million award. So we'll
4 have the 24 million serving roughly 600 people.

5 MR. OXER: And that goes -- and those services
6 that are provided by that funding include what?

7 MS. BOSTON: Only the housing payment. We
8 don't --

9 MR. OXER: And I guess then housing for what
10 period of time?

11 MS. BOSTON: Well, and that's part of why it's
12 not more people being served. Essentially it can cover up
13 to five years. And in some HUD programs the fund ended
14 like the first year and then you anticipate that they'll
15 keep funding the ensuing years, in this case we are
16 calculating out the five years out of the 12 million. So
17 it essentially is covering --

18 MR. OXER: Managing --

19 MS. BOSTON: -- a five-year window.

20 MR. OXER: Managing conservatively.

21 MS. BOSTON: Yes.

22 MR. OXER: That's the way to do it.

23 MS. BOSTON: Yes.

24 MR. OXER: So good.

25 Any questions from other members?

1 (No response.)

2 MR. OXER: Good. Thanks, Brooke.

3 MS. BOSTON: Thank you.

4 MR. IRVINE: And Brooke didn't really give
5 herself any accolades there, but I'd like to say that I
6 generally swing by her office sometime between 7:00 and
7 7:30 every morning and we kind of chat, catch up on what's
8 going on. And Brooke is a project manager par excellence,
9 and she keeps a white board that is crammed jam full of
10 things that she is working on. And she's a very
11 thoughtful manager who really works closely with her
12 people and keeps an awful lot of diverse activities moving
13 along, and I'm very appreciative.

14 MR. OXER: Okay. Patricia, does Item 3, was
15 that on the consent agenda or was --

16 MS. MURPHY: No.

17 MR. OXER: So Item 3 is supposed to be an
18 action item.

19 MS. MURPHY: Patricia Murphy, Chief of
20 Compliance. So the next item before you is an item
21 regarding withdrawing proposed amendments to our previous
22 participation rule and giving you an update about the
23 status of what's going on with that.

24 So previous participation is the process that
25 we use to evaluate someone's compliance history before we

1 award them funds or enter into a contract with them. The
2 Department made sweeping changes to our rule in January of
3 2014, eliminating a material noncompliance scoring system
4 and implementing a different process where our Executive
5 Award Review Advisory Committee receives information and
6 makes recommendations to you about awarding funds.

7 We proposed some minor amendments to that rule
8 in October of 2014, and through the public comment period
9 we received a request to hold roundtables to discuss more
10 -- broader amendments to the rule and to talk about some
11 ideas that were not incorporated into the staff's proposed
12 amendment. So on January 29, 2015, we held a roundtable
13 that was mainly focused on the multifamily group and
14 ownership transfers

15 And we got some ideas from them that we are
16 incorporating those concepts into a staff draft of a rule
17 that we will put out and have a conference call about to
18 talk about our ideas about that, and we anticipate
19 bringing forward to you in April a proposed rule. But in
20 doing so we need to withdraw the amendment that we had
21 proposed in October.

22 Yesterday we had a roundtable with the
23 Community Affairs network about some -- a staff draft that
24 we have released about the previous participation rule and
25 how it would impact them. And we got some minor

1 suggestions to them through that roundtable about some
2 changes that they would like to see to that before we
3 bring it forward to you.

4 So we're requesting that you allow us to
5 withdraw the proposed amendments. And just give you an
6 update, and if you have any questions I'll be happy to
7 answer them.

8 MR. OXER: So this is more or less procedural?

9 MS. MURPHY: Yes. And updates so you know
10 what's going on.

11 MR. OXER: Okay. Any thoughts? Any questions
12 from the Board?

13 (No response.)

14 MR. OXER: Okay. Motion to consider?

15 MR. GOODWIN: I'll make a motion.

16 MR. OXER: Okay. Motion by Mr. Goodwin to
17 approve staff recommendation on Item 3(a).

18 MR. MUÑOZ: Second.

19 MR. OXER: Second by Dr. Muñoz.

20 Is there any public comment?

21 (No response.)

22 MR. OXER: There appears to be none. All in
23 favor.

24 (A chorus of ayes.)

25 MR. OXER: Opposed?

1 (No response.)

2 MR. OXER: There are none. It's unanimous.

3 Okay. Is the -- is 3(b)?

4 MR. IRVINE: Just we're not ready to take any
5 further action on Urban League of Greater Dallas at this
6 time.

7 MR. OXER: So you want to essentially --

8 MR. IRVINE: We're still awaiting submittal of
9 their required single audit.

10 MR. OXER: So you want to pull this, basically
11 pull this item for consideration for later? So I have
12 to -- yeah, the record will reflect that 3(b) has been
13 pulled for later consideration.

14 Okay, Michael, I think you're next.

15 MR. DeYOUNG: Good morning. Michael DeYoung,
16 Community Affairs Division Director. Item 4(a) relates to
17 last month you recall a rather lengthy discussion with the
18 Board about Cameron and Willacy Counties Community
19 Projects, Inc. And we talked about the administration of
20 our CSBG, LIHEAP and our DOE funds. And you took action
21 as a Board last month to award the CSBG with special
22 conditions.

23 And subsequent to that you tabled a decision on
24 DOE and LIHEAP funds with the provision to staff that we
25 could go out and award 25 percent of the LIHEAP funds to

1 an alternate provider in an adjacent area to provide
2 continuity of services for the utility assistance
3 component within the LIHEAP grant. And if I haven't
4 thoroughly confused you, just hold on a few minutes.

5 So last month you took that action. Staff has
6 initiated a contract for that 25 percent of the LIHEAP
7 funds with a provider adjacent to the two-county area of
8 Cameron and Willacy Counties. And that contract is, I
9 believe it's approved as of this morning. If not, it will
10 approved later today and be finalized. So staff is
11 working with that provider to establish services in
12 Cameron and Willacy Counties.

13 Part of that action last month was to defer a
14 decision on that 75 percent of the LIHEAP funds. And this
15 Board action before you is triggered through a
16 recommendation from our EARAC process, which recommends
17 that the Board deny the award of the remaining 75 percent
18 of the LIHEAP funds to Cameron and Willacy Counties
19 Community Projects. Now, this is just the LIHEAP funds
20 we're talking about.

21 And then that staff would then provide a 30-day
22 notice, and that is pursuant to '2105.203 of the Texas
23 Government Code. And that notice would be provided to
24 Cameron and Willacy Counties Community Projects. And
25 again I -- this -- although there are three different

1 sources of funds going to this organization, we are
2 talking about solely the LIHEAP funds in this action.

3 And if you have legal questions, you have
4 exhausted my legal expertise within the last 45 seconds
5 I've been presenting, and I will have to call up my
6 reliever Megan Sylvester to go through the technical legal
7 issues of this.

8 MR. IRVINE: And this is basically to ensure
9 that the adjacent administrator will have a robust funding
10 source to be able to provide utility bill assistance as we
11 get into the season of high air conditioning bills.

12 MR. DeYOUNG: They've gotten 25 percent and
13 they're going to get established. But very quickly, as a
14 Board member from the Valley, the temperatures are going
15 to warm up quickly, bills will begin to skyrocket, and we
16 will have to be robust in our ability to deliver services
17 to very populous counties with a huge area of need. So I
18 would entertain any questions you might have.

19 MR. MUÑOZ: But not necessarily through that
20 particular agency that's receiving the 25 percent right
21 now.

22 MR. OXER: Currently. It could be through
23 another --

24 MR. DeYOUNG: Not necessarily.

25 MR. OXER: Could be through another --

1 MR. DeYOUNG: We have to establish a process
2 about how we go about doing this.

3 MR. MUÑOZ: Okay. But we're not suggesting
4 that, you know, that that will remain permanently. Right?
5 I mean those funds are going somewhere else.

6 MR. DeYOUNG: It could. I mean if we do a
7 request for application, that provider could certainly
8 apply and become a permanent provider in those two county
9 area.

10 MR. OXER: So it may go to them but it's not
11 required to go to them.

12 MR. DeYOUNG: Right. And they currently
13 provide the utility assistance just north of that area to
14 an area of counties.

15 MR. MUÑOZ: They could also --

16 MR. DeYOUNG: It is possible they could.

17 MR. MUÑOZ: It's possible. It's possible it
18 could go to someone else.

19 MR. DeYOUNG: It could go to someone else,
20 absolutely.

21 MR. OXER: Is there anybody else in the area?
22 And we don't know, there could be somebody else in the
23 area --

24 MR. DeYOUNG: There could be other entities,
25 other nonprofits in the area. In many of these block

1 grants from the federal government when you are looking
2 for an alternate provider in an area you are encouraged to
3 look for other providers who have similar funding sources,
4 who have the benefit of community services block grant
5 funds.

6 MR. OXER: So that they're not scaling up from
7 nothing and they can actually do this as long as the
8 marginal cost of them providing those extra funds is as
9 low as possible.

10 MR. DeYOUNG: Yes. And they're going to be --
11 most agencies that we have that administer the utility
12 assistance portion of the LIHEAP grant have community
13 service block grant funds which kind of works together to
14 provide the services. Because it is not easy to just
15 provide LIHEAP funds based on the 7 percent or the
16 6-1/2 percent they would get from the State just for the
17 LIHEAP funds.

18 MR. IRVINE: And I would also like to say that
19 there remains the possibility that through the items that
20 we'll be addressing next under 4(b) that we'll get through
21 everything and give Cameron and Willacy a clean bill of
22 health and these funds would remain with them. Although
23 that is a process that will take a little bit of time, and
24 it's also a process that -- you know, we still have not
25 got the general ledger, so it's not moving quickly.

1 MR. DeYOUNG: Yeah, the Board action last month
2 that you took had requested that staff issue the CSBG
3 contract, and then immediately suspended and attached four
4 special conditions. Of those special conditions, one of
5 those special conditions has been met, and I believe we're
6 still --

7 MR. IRVINE: Which one?

8 MR. DeYOUNG: -- awaiting --

9 MR. MUÑOZ: Why don't you, Michael, why don't
10 you just -- for those of us whose memory isn't as acute as
11 it once was, why don't you remind us of those four
12 conditions?

13 MR. DeYOUNG: Hold on one second. I believe I
14 brought them with me.

15 MR. MUÑOZ: Four conditions and then the one
16 that's been met. Having trouble locating it? So --

17 MR. DeYOUNG: Yeah, I brought it with me.

18 MR. MUÑOZ: It's just not our memory.

19 MR. DeYOUNG: I got it.

20 MR. OXER: So I hope this is not contagious
21 here.

22 MS. SYLVESTER: While he's doing that, Megan
23 Sylvester of Legal Services. I want to clarify something
24 Michael said. The notice requirement under the State
25 government code that he cited is only applicable to the

1 LIHEAP Program. But this action is actually concerning
2 both the LIHEAP and the DOE funding.

3 MR. OXER: So the DOE funding does not require
4 the notice?

5 MS. SYLVESTER: The DOE funding. It's one of
6 those little quirks of our State government code. Chapter
7 2105 deals with --

8 MR. OXER: They have them too?

9 MS. SYLVESTER: Yeah, they have them too.
10 Chapter 2105 deals with block grant programs, but it has a
11 very specific definition for a block grant. So for the
12 programs that are -- the TDHCA administered, it only
13 covers the little bit of CDBG that we have, CSBG and
14 LIHEAP. HOME, ESG, and DOE are not a block grant for the
15 purposes of that chapter, and then therefore none of the
16 things in that chapter apply to those programs.

17 MR. OXER: Okay. Michael?

18 MR. DeYOUNG: Okay. I actually do have the
19 four special conditions that you approved. The first,
20 "any cost determined to be disallowed by the Department
21 for 13 and 14 CEAP or CSBG costs must be repaid to the
22 Department within 15 business days of this Board action
23 or, alternative, submission of documented eligible
24 expenses expended during the appropriate contract
25 periods."

1 To-date I don't believe we have received a
2 check for the disallowed 13 and 14 CEAP. I believe there
3 was some submission of some expenses but they were from a
4 different contract category. So, in other words, we
5 disallowed activities in one area and the request for
6 submission of alternative documentation was from the
7 administrative line item. Those would not be eligible
8 under the other budget line item. So I would, I think
9 staff would say that that has not been met.

10 Second special condition was Cameron/Willacy
11 will no longer include funds provided by the Department in
12 its equalization fund account. And there's some
13 additional language. And I think Cameron/Willacy has
14 expressed to us that they would no longer utilize those
15 accounts for Department funds. So that one we've been
16 given an assurance, and I feel like we've gotten that one
17 met pending documentation of it through the monitoring
18 process.

19 The third special condition was the quality
20 improvement plan that was due to the Department on
21 February 9th, must be received and approved by the
22 Department. The plan must be implemented and Cameron/
23 Willacy available themselves of any appropriate technical
24 assistance provided by the Department.

25 The quality improvement plan that was submitted

1 was not accepted, it wasn't robust enough. There's been
2 some back and forth, but we do not have a quality
3 improvement plan that is approved at this time.

4 And then the fourth special condition was
5 Cameron/Willacy must provide the general ledger for the
6 equalization funds as well as any other accounts to which
7 Department funds have been moved. And to -- I checked
8 this morning, staff has said that we have not received the
9 general ledger for the equalization fund.

10 So those are the four special conditions. The
11 action before you is EARAC's recommendation that we move
12 forward with the '2105 and deny the award and we move
13 forward.

14 MR. MUÑOZ: Michael, I've got a few questions.
15 Okay, what's the amount in Item 1 of the reimbursement?
16 Okay? I mean are we talking about \$13, are we talking
17 about 13,000, are we talking -- what -- just give me a
18 number.

19 MS. MURPHY: Patricia Murphy, Chief of
20 Compliance. We've received correspondence from Cameron
21 and Willacy Counties Communities Project that they have
22 self-disallowed 373,000. So they're asserting they have
23 eligible expenses to offset that amount, and so we've
24 asked for documentation of that.

25 As Michael explained, we have received

1 correspondence from them saying that they -- and they line
2 out where they have other expenses. But their
3 administrative expenses that appears, and there's no
4 documentation, there's just correspondence from them
5 saying that we have these other amounts.

6 MR. MUÑOZ: Okay. Second question. When you
7 say we don't have an approved corrected plan -- quality --

8 MR. DeYOUNG: Quality improvement plan?

9 MR. MUÑOZ: Yes. What does that mean approved?
10 Approved by who?

11 MS. MURPHY: Patricia Murphy, Chief of
12 Compliance. The CSBG Act allows an eligible entity a 60-
13 day period to submit a quality improvement plan. It's
14 submitted to our agency, and we have 30 days to review and
15 approve it or explain why it's not approved. And so --

16 MR. MUÑOZ: They get an opportunity to revise
17 and resubmit it?

18 MS. MURPHY: So they did have the opportunity
19 during the 60-day period. They sent in a quality
20 improvement plan, we wrote back and said this will not be
21 accepted.

22 MR. MUÑOZ: Didn't we just discuss this at the
23 last meeting?

24 MS. MURPHY: That's correct.

25 MR. MUÑOZ: Sixty days hasn't expired.

1 MS. MURPHY: The 60 days was up on February the
2 24th. So we -- prior to the last Board meeting they were
3 in their 60-day period to provide their quality
4 improvement plan.

5 MR. MUÑOZ: If this was a condition made at the
6 February meeting, then wouldn't it stand to reason that if
7 they have 60 days it would begin at that meeting?

8 MS. MURPHY: Oh, I see what you're saying. So
9 the condition at the February meeting was that they
10 provide a supplement to what they had already submitted.

11 MR. MUÑOZ: I don't remember the word
12 Asupplement@ in what Michael read.

13 MS. MURPHY: Okay.

14 MR. MUÑOZ: The point I suppose I'm trying to
15 make is, you know, if the goal is to get a plan, okay,
16 that is accurate and representative and they have X amount
17 of time to do it, then shouldn't they be afforded that in
18 the interest of having the plan that is what we're
19 interested in? I'm just --

20 MS. MURPHY: Yes, okay. In December we wrote
21 to them and said you're required to submit a quality
22 improvement plan. Their deadline to do that was February
23 the 9th. They sent in something in -- before February
24 9th. We reviewed it and said your deadline has not come
25 up yet but I'm telling you now if this is your plan it's

1 not going to be approved. Please supplement your quality
2 improvement plan to address the following Department
3 concerns, and we extended the deadline to February the
4 24th. Does that answer your question?

5 MR. MUÑOZ: Yes.

6 MS. MURPHY: They had more than 60 days.

7 MR. MUÑOZ: Yes. Yes, it does.

8 MS. MURPHY: And so now they did supplement
9 their quality improvement plan. It was submitted, it was
10 not approved. We explained why. They have requested
11 training and technical assistance, which they're entitled
12 to under the CSBG Act. And we have said that we will be
13 happy to provide that training and technical assistance
14 either through us or through an agreement we have with the
15 Community Action Partnership after an audit has been
16 completed to determine those disallowed amounts, taking
17 into consideration any offsets that could be allowed.

18 MR. MUÑOZ: Okay. And I don't have any
19 questions about access to the general ledger. I'm going
20 to assume that there's going to be some explanation as to
21 why that hasn't been satisfied.

22 MR. DeYOUNG: So that's staff's recommendation
23 as well as EARAC recommendation. Are there any more
24 questions for myself? I believe Ms. Garza is here to
25 speak for Cameron and Willacy Counties Community Projects.

1 Or any other questions of Legal?

2 MR. OXER: Any other questions of the Board?

3 (No response.)

4 MR. OXER: Okay. We'll have a motion to
5 consider.

6 MR. GOODWIN: So moved.

7 MR. OXER: Okay. Motion by Mr. Goodwin to
8 approve staff recommendation on Item 4(a). I'll get this
9 right, get my number, 4(a).

10 MR. CHISUM: Second.

11 MR. OXER: I hear a second by Mr. Chisum.
12 Okay. We'll take public comment now.

13 Ms. Garza, would you like to speak?

14 MS. GARZA: Yes, sir. Good morning. Once
15 again my name is Amalia Garza, I'm the Executive Director
16 for Cameron and Willacy. This whole thing is so
17 convoluted, and I think that the operative word here is
18 the audit. I think it will clear just about everything
19 that we're talking about here.

20 And the general ledger, part of the information
21 was given at the meeting that we had with the Department.

22 The -- I'm sorry, I don't want to say IRAQ. EARAC is it?

23 MR. OXER: EARAC.

24 MS. GARZA: EARAC. That was given at that
25 meeting --

1 MR. OXER: Think of it as an earache. Okay?

2 MS. GARZA: I know. And I got California and
3 New York mixed up the last time.

4 So, anyway, we're here to fully cooperate with
5 the Department. As a matter of fact, we thank them. The
6 QIP, the quality improvement plan, has been going on back
7 and forth. Now, we're saying if it's not -- if it will
8 not suffice what the Department wants as an improvement
9 plan, please give us technical assistance. Because we can
10 do this backward and forward all year, and if we don't get
11 enough information we won't be able to satisfy what the
12 Department wants.

13 So if we could have some kind of a commitment
14 for that. And again it goes back to the audit, maybe the
15 audit will also give you -- give us that avenue. We want
16 to improve services but first we have to improve the
17 fiscal. And if that's the problem, then by all means. I
18 do not relish the idea of having this hang over the agency
19 for any more time than need be. Be patient with us.

20 We know that the agency is doing fantastic
21 work. We have doubled our numbers going out of self-
22 sufficiency closures. We agree with the Governor, we want
23 for these people to work. It has taken us years to
24 establish a very good inroads in communication with our
25 community, and I think that we can continue making that

1 difference.

2 So again the information is available.
3 Everything that the general ledger, and we've given some
4 information already, that's only about 25 percent of what
5 the Department needs to look at as far as records are
6 concerned. They have always been available to the
7 monitors. That has never been denied. So again it's a
8 matter of just looking at our records. The documentation
9 is there, all of it. And probably even more.

10 MR. MUÑOZ: Can we ask questions?

11 MR. OXER: Absolutely.

12 MR. MUÑOZ: I'm just -- I'm misunderstanding
13 something, and I apologize for my feeble comprehension.
14 But you say they've had access to some of the general
15 ledger. You've heard the representative from the agency
16 state fairly unequivocally, we have not had access to the
17 general ledger. I'm not sure how to reconcile.

18 MS. GARZA: I think some because they were
19 asking us for January 2013 to October.

20 MR. MUÑOZ: But at the last meeting I'm fairly
21 certain, it's in the transcript, we said access to the
22 general ledger. Not a portion, not a percentage, but
23 access, which I believe we were assured they would have
24 access. Which seems to be the basis of some of this
25 convolution, as you stated.

1 MS. GARZA: Yes. And excuse me for my
2 misunderstanding. We're willing to come in and sit down
3 with the Department and go over the general ledger. Again
4 though it's got to be supplemental to the documentation we
5 have in the office. And it's a lot of information.

6 MR. OXER: Ms. Garza?

7 MS. GARZA: Yes, sir.

8 MR. OXER: I think you'll find it doesn't have
9 to be supplemental, it has to be the general ledger that
10 you deliver to our staff.

11 MS. GARZA: I'm sorry.

12 MR. OXER: Well, let me say it again then. I
13 think you'll find it doesn't have to be supplemental to
14 anything you have in the office. It will be the general
15 ledger that you deliver to our monitoring staff.

16 MS. GARZA: I agree to a degree. It's got to
17 make sense when they look at those documents to back up
18 whatever expenditures we have. It's got -- and the
19 monitors have always had access to those records.

20 MR. OXER: Hold on just for a second. I'll
21 take a --

22 Patricia?

23 MS. MURPHY: Yes?

24 MR. OXER: Okay. Tell me the access that
25 you've had to those records that she's talking about.

1 MS. MURPHY: In our August 2014 monitoring what
2 we found was that money was being moved from our staff
3 account into their equalization fund. And that my staff
4 said, you know, I need to see, you know, the information,
5 the accounting records from the equalization fund to
6 determine its final disposition, where does the money go
7 after you move it into the equalization fund.

8 And that my staff was not provided that
9 information, and told that they would need a signed letter
10 from our Executive Director that, you know, they have the
11 right to look at that information. And we have not been
12 provided this information.

13 MR. OXER: Okay. Megan?

14 MR. IRVINE: Before Megan takes the
15 microphone -- and please come on up -- I just want to
16 reiterate a comment that was made to our executive-level
17 staff by an executive-level person at the U.S. Department
18 of Health and Human Services. And that is we, not our
19 auditors, not some other auditor, not a third party, we
20 are entitled to this information.

21 MR. OXER: The contract that you sign,
22 Cameron/Willacy signed is with TDHCA, it's not with
23 anybody else, and that gives us the right to this
24 information.

25 Is that not correct, Megan?

1 MS. SYLVESTER: Megan Sylvester, Legal. Yes,
2 that is correct.

3 MR. OXER: Okay. So back to the question, Ms.
4 Garza. Last time you were here three weeks ago to this
5 day you said we would have access to that and you would
6 send the general ledger. Where is it?

7 MS. GARZA: We can deliver it to you on Monday.

8 MR. OXER: No, you said last week -- three
9 weeks ago that you would deliver it. What I would like to
10 know is why hasn't it been delivered yet.

11 MS. GARZA: Again I was concerned that if you
12 didn't have the complete picture, there could be some
13 misunderstandings. The documentation is vital to the
14 general ledger.

15 MR. OXER: You're more than welcome to send
16 that documentation to support the ledger.

17 MS. GARZA: Okay. The audit would just be a
18 lifesaver. It really would. And it's all we're asking.
19 And I thank the Department for putting it on the agenda
20 for action.

21 MR. OXER: Okay. Board have any other
22 questions?

23 (No response.)

24 MR. OXER: Any more?

25 (No response.)

1 MR. OXER: Michael?

2 MS. BINGHAM: I'm sorry, Mr. chair.

3 MR. OXER: Ms. Bingham?

4 MS. BINGHAM: So I think the Board left the
5 last meeting with a clear understanding that the
6 conditions that we laid out could be met and that the
7 reason that we approved the 25 percent to the adjacent
8 agency was to keep the program running. Our other choice
9 was to deny it at that time.

10 So my general takeaway, fellow Board members,
11 was we were trying to buy some time. Because we share,
12 what we share is our motivation that the people that need
13 the funds are the priority and we need to make sure that
14 those people continue to get the funds. But I think the
15 Board was benevolent and fair in trying to buy your agency
16 time to provide us with the information that we had needed
17 all along, and that allowed us to postpone making a
18 decision to deny those funds, which none of us want to do.

19 What I heard from Michael a minute ago was, you
20 know, the clock has continued to tick. And because you
21 haven't provided the information that was in those
22 conditions, now the Board is forced to make a decision to
23 continue those funds as we start to go into the hot season
24 that you and I know very well.

25 So, you know, I don't like the way this is

1 headed, but my general sense is the ball was in your court
2 to bring the -- and when we left here we thought that --
3 and I'm not trying to chastise you, I think I'm just
4 trying to say we're all on the same side here. What we
5 wanted was for the folks to continue to get the funds.

6 Unfortunately, now we're at a place where the
7 initial 25 percent isn't going to be sufficient plus the
8 Board's going to lack some confidence, that we're going to
9 leave here again thinking that we're crystal clear that
10 the general ledger and whatever you want to send will be
11 made available but that we may be back here next month and
12 there may be another reason that you have decided not to
13 provide the necessary B- so I just want to clarify.

14 Because we, you know, we went out of our way
15 last meeting to try to, you know, buy some time and cut
16 some slack. And now I think we're -- our back's up
17 against the wall on the deal. I just -- I hate the way
18 this sounds like it's going, but I think you had the power
19 to do something about it and we're here again.

20 MS. GARZA: May I ask the Board for some time?

21 I'll get it to you by tomorrow. I'll have it delivered
22 overnight.

23 MR. OXER: You had three weeks to do that.

24 MR. IRVINE: Mr. Chairman, actually this is a
25 much longer-standing issue than this. I have had

1 discussions with staff that have been working in this
2 program for a number of years, and I believe that requests
3 for access to this information go back as far as seven
4 years.

5 Is that correct, Mr. DeYoung?

6 MR. DeYOUNG: Correct.

7 MS. DEANE: And if I can just say one thing?
8 And this is more for general information because some of
9 the Board's fully aware of this. We -- it's my
10 understanding that the Board members received an extremely
11 large binder of information related to this issue. And
12 there are -- our agency, the legislature has seen fit to
13 provide us with an even greater level of openness and
14 transparency than most other agencies in the State. And
15 we have the ex parte rule, it's in statutes, ex parte
16 communications rule, and we also have a rule related to
17 information that's provided if someone wants the Board to
18 consider at a meeting.

19 And so because the ex parte prohibition, in
20 which you can only communicate with Board members about a
21 pending application, and I think that would include this,
22 at a meeting, that there can't be outside communications.

23 And by statute that includes a written communication.
24 And the statute even goes so far to be so strict as to say
25 even on breaks, you know, the Board members can't have --

1 can't communicate about these pending issues.

2 And then with regard to our meeting, the
3 statute regarding our meetings, it does require here again
4 a great deal of openness for the public, so the public can
5 know what the Board is looking at, that information be
6 provided ahead of time, and we have to post it on our
7 website.

8 So just so you'll know, you know, sending
9 information directly to Board members without also
10 providing it to staff so we can run it through the process
11 of getting it on line and having that public openness of
12 it, they can't review that information. They're not
13 allowed to review that information by statute.

14 So please be sure if you want to have something
15 considered by the Board for a Board meeting, make sure you
16 get it to us so that we can process it and get it up on
17 line. And, you know, if you bring something to the
18 meeting, we need copies of it so we can put it out front
19 and so forth. So that's just a general informational
20 thing. I know a lot of people -- the tax credit people
21 are pretty familiar with that because they run into this
22 rule several times.

23 But, you know, perhaps others may not be as
24 familiar with it. So just so you'll know if you want to
25 get something in front of them, you know, follow the

1 process. If you have questions about that, I would be
2 glad to answer any of those questions ahead of time so you
3 can make sure that, you know, you've gotten the
4 information to them.

5 MS. GARZA: Thank you very much. Thank you.

6 MR. OXER: Okay. Michael?

7 Thank you, Ms. Garza.

8 MS. GARZA: Thank you.

9 MR. CHISUM: Mr. Chairman, I've got a question
10 for Ms. Garza.

11 MR. OXER: Okay. Ms. Garza.

12 MS. GARZA: Yes, sir.

13 MR. OXER: Please, Mr. Chisum, has a question.

14 MS. GARZA: Yes.

15 MR. CHISUM: Yes, I'm relatively new to the
16 Board, Ms. Garza, and what I don't understand is why has
17 access been denied to the general ledger. Oh, I'm sorry.

18

19 Ms. Garza, Tolbert Chisum. I'm relatively new
20 to the Board, and so I don't understand why access of the
21 staff to the general ledger has been denied. I don't
22 understand that. Why is that?

23 MS. GARZA: The general ledger has been made
24 available to monitors when they go into monitor the
25 agency. It's always been there. We give the monitors a

1 manual of information and we urge them to ask us
2 questions. That information, sir, has always been
3 available.

4 MR. CHISUM: Excuse me, Ms. Garza. Is that the
5 general ledger?

6 MS. GARZA: Yes. All our fiscal records are
7 open.

8 MR. CHISUM: I didn't -- that's not what I
9 heard from Ms. Murphy.

10 Ms. Murphy? Please explain that to me, the
11 difference.

12 MS. MURPHY: Ms. Garza is saying that their
13 records are available, which could mean they're in a box
14 in the broom closet for all I know. When we expressly say
15 show us the documentation that this money went to an
16 eligible cost we are denied that -- well, it either does
17 not exist or we are not provided that record.

18 I believe what has happened is that Cameron and
19 Willacy Community Project has misunderstood a programmatic
20 rule whereby they have been under the impression that
21 there is an ability to earn funds through the
22 administration of this program. And there is no ability
23 to earn funds under these programs, and that's one of the
24 reasons that their quality improvement plan has not been
25 approved and one of the conditions for approval of the

1 plan is that they have got to acknowledge there's no
2 opportunity to earn funds.

3 MR. CHISUM: Okay.

4 MS. MURPHY: So their perspective is that once
5 they've earned these funds and they go into this
6 equalization that they are not longer federal funds, and
7 that is why they're not providing us access to those
8 records.

9 MR. OXER: This is your speculation. Right,
10 Patricia?

11 MS. MURPHY: That is correct.

12 MR. OXER: All right.

13 MS. MURPHY: Can I say just one thing?

14 MR. OXER: Please.

15 MS. MURPHY: Ms. Bingham, I really want to echo
16 on your concern about, you know, that the Board left last
17 meeting with the impression and understanding that the
18 information would be provided. And I'm concerned with
19 some of the comments I'm hearing from Ms. Garza that,
20 sure, she'll give us the general ledger, but that's only
21 25 percent of what we need. Because once we get the
22 general ledger we're going to see the money went somewhere
23 else, and we're just going to say, well, where is that.

24 So I -- you know, in these Board items we
25 discuss that the SAO and HHS are not able to do this

1 audit. I had a phone call this morning with a CPA firm
2 who has -- we're working with them to get out and do this
3 kind of an audit. And I've made it very clear that we are
4 not on a witch hunt here. We need to determine what is
5 the disallowed amount that they thought that they earned,
6 and we have got to get the Cameron/Willacy record to see
7 are there any documented costs which can be eligible to
8 offset that.

9 So the goal of this audit is to get to the
10 bottom of that and help Cameron/Willacy. And the best
11 outcome is there is no disallowed amount. Right? That
12 there are eligible costs. And that's what we would all
13 love to see. So I think convoluted has come up here, so I
14 hope that Cameron/Willacy takes this opportunity to
15 organize their records in a manner that they can show
16 these are our documented eligible costs. Right? This is
17 how we spent the money.

18 So are there any other questions or --

19 MR. CHISUM: Thank you, Mr. Chairman.

20 MR. OXER: Okay.

21 MS. GARZA: We agree with that. Oh, my God.

22 MR. OXER: Ms. Garza, you said that you did not
23 send the general ledger after you said you would three
24 weeks ago and told us that would be -- because that was
25 one of the conditions. You did not send the general

1 ledger because there were documentation in support of that
2 that you felt like were necessary. But yet while the
3 folks were down there you didn't provide that while the
4 monitors were in place. Can you explain that?

5 MS. GARZA: Sir, this is going to go backward
6 and forward. I know that the documentations was provided
7 to the monitors.

8 MR. OXER: But yet Ms. Murphy just said that
9 they were not.

10 MS. GARZA: Again we're going to go back and
11 forth on this issue. The audit will show, and like she
12 says, and I appreciate that comment, the thing is to just
13 prove, and we will do that, that expenditures were
14 according to program guidelines.

15 This particular fund for this agency has
16 existed since the 1980s. So -- and we don't move money
17 around; we had to have a line of credit for the agency at
18 one point, so when we received -- because we didn't have
19 money for seven months in 2013, so we had a line of credit
20 so that we could cover salaries and other expenditures.

21 When we did get the grant, that grant went to
22 pay some of that line of credit. We had a contract, we
23 had a CF contract or a LIHEAP contract at that point. An
24 auditor again would be able to decipher all this
25 information. Believe me, it's there. It is there. Every

1 cent that this agency has ever handled, at least while
2 I've been there, is accounted for, sir.

3 MR. OXER: But yet you've not made that
4 available to our monitors when they're in place, when they
5 came to visit you.

6 MS. GARZA: Yes, sir.

7 MR. OXER: But yet --

8 MS. GARZA: That's what I'm telling you.

9 MR. OXER: -- Ms. Murphy says you did not. All
10 right. One of the two of -- listen to this.

11 MS. GARZA: All right.

12 MR. OXER: One of the two of you is lying.
13 Okay? And I'm expecting that we're going to get to the
14 bottom of this and there'll be some --

15 MS. GARZA: Absolutely. Absolutely. I have
16 not been able to have one comforting moment because this
17 is hanging over our head. And the money, sir, is there.
18 Through documentation, it is all there. We're so busy
19 working in the Valley that sometimes we might have become
20 neglectful, but we are meticulous with our documentation.

21 I will not have anything less. I expect the Finance
22 Director to show me everything that was spent, and it'd
23 better be program-related.

24 MR. OXER: Is there any other questions for Ms.
25 Garza?

1 MS. BINGHAM: I'd --

2 MR. OXER: Ms. Bingham?

3 MS. BINGHAM: -- like to, Mr. Chair, just make
4 one comment. I just -- no regrets and I -- we have to
5 respect, you know, that we may not share the same position
6 on this one topic. I just wish that the energy that had
7 been spent putting the binders together would have been
8 spent on putting the general ledger and the documents that
9 were actually requested and sending those.

10 Because, you know, I think Ms. Murphy and you,
11 you're both very detail oriented. I'm going to speak for
12 us and say we're -- you know, we made a request that to us
13 was a very perfunctory surface-level request, which was
14 just give it. Worse case, it would have bought you a
15 little bit more time and the agency still would have had
16 to look in, dig into more details. But at least you would
17 have that good faith effort of we sat here together, we
18 asked for something.

19 But I guess what it sounds like to me is after
20 that meeting you decided for some other reason that you
21 were not going to -- it sounds like, you know, you have
22 some rationale, which you decided that you weren't going
23 to provide it because you believe that supplemental
24 information is needed to clarify the general ledger or
25 that an audit would be helpful.

1 But the clock was ticking that whole time, so
2 rather than say I can't agree to these conditions because
3 I truly believe that you will also need supplemental
4 information and audit, we all left here with kind of a
5 good feeling that, yes, those conditions were going to be
6 met.

7 So it's just unfortunate that -- because I
8 believe that you are all busy working. But it took a
9 tremendous amount of time to put those binders together,
10 and it would have been, it seems to me that it would have
11 been so much better a choice to take that same amount of
12 time and actually provide what we all left here thinking
13 that we were going to have before the next meeting.

14 MS. GARZA: My mistake and my apologies. My
15 mistake.

16 MR. OXER: All right. Are there any other
17 questions?

18 (No response.)

19 MR. OXER: Ms. Bingham, you have anything else?

20 MS. GARZA: Thank you.

21 MR. OXER: Michael? All right, would you be
22 kind enough to summarize the staff recommendation quickly
23 again?

24 MR. DeYOUNG: Okay. So staff recommendation is
25 that staff --

1 MR. OXER: You can bullet point the whole thing
2 if you like.

3 MR. DeYOUNG: Sure. Staff -- that you would
4 approve of the EARAC and staff recommendation that we move
5 forward with the denial of the last 75 percent of the
6 LIHEAP award, which then would allow staff to proceed with
7 the process outlined in 2105.203, which is a notification
8 of that decision to Cameron and Willacy Counties. Again
9 LIHEAP dollars only with DOE -- I'm sorry, with Megan's
10 correction that it also includes DOE.

11 MR. OXER: Megan, get the cattle prod up here
12 and make sure he's doing this right. Okay?

13 MR. DeYOUNG: Yeah.

14 MR. IRVINE: So it's to deny the remaining
15 75 percent --

16 MR. DeYOUNG: Yes.

17 MR. IRVINE: -- of both LIHEAP and the DOE.

18 MR. DeYOUNG: And the DOE.

19 MR. IRVINE: And to trigger the 2105 process
20 for the LIHEAP.

21 MR. DeYOUNG: Right.

22 MR. OXER: And concurrently go enter the
23 process to acquire another or a subrecipient to provide
24 services in that region. Or is that coming?

25 MR. DeYOUNG: That was action last month.

1 Wasn't it?

2 Yeah, we got that approved the last time.

3 MR. OXER: So you're underway on doing that.

4 MR. DeYOUNG: That's a separate -- yes, that's
5 a separate process.

6 MR. OXER: Okay. So this is essentially to
7 take the remaining 75 percent of the LIHEAP funds and the
8 DOE funds, hold those in abeyance so that process
9 requiring a new sub -- or a new grant manager gets into
10 process and they'll get those funds to execute. Is that
11 correct?

12 MR. DeYOUNG: Correct.

13 MR. OXER: Okay. Is that clear to the Board?

14 (No response.)

15 MR. OXER: Okay. Motion --

16 MS. DEANE: And just to be clear, that's
17 paraphrasing the actual language in the resolved of --

18 MR. OXER: Correct.

19 MS. DEANE: -- that's actually what the Board
20 will be adopting, so.

21 MR. OXER: Correct. The resolution --

22 MS. DEANE: If something wasn't mentioned, I
23 want to make sure we --

24 MR. OXER: Yeah.

25 MS. DEANE: -- tie that to the actual resolved

1 language.

2 MR. OXER: Correct.

3 MS. BINGHAM: Mr. Chair, I have one more
4 question while Michael is still up there.

5 MR. OXER: Ms. Bingham.

6 MS. BINGHAM: Michael, does the -- and maybe
7 this is a Michael and Megan question. Does the Board have
8 the discretion to move -- to do something in between
9 allowing the award, the rest of the 75 percent award or
10 denying the whole award? And based on the information
11 that we have right now, with there being significant
12 questions as to the appropriateness from a compliance
13 standpoint, is there an impact to the agency, our
14 Department, and the Board for making a decision that would
15 be less than denying the entire amount? Does that make
16 sense?

17 MR. OXER: Is there a halfway step between
18 where we are and where we're going?

19 MS. SYLVESTER: Megan Sylvester. I want to
20 clarify that you're not awarding the funds to someone else
21 today. What this is doing for the LIHEAP funds is 2105
22 says specifically you have to deny the award. Now, you
23 can go ahead and deny a part of the award, but then when
24 you -- if you would go -- you'd have to go back and start
25 that 30-day notification clock for the remainder. So

1 after those 30 days are over the staff could come with a
2 new provider of services. So does that answer --

3 MR. OXER: So the real --

4 MS. SYLVESTER: -- your question?

5 MS. BINGHAM: I think it really does.

6 Because -- yeah.

7 MR. OXER: All right.

8 MS. SYLVESTER: And for the DOE we're also not
9 awarding a new provider today. And they -- you would have
10 a chance when we bring that new DOE provider, I believe
11 possibly in April, that you could say no, we don't want
12 the funds to go to that provider, we would like to award
13 them to Cameron/Willacy.

14 MS. BINGHAM: Okay, I may have another question
15 then.

16 MR. OXER: Okay.

17 MS. BINGHAM: Is there such a thing as denying
18 it and then turning around and awarding it back to the
19 original recipient?

20 MS. SYLVESTER: Yes, that is a step you could
21 take.

22 MS. BINGHAM: Okay.

23 MR. OXER: And let me ask another question
24 here, Megan. If we deny it now, we go through the
25 process, because this audit -- based on the evidence of

1 the availability of data, the audit that we will
2 invariably get to is going to take awhile, can this
3 process be so we have an interim manager for a portion of
4 the fund and then return to Cameron/Willacy?

5 MS. SYLVESTER: You could decide to award the
6 LIHEAP provider as a temporary manager of funds. For DOE
7 the staff usually recommends the same provider year after
8 year, but there's no State government or federal
9 requirement that you do so. So just that you awarded the
10 2014 and '15 DOE funds, if you chose to do that to another
11 provider, in '16 you could come back and award the funds
12 to Cameron/Willacy and there wouldn't be any State or
13 federal thing that would prohibit you from doing that.

14 MR. OXER: So I'd like to think that we're
15 trying to Cameron/Willacy and the folks down there the
16 benefit of every bit of the doubt. And, now, the
17 sentiment that I had at the last Board meeting was that we
18 gave them enough time to provide the information so we
19 could settle this and move on, but apparently that
20 information has been unavailable.

21 So given that that's the case, we've got to
22 move on to another position that provides the services to
23 those folks down in the Valley, Ms. Bingham, but also
24 maintains the integrity of the management and monitoring
25 structure that we have in place.

1 Now, that said, I think it's going to become
2 evident eventually, and if -- the sooner the better this
3 is going to happen, if we have access to these funds or
4 this information, these data, then I'd like to make sure
5 that we get that as soon as possible.

6 So if we have the capacity -- the denial now is
7 to deny the balance of those funds that are available.
8 And while we're underway in procuring another provider of
9 services to manage those funds, in the event that that
10 takes a little bit longer, what gap in service do you
11 anticipate would occur, Michael, in terms of what's
12 available now and what the people would be -- the good
13 news is we're in a relatively cool portion of the year.

14 MR. DeYOUNG: Yes.

15 MR. OXER: But it's ramping up, as Leslie would
16 tell you, down in the Valley.

17 MR. DeYOUNG: Correct. And the funds provided
18 to the adjacent provider are essentially -- they were
19 25 percent. Most of your cost in the LIHEAP program,
20 utility assistance portion of the LIHEAP program is a
21 cyclical cost. It tends to rise as we get into the spring
22 and as soon as electricity bills start to skyrocket with
23 cooling they're going to churn through their funds fast.

24 It's my anticipation -- this is off the top of
25 my head so I apologize -- they were provided essentially

1 one-quarter of the funds, you would think it would be
2 about three months before they are out of funds and
3 utility assistance would not be available in the lower
4 Valley.

5 Primarily, you know, the funds are expended a
6 little bit later in the year, we might be able to get away
7 with three and a half months, four months. And we're
8 going to then hit a wall which these funds are essential
9 in the lower Valley. These are two counties with a huge
10 population. This is a big allocation and it's a
11 significant organization.

12 And we would be hard pressed to quickly provide
13 services if we are dealing with this issue at that time.
14 This is kind of staff reaching out to say we need to move
15 forward, we have to get planned activities going and we
16 need to identify that provider.

17 MR. OXER: So does our schedule for procuring
18 or identifying and contracting with another provider fit
19 within the schedule that we're anticipating we need for
20 the funds? In other words, can we get somebody in place
21 before the three months are out?

22 MR. DeYOUNG: Yes. I think, you know -- of
23 course it all depends on who applies in and the
24 application process for the request for applications. But
25 if it's an existing provider who is already administering

1 the program in another area, you're talking about
2 replicating a delivery service model, which isn't as
3 difficult as starting up new. If you have a new provider,
4 I would tell you we are late to the table if we are
5 starting a new provider.

6 MR. OXER: In the procurement, are we able to
7 stipulate that it needs to be an existing service
8 provider?

9 MR. DeYOUNG: I think we historically have said
10 that they would be granted a slight increase in --

11 MR. OXER: Priority?

12 MR. DeYOUNG: -- priority in their score so
13 that an existing provider who is knowledgeable in the
14 rules and the service delivery model as well as the case
15 management aspect of it, we would certainly look to those
16 providers first.

17 MR. OXER: Because part of the background
18 context for this issue is in the need to -- in my
19 estimation, the rest of the Board has their own position
20 and perspective on this, but in my estimation that they
21 improve their robustness, the capacity of these providers
22 on every one of these major programs to provide these at a
23 level of service and a level of administrative excellence
24 that let's just say we're going to raising the bar as
25 the -- as we progress.

1 So you're confident that we can find somebody
2 who can implement this program, because we've already
3 started, within the period with which this 25 percent of
4 funding exists so we get them on -- there'd be no
5 disconnect on the service provided to those residents in
6 that area.

7 MR. DeYOUNG: Yes. I think the recommendation
8 from staff anticipates that we'll be able to have that up
9 and running and not have a loss in service or a gap in
10 service to the residents of Cameron and Willacy Counties
11 if we can move forward with this action.

12 MR. OXER: And so your future and from here on
13 out follow-on Board meetings you'll be able to come tell
14 us where we're at on that procurement. Because we're
15 going to be interested.

16 MR. DeYOUNG: Absolutely we'll do that. We'll
17 make a point to have an item so you're aware of what the
18 status is of the services.

19 MR. OXER: Okay. Any questions, any other
20 questions from the Board?

21 (No response.)

22 MR. OXER: No other public comment?

23 (No response.)

24 MR. OXER: Okay. Regarding Item 4(a), there's
25 been a motion by Mr. Goodwin and seconded by Mr. Chisum to

1 approve staff recommendation regrading Item 4(a). Those
2 in favor.

3 (A chorus of ayes.)

4 MR. OXER: And opposed?

5 (No response.)

6 MR. OXER: There are none. It is unanimous.

7 All right. Just for purposes of timing here,
8 we're going to take a quick break. It is now 10:46. I'll
9 see you back in our chairs at 11 o'clock straight up.

10 (Off the record at 10:46 a.m.)

11 (On the record at 11:01 a.m.)

12 MR. OXER: Okay, we'll be back in session, back
13 to order, please. It's 11:01, so, okay.

14 Do you have one more, Michael?

15 MR. DeYOUNG: Item 4(b) -- Michael DeYoung,
16 Community Affairs Division. Item 4(b) authorizes staff to
17 procure a third party auditor in case our arrangement with
18 the Partnership that Patricia talked about a few minutes
19 ago is not able to go down to Cameron/Willacy and provide
20 the necessary audit. We just are looking for an on-deck
21 hitter, if you would, to go down and do that audit. This
22 would authorize us to run out and do a procurement.

23 MR. OXER: Dual capacity here?

24 MR. DeYOUNG: Yep. And it is -- I had a
25 conversation this morning with the Partnership, and I

1 think that's obviously the path we're going to pursue, and
2 we hope that that will come to fruition. But this is a
3 backup plan.

4 MR. GOODWIN: Michael, the last time we met I
5 thought the State Auditor was going to do that audit.

6 MR. DeYOUNG: Part of the request from
7 Cameron/Willacy was that we either send down the State
8 Auditor or the Office of Inspector General for the U.S.
9 Department of Health and Human Services.

10 Staff reached out to both of those offices and
11 requested assistance on this matter. Both declined. The
12 State Auditor said they were -- their calendar was so full
13 that they wouldn't be able to get to it for more than a
14 period of months. So it would be too late at that time.
15 U. S. Department of Health and Human Services' position is
16 that they fund the states and the states' responsibility
17 is to monitor those agencies.

18 In a subsequent conversation last week with the
19 director of the programs at U. S. Department of Health and
20 Human Services, not the OIG, but we talked with the
21 administrator for both the LIHEAP and the CSBG funds, and
22 she confirmed that that was a consistent position
23 throughout Health and Human Services, and that we should
24 be given access to those records and we should go down and
25 do the audit.

1 So that's when we again have come back to the
2 Board and say, hey, we're -- we have the Partnership, we
3 think that's going to work out, we talked to them this
4 morning, but we need Item 4(b) just in case they say, hey,
5 it's going to take us -- we don't want to wait four or
6 five months. And if they say it's going to be four or
7 five months to get down there, we want to go get another
8 auditor and let's get someone in there right away. Sooner
9 the better.

10 MR. GOODWIN: Yeah, we're running under a shot
11 clock here to make sure we keep services, no gap in
12 services before things get heated up down there,
13 literally, to the point that these folks need the support
14 for their energy bills. Right?

15 MR. DeYOUNG: Correct. And so my inclination
16 is that this would never come into fruition but it is a
17 backup plan that we don't want -- we don't want to wait
18 another month to have to go out for that action.

19 MR. IRVINE: And I would just like to comment,
20 I mean Patricia and her team are completely capable of
21 going into any community action agency, looking at their
22 books and records, and determining with absolute certainty
23 if every dollar drawn has been applied to a documented
24 allowable cost, period.

25 MR. OXER: They do this everywhere else.

1 Right?

2 MR. IRVINE: That's their job. They're really
3 good at it.

4 MR. MUÑOZ: There's the -- okay, may I ask a
5 idiot question? So if that's the case, Tim, then, you
6 know, then why even go down that, you know, SAE or SAO
7 route?

8 MR. IRVINE: That's --

9 MR. OXER: That's a different matter.

10 MR. MUÑOZ: SAE is a issue that OU is dealing
11 with right now. And --

12 MR. OXER: Better them than us.

13 MR. MUÑOZ: Yeah, better than anyone. No, I
14 shouldn't. And but why, then why go down that route
15 anyway? I mean why?

16 MR. IRVINE: I would be completely comfortable
17 with Patricia going in and doing the review. But you've
18 got to have access to the records to review them.

19 MR. OXER: Now, the -- just as a thought on
20 this, what we're essentially doing is doing a procurement
21 for an auditor to go down there and get on -- we can
22 accelerate this procurement, can't we?

23 MR. MUÑOZ: Okay, how do we -- what's the time
24 schedule on that procurement?

25 MR. DeYOUNG: If we granted approval by the

1 Board, we would have an RFP together by I believe middle
2 of next week and probably --

3 MR. OXER: I was thinking more in terms about
4 five o'clock, but go ahead.

5 MR. DeYOUNG: I don't believe we have this RFP
6 drafted right now. But we would move quickly to draft
7 that RFP, get it published, ask for bids, have that bid
8 opening, and award the contract and immediately engage and
9 have them deployed down to Cameron/Willacy. I do think
10 this audit will be -- will take some time.

11 MR. OXER: How much time do we typically allow
12 for the advertisement for the bid, so to speak? Thirty
13 days? Mark?

14 (No response.)

15 MR. OXER: For our federal funding response.
16 Hi, Megan.

17 MS. SYLVESTER: Hi. This is Megan with Legal.
18 That really depends on how we're paying for it. So I
19 think that that's -- I think giving a few more days to see
20 if we can work something out with the Partnership and then
21 we can pursue. Typically it's 30 days, it can be less
22 depending on what funding source we're using to pay for
23 it.

24 MR. CHISUM: Mr. Chairman?

25 MR. OXER: Mr. Chisum.

1 MR. CHISUM: Since our staff has that
2 responsibility of oversight and monitoring and --

3 MR. OXER: And that skill set.

4 MR. CHISUM: -- and the skill sets and are most
5 familiar with the issues, and for us to go out and to
6 spend money hiring an outside auditor who then would have
7 to come up to speed, my inclination is that it would seem
8 to me to be most time efficient, certainly less costly,
9 that is to say for our own people and their good skill
10 sets to do this. They've been endorsed by their past
11 performance, everybody on this Board, Tim just
12 acknowledged it. I would much prefer that our staff
13 conduct that audit.

14 MR. OXER: Okay. Let me ask a question.

15 Mark, I got a question of you, if you can come
16 up for a second.

17 MR. SCOTT: Yes, sir. Mark Scott, Director of
18 Internal Audit.

19 MR. OXER: Okay. So an audit of this type,
20 scope, caliber, pick a term on it, this is not magic, this
21 is just basic --

22 MR. SCOTT: This is pretty simple, what we
23 want. We want --

24 MR. OXER: -- meat and potatoes auditing, isn't
25 it?

1 MR. SCOTT: Correct. The A133 audit that was
2 done, they should have looked at the allowability of
3 expenditures. They should have asked them how do they get
4 paid. They should have said, you know, we get paid based
5 on reimbursement. They should have looked at the contract
6 to determine if they were charging in a manner that was
7 allowable. So that's basically what we need to do.

8 The advantage of having SAO or OIG, they can --
9 well, they will not be denied the records, and they can
10 get all the records they need, including bank statements.

11 Even if we got -- the general ledger should not be -- is
12 a very simple thing to print out. To do a proper audit
13 you'd have to have the general ledger and their bank
14 statements to see where the money went. But it's a simple
15 thing. And I can definitely advise on it if our staff
16 does it.

17 MR. OXER: Well, but where I was going to
18 address -- and what we were trying to do, just as a note
19 back, there was some concern to them about -- that Ms.
20 Garza and her crew had some concern that they wanted an
21 outside auditor of some variety so that they felt like
22 they were getting third party objectivity, which we said
23 the State Auditor's Office, the OIG, those folks are
24 there.

25 And at this point I recognize that the

1 appropriate amount of -- appropriate time expenditure and
2 such would be for our staff to do it. But given the fact
3 that there's some contention, it might -- we were trying
4 to address this third party issue. And so --

5 MR. SCOTT: Let me say something. There's
6 something called a limited scope audit that you can
7 procure.

8 And tell me if I'm wrong. It's an allowable
9 cost?

10 Wherein you as the passthrough entity tell the
11 subrecipient, yeah, we got your single audit, we want
12 additional work done. Sometimes they call it a
13 programmatic audit, say we want additional work done on
14 this specific program. So we could write a limited scope
15 audit agreement with an auditor so they wouldn't have to
16 go through and -- you know, frankly, the usual things that
17 you are concerned with in an audit, the balance sheet, the
18 income statement of the entity as a whole in this case are
19 not really the critical things. What we want to know is
20 the allowability of the costs, the money that was taken
21 out of the federal programs, put into the equalization
22 fund, what happened to it, so.

23 MR. OXER: It's basically cash flow for these
24 programs as opposed to a balance sheet audit.

25 MR. SCOTT: Correct.

1 MR. OXER: Okay. Any other questions? Mr.
2 Chisum?

3 MR. CHISUM: Mr. Chairman, well, also I'm --
4 again I'm new to the Board but also I don't want us to be
5 in a position of creating a precedent where every time we
6 end up in a situation similar to this then we have to go
7 outside to get an audit. Our staff is very, very capable
8 of conducting this audit.

9 MR. OXER: Very good point, noted.

10 Ms. Sylvester.

11 MS. SYLVESTER: Megan Sylvester, Legal
12 Department. I just also wanted to say we do have a
13 already procured firm and we've already set aside funds
14 under that contract with a firm. It's just working out
15 whether they're available for this engagement. So I just
16 wanted to make sure, Mr. Chisum, that you had that
17 information.

18 MR. OXER: Yeah, one of the things that we had
19 talked about, for the benefit of the entire Board, one of
20 the things we had talked about some months ago was -- and
21 in the internal audit process there will be times when
22 there's a lot of auditing demands and there's some -- so
23 we were looking to have on contract some surge capacity,
24 somebody benched up, you know, a pinch hitter come in and
25 help us out.

1 And then I still contend and believe that that
2 would be wise to have that availability. I agree that the
3 precedent that's set for this, what I don't want to have
4 set is to every agency out here that has a conflict with
5 us thinks they get a third party audit that we pay for.
6 That's not going to be the case. That's just not going to
7 be the case. But we are going to get to the bottom of
8 this, and if it takes us hiring somebody from the outside
9 to go dig, then we're getting ready to hire them, so.

10 All right. Michael?

11 Patricia, do you have anything else you want to
12 add?

13 MS. MURPHY: Patricia Murphy, Chief of
14 Compliance. And I just want to assure you that I did
15 call, had a call this morning with Wipfli, who's the CPA
16 firm Wipfli, who's the CPA firm who's very familiar with
17 these programs, and I committed to getting them the
18 contract for single audits, all of our correspondence, all
19 of the documentation that we have, and they seem poised
20 and ready to go on that.

21 And while our staff can and will do that kind
22 of an audit, I do think there's a lot of value in this
23 third party audit in this circumstance. I -- it's going
24 to take, you know, a full reconciliation of all of their
25 records to determine what is that disallowed amount. And

1 they, you know, estimate it can take them about five days
2 to get through this agency's books and records. And I
3 think there'd be a lot of value in having Wipfli perform
4 this audit, although I see your point that it would set
5 some sort of a precedent.

6 MR. OXER: And for the record, they haven't
7 been -- you know, we -- it's evident that the staff has
8 the capacity, as Tim acknowledged, that you and your staff
9 and monitoring team have every capacity of doing this.
10 And we're not lacking any of the intellectual capital or
11 expertise or experience to go do this.

12 MS. MURPHY: Right. This would really mess up
13 my SXSW, but.

14 MR. IRVINE: I would say Patricia's staff is
15 pretty slammed for work, and I think that this is enough
16 of an aberration and distraction that it would really --
17 it would be helpful to all of us to have a third party
18 assist on this. I think that using Wipfli working through
19 our existing partnership would hopefully set the stage for
20 any appropriate, you know, technical assistance or follow-
21 on.

22 MR. OXER: Mr. Chisum?

23 MR. CHISUM: Ms. Murphy, you stated that you
24 thought it was a five-day audit?

25 MS. MURPHY: When I spoke with Wipfli this

1 morning and explained the circumstances and what we have
2 and what we're looking at, they expected it would take
3 five days.

4 MR. CHISUM: And the estimated cost?

5 MS. MURPHY: They're getting that back to me
6 next week.

7 MR. OXER: Assume it's going to take 10.

8 MS. MURPHY: You know, Wipfli could go down
9 there and they could gain access to the records and it's a
10 one-day engagement. And then we've got the answer.
11 Right?

12 MR. OXER: Right. Okay.

13 MR. CHISUM: Thank you.

14 MR. OXER: Michael, anything else?

15 MR. DeYOUNG: I don't believe so. Any other
16 questions?

17 MR. OXER: Okay, any other questions?

18 (No response.)

19 MR. OXER: Okay. Motion to consider?

20 MR. MUÑOZ: So moved.

21 MR. OXER: Okay. We'll give that one to Dr.
22 Muñoz. Okay, motion by Dr. Muñoz. Second by Mr. Goodwin.

23 There's no request for public comment. All in favor?

24 (A chorus of ayes.)

25 MR. OXER: Opposed?

1 (No response.)

2 MR. OXER: There are none. It is unanimous.

3 Okay, Jean. Good morning.

4 MS. LATSHA: Good morning. Still is --

5 MR. OXER: It is still morning.

6 MS. LATSHA: -- morning. All right. So the
7 next item on your agenda --

8 MR. OXER: The groupies are showing up in the
9 front row here.

10 MS. LATSHA: Groupies. The next item on your
11 agenda is the first of likely a number of appeals related
12 to the competitive 9 Percent Housing Tax Program. You
13 know, I was going to say something funny about Dr. Muñoz
14 and of course he's gone, but --

15 MR. OXER: That's even better.

16 MS. LATSHA: But I was thinking about this.
17 You know, as we prepare these presentations oftentimes,
18 you know, we have to kind of play devil's advocate with
19 ourselves, so I'm also often thinking what questions are
20 going to come from the Board members, specifically Dr.
21 Muñoz. He tends to give me a hard time.

22 MR. OXER: He seems pretty good at it,
23 actually, too.

24 MS. LATSHA: But I thought about it too and I
25 was really pleased that we actually have two new Board

1 members in this situation. I think although the write-up
2 here you'll see does speak to some precedents with
3 similarly situated full applications and pre-applications
4 in previous cycles that you haven't had the benefit of
5 hearing all of those appeals. I think it -- and the
6 applicant in their appeal talks about how this was a new
7 system this year, and that's true too. So I kind of went
8 back and forth on, you know, is precedent important here
9 or not.

10 And I think whether you consider precedent or
11 you don't in this situation, you know, staff kept coming
12 to the same conclusion, which was we couldn't accept this
13 pre-application because it simply wasn't submitted timely.

14 The fact that this was the first year for this system I
15 started to find a bit irrelevant. We could have had this
16 system in place for the past 10 years and this could have
17 been a new application who didn't maybe also, admittedly,
18 have the benefit of hearing similar appeals.

19 We might hear this exact same -- if we keep
20 this system in place exactly as it is I wouldn't be
21 surprised if we hear the exact same appeal next year from
22 someone who entered Texas, thought this was a new system,
23 and didn't know that this very situation had come up
24 prior, made the same mistakes, found himself in the same
25 position. So --

1 MR. OXER: It's not a new system, it's a new
2 system to them.

3 MS. LATSHA: In a -- right, in a way. At the
4 same time I think, you know, these precedents, they're
5 there for a reason. Right? This is an extremely
6 competitive process. And what is important about the
7 precedent is that we've never been lenient about deadlines
8 with respect to this program, and for very good reason.

9 The applicant is going to talk I think
10 probably, these fine gentlemen that I don't know, about
11 some of the technical aspects of how a file is uploaded to
12 a website and things like that. I'll tell you the truth,
13 I'm not the expert on that. If it does come to that, I'll
14 probably call on Kathryn and our Director of Information
15 Systems too.

16 But just to give you the story of what happened
17 here. On I think it was January 6th the applicant went to
18 the web page, which is you click on a link, go to that web
19 page and you fill out a bunch of forms related to the pre-
20 application. When you get to one part of that form and
21 it's what we've all seen a million times on the internet.

22 Right? A little rectangle that says upload your site
23 control document here. And gives you the opportunity to
24 find a file on your own computer, and you hit a button
25 that says upload. You do that a couple times, and then

1 you get to the bottom of this form and you click on a
2 button that says submit.

3 And so what happened in our system was after
4 you did that you got a email back. That email said this
5 is what you just submitted. Right? And it has all the
6 information about your application that you just filled
7 in, and then it also had hyperlinks to the document that
8 you uploaded.

9 So staff on the day before the pre-applications
10 were due, they found that a lot of folks that have been
11 doing this for a while in Texas wanted to make sure that
12 their documents made it to us. Right? So they called
13 Kathryn, she got a number of calls, hey, Kathryn, did you
14 get my file. Right? And she was able to click on the
15 same link that was in that applicant's confirmation email
16 and say, oh, yeah, it's here, I can open it up. Right?
17 You're good to go.

18 Some folks maybe it didn't work. Or we
19 eventually said we need to just tell people to click on
20 their link, they're going to be able to double-check this
21 without calling Kathryn. But the fact is this was a
22 double check that was going on with several applicants.
23 They were not in a position like they had been in the past
24 where what you did was you put some files on a CD, some
25 PDF files on a CD and then you would pop that CD out of

1 your computer, pop that CD back into your computer, click
2 on those files and make sure they can open. Right? That
3 was the double check.

4 So is the double check required in the QAP?
5 No. You could have put those files on your disk, handed
6 that disk to us. And the same way this year, you could
7 have uploaded those files, hit submit, never call Kathryn,
8 never checked your hyperlink, and you're fine. Right? So
9 it's not required. But I would ask is it your
10 responsibility and as an applicant, and I would say yes,
11 that it absolutely is a responsibility --

12 MR. OXER: Just spending that much on an
13 application that's as competitive as it is --

14 MS. LATSHA: That's right.

15 MR. OXER: -- you'd have probably checked it.
16 Right?

17 MS. LATSHA: That's right. So then you have to
18 say what's the responsibility of staff then. Right? The
19 applicant has some certain responsibilities. I would say
20 our responsibility, we have two, to give some direction
21 with respect to how to submit your application, some clear
22 direction. Right? And to in cases where something can be
23 cured by an administrative deficiency allow that cure.

24 So with respect to the administrative
25 deficiency, this is not nonmaterial missing information.

1 Site control documentation is almost the only thing that
2 you have to do to submit a pre-application. You have to
3 have site control. So the fact that the site control
4 documentation was not there could not be considered
5 nonmaterial missing information and so can't be cured via
6 administrative deficiency.

7 So then did staff give direction with respect
8 to how to submit this application? Yes. Several FAQs on
9 the website, a webinar about how to do it, and then
10 finally all of those folks that double-checked and called
11 Kathryn or clicked on their hyperlinks. And then staff
12 took one more step, on Thursday sent out a listserv that
13 said specifically that applicants should click on that
14 hyperlink and make sure that they can open that document.

15 This applicant did receive that listserv message telling
16 him to double-check this.

17 So again I think what this really comes down to
18 is it isn't the responsibility of that applicant to
19 somehow double-check, whether it's a phone call or
20 clicking on a hyperlink or something. In two places in
21 the rules, in Section 10.201(1)8 and then also in 11.18 of
22 the QAP we specifically say that applicants are instructed
23 to ensure that digital media is readable. And then
24 specifically also say that it's readable by the
25 Department. So I would say that this is even in the rules

1 in a sense that that double check, if you will, is there.

2 I think that's about all I have. I know that
3 the applicants have some points that they would like to
4 make. Unless you have any questions for me.

5 MR. OXER: Any questions from the Board?

6 (No response.)

7 MR. OXER: I have a question for Kathryn.

8 MR. CHISUM: I have a question.

9 MR. OXER: Mr. Chisum has a question.

10 MR. CHISUM: How many pre-applications did we
11 receive?

12 MS. LATSHA: Right around 300.

13 MR. CHISUM: 300?

14 MS. SAAR: 326, I believe, seven.

15 MR. CHISUM: 326?

16 MR. OXER: And you are?

17 MS. SAAR: Kathryn Saar, 9 Percent Tax Credit.

18 MR. OXER: Right, okay.

19 Is that it?

20 MR. CHISUM: Right.

21 MR. OXER: Okay. And of those 320-some-odd
22 that we had, how many compliments or what was the response
23 generally from the community for the way the process
24 worked, Kathryn?

25 MS. SAAR: In general we received very positive

1 feedback from the development community. They liked the
2 ease of the system, they liked that they could check their
3 own -- the information that they submitted. And, you
4 know, there's always room for improvement in these things,
5 and we always welcome feedback from the development
6 community. So if there's something specific that we can
7 do better next year, we certainly will. But the system
8 was largely received very positively.

9 MR. OXER: If I recall correctly, it was not
10 this -- not the last meeting but perhaps the last one we
11 had over in the Reagan Building that who was it that came
12 up? Was very complimentary, said it was as easy as they
13 had seen, used in any of the states. So we'll take that
14 as a compliment. Okay, thanks.

15 All right. Jean?

16 MS. LATSHA: Yes, sir.

17 MR. OXER: So staff recommendation is to deny
18 the appeal.

19 MS. LATSHA: Yes, sir.

20 MR. OXER: Okay. Is there any questions of the
21 Board?

22 (No response.)

23 MR. OXER: Okay. We'll have a Board motion to
24 consider.

25 MS. BINGHAM: I'll move staff's recommendation.

1 MR. OXER: Okay, motion by Ms. Bingham to
2 approve staff recommendation on Item 5(a).

3 MR. CHISUM: Second.

4 MR. OXER: And a second by Mr. Chisum. Okay.

5 Well, it looks like somebody wants to talk.
6 All right. We've got some time here, I want to be
7 generous with the time but I want you to recognize that if
8 there are two or three of you that have the same thing to
9 say, if you come up and say ditto what he said, that would
10 be okay too. So who's going to be first, who wants to
11 carry the flag?

12 And I would remind you to make sure that you
13 sign in and tell us who you are so that our transcriber,
14 Madam Reporter, can make sure that she can identify you as
15 well.

16 MR. WHITFIELD: Okay. My name is Lee
17 Whitfield, I work for a company called Digital Discovery
18 in Dallas. I am a certified private investigator for the
19 State of Texas, and I've been doing digital forensics for
20 about nine years.

21 I was approached by HCS to look into the issue
22 regarding the submission and what appeared to be
23 corruption with one of the PDF files that they submitted.

24 The file, as was declared earlier, was submitted
25 electronically by a form. That form was provided by a web

1 service called JotForm. And I've looked at the actual
2 file on the HCS server, and it's intact. It hasn't been
3 changed or modified since the time of its submission so I
4 know that it's a true and accurate copy of the file.

5 I then conducted some tests on the JotForm
6 website, and I did this in a number of different ways. I
7 uploaded a quantity of PDF files, which is the same type
8 of file that they uploaded previously. I uploaded files
9 of varying sizes, different file types. I allowed some of
10 the uploads to complete, I stopped some of the uploads
11 from completing. And I also uploaded multiple files on
12 the same form. There was a whole list I went through, I
13 won't tire you with those.

14 What I did find is that whenever the files were
15 all uploaded successfully there was a confirmation email
16 received that had those hyperlinks embedded. When the
17 upload was interrupted for any reason whatsoever, whether
18 that was on my own system or whether it was elsewhere, no
19 confirmation email was sent.

20 So that would lead me to believe that the issue
21 was on the JotForm submission itself, on JotForm's side,
22 rather than HCS's side. And kind of to go along with that
23 whenever you look on the JotForm support forums there are,
24 there's an abundance of issues that you find in those
25 support forums where people have gone in and said

1 specifically in relation to PDF files that there's been
2 corruption, it hasn't uploaded properly, there's been this
3 issue and that issue, and JotForm said on several
4 occasions that it's something which they're trying to
5 resolve.

6 So I could say that it's my full belief that
7 this is an issue with the JotForm website itself, not with
8 the actual submission from HCS.

9 MR. OXER: Any questions of the Board?

10 (No response.)

11 MR. OXER: Okay. Thanks for your comments.

12 MR. WHITFIELD: Thank you.

13 MR. McMURRAY: Brad McMurray, Director of
14 Development for Housing and Community Services. Chairman
15 and Board members, I appreciate, and Executive Director, I
16 appreciate the opportunity to speak with you this morning.

17 And I wanted to share our concerns about the
18 implementation of this new pre-application process.

19 The first is that TDHCA provided no advance
20 notice in the extensive training materials provided
21 applicants that an applicant should check or could check
22 the uploaded file. Now, what you had Ms. Latsha just
23 say -- and I first want to take a moment just to say that
24 I used to work at TDHCA 15 years ago in the Tax Credit
25 Department. I moved my family to San Antonio and moved

1 away from TDHCA, stayed in affordable housing.

2 But I have to commend Jean and her staff on the
3 excellent job they do in a very complex and challenging
4 environment. They've got an efficient, effective system,
5 and I think that's no small part to your oversight. But I
6 have to say that I think Jean hit it on the head with the
7 fact that they provided FAQs, they did a webinar, they did
8 call-ins, they sent out a special email, so they had some
9 extensive training, but I'd like to review that training
10 quickly.

11 In the multifamily application training
12 workshop that was at least a 60-page slideshow, not
13 exhaustive but extremely detailed, it just simply said
14 that the site control information had to be uploaded.
15 There was nothing about checking or clicking on
16 hyperlinks. Then in the procedures manual, a 45-page
17 document that details ad nauseam how to do everything, the
18 only information that talks about checking for errors is a
19 reference to the edit submission link. It says you click
20 on that, go through, correct your errors, and you can make
21 those changes.

22 Now, when you click on that edit submission
23 link you can't do anything with the attachments. There's
24 also nothing in that information in the procedural manual
25 that says, hey, you need to click on your hyperlink to

1 make sure that it opens.

2 Now we'll talk about the pre-application
3 webinar. Excellent tool. Goes line by line detail, tells
4 you everything you need to do. And in fact they go
5 through and correct the mistake that was made. And after
6 they corrected the mistake they continue through the
7 application.

8 And in reviewing the rest of it the presenter
9 stopped at the attachments, and I quote, "you will notice
10 that your attachments are still there, so you're good
11 there." So all she did was look at the hyperlink, it's
12 got the same file name, your attachments are good. That
13 was the direction that was given. Now, the confirmation
14 email itself was flawed because it said you have
15 successfully submitted your application. Then -- and
16 there was nothing about checking the hyperlinks.

17 Now, I'd also like to say that we strongly
18 disagree with the position staff took in their response on
19 a couple of things. First, staff states in the response
20 that the file had to be corrupted when we uploaded it.
21 But we just had the forensics expert describe, and what we
22 learned ourselves from asking on these forums, is that
23 actually you upload to a temporary server on JotForm, then
24 internally they transfer it to the place where your
25 product is actually stored. So as the forensic expert has

1 said, we uploaded it, it must have uploaded correctly
2 because we got a confirmation email. But for some reason
3 when it was transferred from the temporary storage server
4 to the main server it was corrupted.

5 Now, it also talks about the position on TDHCA
6 with precedent, and she questioned whether precedents were
7 applicable or not. Well, I have to say that in these
8 precedents where bookmarks were not provided, in the
9 procedures manual there's a two-page detail of how to put
10 in bookmarks, how to name them, everything you're supposed
11 to do with bookmarks. So if you didn't include them, you
12 had to know that they were required whether you're a new
13 applicant or not, if you read the manual.

14 But in this case there was nothing talking
15 about confirming the attachments would open. It also had
16 blank CDs and other information that wasn't submitted.
17 But in that case the applicant could take a CD, do
18 whatever they're going to do, and then get it to TDHCA.
19 We actually submitted what is a file that is still in the
20 same way it was before, it's not been changed, not
21 manipulated, it's a complete document of the site control
22 information that's required, and we successfully uploaded
23 it. So it wasn't a blank CD, it was successfully
24 uploaded.

25 Now we look at -- you know, I have the highest

1 respect for staff, but I think in this instant the proper
2 process and timely guidance for the process were not in
3 place. And the reason I say that is because there was no
4 guarantee from the vendor that when they transferred it
5 from the temporary server to the place where it was stored
6 that it wouldn't be corrupted, and ours was.

7 Also there was no indication to say, hey, this
8 is the size of your file. Had there been an indication
9 that said, oh, this is a couple of, you know, kilobytes
10 versus a megabyte, well, then we would have known that
11 that wasn't in place. And also the proper file name
12 appeared and turned blue, so it must be -- it must have
13 uploaded properly.

14 And then we talk about, well, we did tell
15 staff. You know, she described exactly that I didn't know
16 it happened. People are calling in how do we confirm it.

17 Clearly nobody knew from the webinar, from the workshop,
18 from the procedures manual, so people were calling in.
19 And she said we decided to tell them. Okay. Well, in
20 previous things when things changed, when a tab on a
21 multifamily application was changed or anything changed,
22 it's TDHCA update, get your attention.

23 This was actually shared through -- you know,
24 and this guidance that was provided was actually eight
25 words in the third and final paragraph added that said

1 "and can be opened from the confirmation email." It was
2 said, it was there. We got the email. But it's in a
3 reminder email on the third paragraph.

4 Now, this unlike other -- you know, this new
5 information was not done in the update. Also it was
6 counter to what was done in the webinar, that remember the
7 quote said you will notice that your attachments are still
8 there, you were good there. So in effect we were not
9 notified that we could check this.

10 Now, if we got a reminder notice kind of
11 similar to after you submitted your application and they
12 sent out a reminder notice, hey, your applications are due
13 tomorrow, we hear that there's inclement weather, you
14 know, be sure to make plans, would you pay attention to
15 that? Because you've already turned in your application.

16 So when you get a reminder email, which is
17 simply that, and it's not significant to someone that has
18 already submitted their pre-application, we followed all
19 the rules in the procedure manual, in the workshop, in the
20 Frequently Asked Questions, and it said -- and we'd gotten
21 an email that said you have correctly or you have
22 successfully submitted your application.

23 So I just say, close in saying that the fact
24 that a change to this process that conflicts with previous
25 guidance, was provided in such an obscure and last-minute

1 fashion, is against all established procurement protocol,
2 unfair regardless of the number affected, and counter to
3 the precedent of quality and transparency established by
4 TDHCA staff and yourselves as the Board of the Texas
5 Department of Housing and Community Affairs.

6 I appreciate this time, and I'm happy to answer
7 any questions.

8 MR. OXER: Any questions of the Board?

9 (No response.)

10 MR. OXER: Thanks, Mr. McMurray.

11 MR. McMURRAY: Thank you.

12 MR. OXER: Ms. Bast, how nice to see you again.

13 MS. BAST: And you as well. Good morning.

14 Cynthia Bast from Locke Lord representing HCS, and I'll
15 just be brief and bat cleanup here. I do think that Ms.
16 Latsha was right on when she said here's what we're trying
17 to balance. What's the responsibility of the applicant
18 versus what is the responsibility of the Department in
19 this particular situation.

20 What we know about HCS, with the help of an
21 unrelated third-party forensic expert, is that they
22 submitted a clean, readable file. The corruption we
23 believe, with as much certainty as possible, occurred when
24 it got to that JotForm server and then was being uploaded
25 to TDHCA.

1 So if your rules say that the applicant must
2 ensure that all digital media is readable by the
3 Department but if they can't do that because they can't
4 control the process from JotForm to TDHCA, all they can
5 control is the process from their submission into the
6 JotForm system, then they've done their job.

7 They received a confirmation email, it said
8 their submission was successful. There was -- as our
9 expert testified, they received a confirmation email, and
10 in his experimentation when something went wrong in an
11 upload you didn't get a confirmation email from JotForm at
12 all.

13 So, you know, and as Mr. McMurray pointed out,
14 there was nothing from TDHCA about this particular part.
15 No one said in the webinars, in the manual, anything, your
16 PDF files that you upload will be hyperlinked on your
17 confirmation email. The confirmation email itself could
18 have been structured to say note these hyperlinks below.
19 It didn't.

20 So there is more procedure that could have been
21 in place. Why did TDHCA receive so many calls at the last
22 minute right before the deadline of people wondering if
23 their files really made it? It's because they didn't
24 know. They didn't know.

25 And so when you're weighing that balance in

1 this circumstance where we do have a new system -- and
2 with all due respect I understand again Ms. Latsha's
3 argument that the fact that this is a new system shouldn't
4 matter. But the fact is when we implement new systems we
5 need to think about how they're implemented. And there
6 was a lot of thought that went into this. There was so
7 much thought, there were pages and pages and pages of
8 thoughts. But this item got missed until the last minute
9 when TDHCA tried to go back and notify the community, oh,
10 yeah, you can click on these hyperlinks. And they did
11 that after this applicant had already submitted its
12 application.

13 So when you're weighing this and you're doing
14 the balancing in your own mind, I hope you will find that
15 in this circumstance the responsibilities as between the
16 applicant and TDHCA and in fairness to the competitive
17 process, that this applicant did everything that they were
18 supposed to do. They submitted their file timely, two
19 days early, they submitted a clean file, and the fact that
20 that file corrupted after it was submitted should not
21 cause them to lose their pre-application and points
22 associated with that.

23 So we thank you for your time.

24 MR. OXER: Thanks, Cynthia.

25 Other comment?

1 (Pause.)

2 MR. OXER: Okay. So you're covering for them,
3 Cynthia?

4 Okay. Any response, Jean?

5 MS. LATSHA: Yes, sir. Jean Latsha, Director
6 of Multifamily Finance. I think that there is some
7 misunderstanding with respect to some of this technical
8 aspect. There was no transfer from JotForm to TDHCA.
9 That simply didn't happen. Files were uploaded to JotForm
10 and then, as I said, the same, the exact same link that
11 appeared in the confirmation email was the exact same link
12 that appeared to us. Right?

13 So we're clicking on exactly the same thing,
14 which is precisely why had they clicked on their hyperlink
15 nothing -- there was no file there. Because when we
16 clicked on the same hyperlink there was no file there.
17 There was no transfer in between.

18 MR. OXER: No two-step transfer.

19 MS. LATSHA: No. No, sir. This very much is
20 liken to someone, like I said, burning that CD, being very
21 confident that those files were readable, having no
22 indication when they burned that CD that they shouldn't be
23 readable, popping it in a FedEx package and sending it to
24 us and we open it up and the fact is it's not there.

25 It's that analogy. It is not the analogy of it

1 making it to TDHCA's office and then we do something with
2 the file and then after we do something with the file we
3 can't read it. That simply didn't happen. There was no
4 submission of a clean file. Otherwise it would have
5 appeared on JotForm's website. And my understanding is
6 there was no temporary server either. It simply went
7 straight to JotForm, then we were both looking at the same
8 hyperlink.

9 One thing I will say too, you know, it is --
10 it's true, there's a lot of documentation out there about
11 how to submit an application. But I think -- what would
12 have been enough? Two listservs? A statement in the
13 manual and no listserv? I'm not sure what it is that is
14 supposed to grab people's attention the most with respect
15 to simply double-checking to make sure a submission
16 actually happened.

17 Those folks that did call, that prompted us to
18 send that listserv, they did that with no direction. They
19 simply said, you know what, I better double-check this and
20 I don't know how. Right? I mean when you burn a CD you
21 know how to double-check it, you pop it back in your
22 computer and you see if you can open it up. Right? But
23 they didn't know how to double-check it. But they knew
24 that that's an important aspect of submitting these pre-
25 applications.

1 And so I would ask what would have been enough.

2 I think that had it been no listserv and a statement
3 buried in the 45-page manual that we would be up here
4 having the exact same discussion, that they would be
5 claiming, well, sure, the manual 45 pages long though and
6 you didn't tell me to double-check it.

7 Well, the listserv that went out is the exact
8 same format as the listserv that goes out when we did do
9 application updates and any other important updates with
10 respect to the program. I think anyone who is experienced
11 in realizing how competitive this program is reads every
12 work of those listservs. We don't send them out every
13 day, we send them when there is pertinent, important
14 information to relay to the development community.

15 I think -- I'm not sure if there was anything
16 to add about any of the technical aspects. Unless you
17 have some specific questions about that, I might punt
18 them.

19 MR. OXER: Any questions from members of the
20 Board?

21 MR. GOODWIN: Jean, is there anyone here from
22 Jot -- is it JotForm?

23 MS. LATSHA: No, sir.

24 MR. OXER: Anymore --

25 MS. LATSHA: But Kathryn dealt with them quite

1 a bit so I think could answer --

2 MR. GOODWIN: What I heard one of these
3 gentlemen say was that it went from a temporary server in
4 JotForm to a permanent server in JotForm, and that's where
5 they think something might have gone wrong.

6 MS. SAAR: Kathryn Saar, 9 Percent Tax Credits.
7 There's no way for anyone to know whether or not the file
8 ever made it to the server that JotForm uses. Because it
9 never wound up on JotForm, so we can't say that they
10 submitted a clean file. Yes, the forensic investigator
11 has indicated that the file did in fact exist on the
12 applicant's computer at the time of submission. That is
13 what his sworn declaration says.

14 What the -- and he opines that it could -- that
15 the corruption could have occurred in one of three places,
16 somewhere in between the applicant and the JotForm server,
17 somewhere in between the JotForm server and TDHCA, or some
18 internal handling of the file by TDHCA staff. Because we
19 were never able to download the file from the JotForm
20 server we can rule out the second and third transfer
21 point. Because TDHCA staff was never able to view the
22 file because it was never cleanly uploaded to the end
23 server where JotForm stores their data, which is, I'm
24 told, is an Amazon Cloud server.

25 MR. GOODWIN: But TDHCA receive a notification

1 from JotForm that they had filed and then when you went to
2 open it it didn't work?

3 MS. SAAR: So the way the system works it's
4 simply -- it's basically a big database. The applicant
5 clicks on a link and fills out a multi-page form, and
6 whatever they put into that form including the two or
7 three attachments is stored in this database. And TDHCA
8 staff, once they hit submit, a confirmation email was
9 automated, automatically sent from the server --

10 MR. GOODWIN: From JotForm.

11 MS. SAAR: -- from JotForm --

12 MR. GOODWIN: To them.

13 MS. SAAR: -- to them, to the application.

14 Correct.

15 MR. GOODWIN: My question is is a email sent to
16 TDHCA --

17 MS. SAAR: Yes. We get a copy of that email as
18 well.

19 MR. GOODWIN: So you received an email saying
20 they had --

21 MS. SAAR: Right. We --

22 MR. GOODWIN: -- submitted --

23 MS. SAAR: -- knew that they had submitted
24 their application. And, you know, I was also logged into
25 the JotForm system as the applications were coming in and

1 could see in real time as applications were being
2 submitted.

3 MR. GOODWIN: Okay.

4 MS. SAAR: I would like to make one clarifying
5 point. It was mentioned that the webinar talked about
6 the -- I can't remember exactly the phrasing that was
7 used, but that -- What? It said, they quoted me, because
8 I did the webinar, as saying that your files are still
9 there so you're good. That's taken slightly out of
10 context because that was made, that comment was made after
11 I had gone through the edit submission process.

12 So when you receive your confirmation email
13 there's an edit submission link at the top of the email.
14 It's a hyperlink, it's underlined blue, everyone knows
15 that that's clickable, that you can click on that. So if
16 people know that the edit submission underlined --
17 highlighted in blue and underlined, you can click on that.

18 When you scroll down to the bottom of your confirmation
19 email, that same formatting is used for the file.

20 So if you recognize that the edit submission is
21 a hyperlink that is clickable, one could reasonably assume
22 that you could make the same judgment about the hyperlink
23 at the bottom, that it is a clickable link.

24 MR. GOODWIN: I'm also curious when you said
25 you received phone calls. Did you receive five phone

1 calls or was it 50, a hundred?

2 MS. SAAR: No. So I was receiving phone calls
3 throughout the entire week. I think the application went
4 live on January 2nd and closed on January 8th, I believe.

5 So I, as the person who designed the system and
6 implemented the system, I got a lot of phone calls, just
7 because people are nervous. It is new. And the phone
8 calls that I did get were, hey, there's a hyperlink to my
9 file at the bottom of -- am I supposed to click on that?
10 And my response was yes. If you can click on that file
11 and it's openable, then I can click on the file and I can
12 see it.

13 You know, after receiving two or three of those
14 calls is when we decided, hey, maybe we should send out a
15 listserv that notifies everyone you should click on the
16 hyperlink. Quite frankly, as a user of technology, I
17 didn't think that we needed to say you should click on the
18 hyperlink. It was kind of an assumption that I made, and
19 that's why it didn't get mentioned in the webinar. That's
20 one of those things that we can definitely add to the
21 instructions for next year.

22 MR. OXER: Caution, coffee is hot in this cup?

23 MS. SAAR: Yes, correct. You will be burned.

24 MR. OXER: Okay. Any other questions?

25 MR. CHISUM: Yes, sir.

1 MR. OXER: Mr. Chisum.

2 MR. CHISUM: Did you say we received
3 confirmation that the file had been uploaded?

4 MS. SAAR: The confirmation email that the
5 applicant receives and the same confirmation email that
6 the agency receives says you have submitted, you have
7 successfully submitted your pre-application. And then I
8 can't remember the exact language of what the confirmation
9 email said, but it included all of the information that
10 was data input into the -- I have it right here.

11 "You have successfully submitted your HTC pre-
12 application. Your application number is. A copy of your
13 submission is below and will be posted to the Department's
14 website. If you --" I'm skipping some things here. "If
15 you find that any of the information submitted is
16 incorrect, please use the edit submission link below in
17 order to make corrections."

18 So while we did not say you should click on the
19 hyperlink to your files, it does indicate that you should
20 check everything below to make sure that your submission
21 is correct.

22 MR. CHISUM: Okay. So when did we learn that
23 the file had been corrupted?

24 MS. SAAR: It wasn't until after the close of
25 the application acceptance period. Once we downloaded all

1 the files from the JotForm server, that's when we
2 discovered that this one file out of 714 was corrupted.
3 So it's unfortunate that it happened, but it was one of
4 714 files. So a very, very minute percentage.

5 MR. CHISUM: But 100 percent to the presenter.

6 MS. SAAR: Correct. That's correct.

7 MR. CHISUM: Do you have another -- something
8 else you wanted to say?

9 MR. OXER: Do you have a follow-on point? So
10 identify yourself.

11 MR. McMURRAY: Quickly. Brad McMurray,
12 Director of Development for Housing and Community
13 Services. Since there's no one here from JotForm, we
14 asked the question what -- to JotForm. This is an email
15 from them. It says that "what are some reasons a file is
16 not uploaded properly." And there's a number of reasons
17 they give.

18 And then it says, and I read it verbatim,
19 "another alternative would be that the file did upload
20 properly to our temporary servers, but also due to some
21 network issues it did not get properly re-created under
22 your storage space."

23 Now, this is from JotForm. This is saying that
24 the process that they use is we upload it, it goes to a
25 temporary server, then it's transported to the storage

1 space. That is what they do. And we've got our technical
2 support that says that you get an email only if it uploads
3 properly.

4 MR. OXER: Thank you.

5 Kathryn, did you have something on that?

6 MS. SAAR: I think I'm going to give this over
7 to Curtis Howe, our Director of Information Services.

8 MR. OXER: Good morning, Curtis.

9 MR. HOWE: Good morning, members of the Board.
10 This is Curtis Howe, Director of Information Systems. I
11 just want to make one quick comment. I believe when
12 JotForm says that the possibility is that the transfer
13 didn't occur from your temporary storage -- from our
14 temporary storage space to your space, they mean not our
15 servers within our network, not TDHCA servers but Amazon
16 Cloud -- our space within JotForm that is Amazon -- run by
17 Amazon Cloud services, not in our network.

18 MR. CHISUM: Right.

19 MR. HOWE: The files aren't transferred to our
20 network until someone within our agency clicks the link
21 and downloads the form. And in this one case we were
22 never able to download that one form. So that's the one
23 clarification I was trying to make is that we -- there's
24 no transfer, there's no automated transfer from JotForm to
25 TDHCA servers. That doesn't happen.

1 MR. OXER: It's not automated, we have to --

2 MR. HOWE: Right. It's completely a web
3 service exclusion where we're using a service and until we
4 manually download the forms they're hosted on JotForm, not
5 within our network.

6 MR. OXER: Okay. Tim, did you have a comment?

7 MR. IRVINE: No. Thank you.

8 MR. OXER: Okay. Any other comments?

9 MR. WHITFIELD: Lee Whitfield again. So just
10 to clarify, it was said that I opined somewhat. I mean I
11 didn't. There's only really -- once you have received
12 that confirmation email that your file has successfully
13 uploaded, there's no question. So the only corruption
14 that could have occurred is that corruption within the
15 JotForm infrastructure from the temporary server to the
16 permanent storage server. To me that's the only place
17 where that could have happened.

18 MR. OXER: Okay. Thanks for your comments.

19 Kathryn?

20 MS. SAAR: Kathryn Saar, 9 Percent Tax Credits.

21 The only reason I stated that -- I'm sorry -- the
22 forensic investigator had opined because that's what his
23 declaration said.

24 MR. OXER: I think he signed in right here, You
25 can tell who he is right there.

1 MS. SAAR: Oh. I'm sorry, I did -- I was
2 unaware that this is not the same forensic investigator
3 that issued the statement that's in your Board book. I
4 was unaware of that.

5 MR. OXER: So some different opining going on
6 here.

7 MS. SAAR: So different opining going on,
8 correct. Another thing that I would like to point out,
9 Mr. Whitfield indicated that he had done some testing on
10 JotForm. I would like to point out that was testing that
11 he would have had to create his own form to do. Because
12 at 5 p.m. on January 8th we turned off our pre-
13 application. So he did not test within our pre-
14 application system.

15 MR. OXER: Right. So with respect to this, I
16 mean -- and I have some familiarity with the backside,
17 data management side with JotForm, WordPress, Vtiger, you
18 know, they're all basically -- they have their own quirks
19 and idiosyncracies. But the fact is they submitted early,
20 had a chance to check it and apparently did not.

21 MS. SAAR: Correct. And the applicant did go
22 and edit their submission at least two times that we're
23 aware of.

24 MR. OXER: So they did --

25 MS. SAAR: They did edit --

1 MR. OXER: -- they did go in --

2 MS. SAAR: Correct.

3 MR. OXER: -- they did go in and edit the --

4 MS. SAAR: Correct.

5 MR. OXER: Okay. All right. Any other --

6 MR. GOODWIN: Did that editing happen after
7 they received the email from JotForm --

8 MS. SAAR: Correct. So --

9 MR. GOODWIN: -- that it successfully
10 downloaded?

11 MS. SAAR: So once you hit submit for your
12 initial submission you get the confirmation email with the
13 edit link.

14 MR. GOODWIN: Right.

15 MS. SAAR: And the confirmation email instructs
16 you that if you find any errors, which would include an
17 error with a file not uploading correctly, that you can
18 use this edit link to make changes to your application.
19 The applicant did use that edit link twice and received
20 two follow-up confirmation emails. Each time you edit
21 your submission you get another confirmation email with
22 whatever changes you made.

23 MR. OXER: To say that --

24 MS. SAAR: Correct.

25 MR. OXER: -- you accepted those.

1 MR. GOODWIN: So maybe I'm a little lost here.
2 I apologize.

3 MS. SAAR: That's okay.

4 MR. OXER: That's okay.

5 MR. GOODWIN: So if I'm the applicant and I
6 filed my application on Monday --

7 MS. SAAR: Right.

8 MR. GOODWIN: -- I'm just going to assume
9 Friday's the deadline --

10 MS. SAAR: Correct.

11 MR. GOODWIN: -- I get a notice, an email and I
12 hit the edit button, I go in and I edit my application
13 and --

14 MS. SAAR: Correct.

15 MR. GOODWIN: -- get another email, I hit edit
16 again and I open my application again and I get another
17 email that says it successfully downloaded --

18 MS. SAAR: Well, it's that you successfully
19 submitted something.

20 MR. GOODWIN: Successfully submitted.

21 MS. SAAR: Right. The word Asuccessful@ is you
22 have submitted and we have received whatever is listed
23 below.

24 MR. GOODWIN: Okay.

25 MS. SAAR: We're not making a determination

1 when we say -- when we use the word Asuccessful@ we're not
2 making a determination on whether or not your application
3 is eligible. We're simply making a determination that we
4 received an application and below is the data that was
5 received.

6 MR. OXER: That good, J.B.?

7 MR. GOODWIN: Yes.

8 MR. OXER: Anything else, folks? Okay. Ms.
9 Bast. Two minutes, quick.

10 MS. BAST: Cynthia Bast. Just so I could
11 clarify for you, Mr. Goodwin. This is a copy of the
12 confirmation email that is in your Board book. And you
13 will see that it's pages and pages of things that have
14 been entered, and then down here at the bottom are the two
15 PDF files.

16 And so when we're talking about this applicant
17 amending after it=s submitted, what they discovered is
18 that somewhere in here there was an incorrect zip code on
19 one of the line items, and so they went in and they
20 corrected that. Then there was one other item that they
21 discovered, a typo or something, and they went in and
22 corrected that.

23 They did not -- because they saw these two file
24 names here and they matched the file names that were the
25 files that they submitted, they didn't change these two

1 submitted PDF files at all. Thank you for the
2 clarification.

3 MR. OXER: Okay. Any other questions of the
4 Board?

5 MS. DEANE: Mr. Chair?

6 MR. OXER: Madam General Counsel.

7 MS. DEANE: If I could ask Cynthia to do
8 something for us that hasn't really been addressed yet,
9 but the waiver requirement, there's two prongs. And first
10 it's the request must establish how it's necessary to
11 address circumstances beyond the applicant's control. And
12 I think that's kind of been the thrust of the discussion
13 we've had.

14 And the second prong is that the Department
15 will not fulfill some specific requirement of law, and
16 that relates to the policies and procedures in the
17 Government code. Can you address that prong of it for us?

18 MR. OXER: Here's where some serious opining
19 gets to happen.

20 MS. DEANE: It's kind of a policy question but
21 it relates to the, you know, fulfilling the requirements
22 of the Government code. But --

23 MS. BAST: Certainly --

24 MS. DEANE: -- can you kind of address that for
25 us?

1 MS. BAST: Certainly, Ms. Deane. Again Cynthia
2 Bast. And when I looked at this I thought about several
3 ways to resolve this problem. One was an administrative
4 deficiency. I know that staff has indicated that they
5 believe that because this is material information that it
6 can't be cured with an administrative deficiency. Staff
7 indicated in their writeup that a waiver would certainly
8 be a possibility.

9 So I think what we would be asking for a waiver
10 on is -- just so you know, the correct file has been
11 provided to TDHCA. As soon as it was determined that
12 there was a corruption in the file, we received a -- so
13 you know, we received a notice that said there's a
14 problem, you have five days to correct your problem. So
15 we sent them the right file.

16 Now, if the problem is not correctable by
17 sending them the right file, why did we get a notice that
18 said you can correct your problem? So we did do that. So
19 there is a correct file in-house with TDHCA.

20 And I don't think that that's disputed. Did
21 you open the file?

22 FEMALE VOICE: That's correct.

23 MS. BAST: Okay. So we got a good file. In
24 terms of, you know, meeting the requirements of state law,
25 I believe that the state law establishes a competitive

1 system, that is intended to give everyone an equal
2 opportunity. As I mentioned in the rules, the rules are
3 rigorous about, you know, an applicant is supposed to be
4 responsible for their application. And in this way this
5 applicant has been responsible for its application.

6 This is an at-risk set-aside. This is
7 promoting the rehabilitation and preservation of
8 affordable housing in Texas. I believe it is promoting
9 the competitive system. Because when you take things out
10 of the control of the applicant, then -- and something
11 happens in an Amazon Cloud that an applicant cannot
12 control, then the transparency of your system and the
13 ability to control your system is impinged.

14 So I think that for all the reasons of
15 preserving affordable housing, at-risk housing,
16 establishing a competitive system within a defined series
17 of rules, that everyone can understand, I believe, that
18 this is an appropriate action by this Board.

19 MR. OXER: Thanks, Cynthia.

20 MS. BAST: Thank you.

21 MR. OXER: Jean?

22 Tim, do you have something?

23 MR. IRVINE: I just wanted to add two things.
24 One, I believe somewhere else in our QAP we do clarify
25 saying that something is an administrative deficiency and

1 asking for a five-day response is not determinative that
2 it was in fact an administrative deficiency. And if it
3 proves to be material, then it's treated as material.

4 I really think the key here is to use, as we
5 say in our rules, a reasonableness standard in determining
6 if the applicant met the requirement. And I'd just like
7 to read verbatim from the rule an overarching statement of
8 the way that we approach the requirement.

9 It says "applicants should further ensure that
10 all required documents are included, legible, properly
11 organized, and tabbed, and that materials and required
12 formats involving digital media are complete and fully
13 readable. Applicants are strongly encouraged to submit
14 required items well in advance of established deadlines.
15 Staff, when accepting applications, may conduct limited
16 reviews at the time of intake as a courtesy only. If
17 staff misses an issue in such a limited review, the fact
18 that the application was accepted by staff or that the
19 issue was not identified does not operate to waive the
20 requirement or validate the completeness or readability or
21 any other aspect of the application."

22 So I think that the question could be sort of
23 phrased did they reasonably do what they needed to do to
24 address that standard.

25 MR. OXER: Final thought, Jean.

1 MS. LATSHA: Probably just echoing some of
2 Tim's comments. We did issue the administrative
3 deficiency. What we were hoping was that the applicant
4 would be able to produce an email that had a link that
5 worked. And they couldn't. And that was how -- that was
6 our reasoning behind the administrative deficiency. We
7 were hoping that something else happened somewhere that
8 could prove that that file at some point existed on
9 JotForm, and that simply didn't happen.

10 I -- what Tim was reading was the quotes that I
11 mentioned earlier. It's actually in two places in the
12 rule, like I said, and at one point actually does ask that
13 applicants ensure readability by the Department. And I
14 think that's what this comes down to. If there are any
15 other questions for me.

16 MR. OXER: Okay. All right. There are none.
17 Item 5(a), there's been a motion by Ms. Bingham, second by
18 Mr. Chisum to approve staff recommendation to deny the
19 waiver. All in favor.

20 (A chorus of ayes.)

21 MR. OXER: And opposed?

22 MR. GOODWIN: No.

23 MR. OXER: One no registered by Mr. Goodwin.
24 Okay, it's four to one.

25 Okay, Item 5(b), Jean.

1 MS. LATSHA: All right. This item is about the
2 request for a reissuance of competitive housing tax
3 credits to Royal Gardens Mineral Wells. We discussed this
4 briefly at the last meeting. Royal Gardens Mineral Wells
5 is a 2012 housing tax credit development. It was under
6 construction earlier this year, had a placed-in-service, a
7 federal deadline to place in service by the end of 2014.

8 In April of 2014 the property was destroyed in
9 a fire, so there was essentially no way for the applicant
10 to meet that placed-in-service deadline. And there's also
11 no provision for the Department either to extend that
12 federal deadline. So they were essentially stuck with
13 having to return those credits.

14 MR. OXER: Sounds like a quirk the size of 11th
15 Street out there.

16 MS. LATSHA: Possibly. So the 2015 QAP does
17 include a provision for the return of credits in a similar
18 situation, in precisely this type of situation, and for
19 the Department to allocate those credits separately from
20 the rest of the allocation, essentially returning those
21 credits to that applicant.

22 That is a rule that exists in the 2015 QAP but
23 it did not exist in the 2014 QAP. So this action is
24 twofold, really. It is, first, asking the Board to make a
25 determination as to whether the return of these credits,

1 whether we could apply the 2015 QAP to the return of these
2 credits, and should we apply the 2015 QAP additional
3 action with respect to the additional requirements of that
4 force majeure provision.

5 So staff discussed this at length, and we do
6 find it a bit problematic to --

7 MR. OXER: We've been working on this for a
8 year, haven't we?

9 MS. LATSHA: For a while -- to consider the
10 2015 QAP to have taken effect at anytime in 2014. And
11 this is why it's a very practical consideration. You
12 know, we make awards in late summer and then continuing
13 into the fall as things move around a bit, and execute
14 carryover allocation agreements as late as December 31st.
15 Just because these tend to be moving parts.

16 So if we were to say that the 2015 QAP, for
17 instance, took effect on January 30th of 2014, it could
18 very well render all of those awarded applications
19 ineligible, say there was a new requirement in the 2015
20 QAP that those applications, while they may have met them
21 in 2014 didn't meet them in 2015. Or, at minimum, a
22 scoring item change, suddenly what appeared to be a
23 competitive application in 2014 suddenly is not under the
24 2015 rules. Which is why staff has consistently said we
25 don't find it practical to apply the 2015 QAP to any

1 actions that are taken in 2014.

2 That being said, at the last meeting we did
3 find that this particular credit return with respect to
4 reporting to the IRS be considered to have been returned
5 on January 1st, 2015. Now, that -- I went back to the
6 transcript and everything else, that decision was made
7 very clearly only with respect to our reporting to the
8 IRS.

9 I would say that that may or may not influence
10 any decision today, but in a real sense, a very real sense
11 the IRS reporting and this issue are very separate. The
12 IRS does not dictate the timing of our making awards or
13 actually allocating credits. So those could be -- it may
14 or may not, like I said, influence the decision here
15 today.

16 So I think the real question becomes there are
17 several requirements under the force majeure provision,
18 one of which is that the return was voluntary. So could
19 the return that was made with the request for it be
20 effective at five o'clock on December 31st, 2014, could
21 that be considered a voluntary return and still have
22 happened in 2015 so that we can apply the 2015 rule.

23 I think the applicant has quite a bit to say
24 about that. After that decision with respect to the
25 application of the 2015 QAP, like I said, then staff would

1 have some further recommendations. It would take some
2 time for us to determine whether or not the other
3 requirements under the force majeure provision have been
4 met. They relate to underwriting and things like that.

5 So unless there are any other question for me,
6 unfortunately, staff's recommendation is relatively
7 unclear with respect to the application of the 2015 QAP.
8 If I must make one, I would say that the return of the
9 credits would not be subject to the 2015 QAP as they were
10 made in 2014.

11 MR. OXER: Any questions from the Board?

12 (No response.)

13 MR. OXER: I have a comment if nothing else.
14 This seemingly infinite parsing of words about when this
15 happened and the last microsecond when something applied,
16 you know, I want to get it on the record that at least I
17 believe that when we write the 2015 QAP it applies to
18 projects that apply in 2015, oddly enough. And those
19 within 2014, you know, would have -- projects that were
20 associated with 2014 would be under that QAP.

21 I think applying a new standard to an old
22 project doesn't work. It doesn't cycle very well, it's
23 just a product of the process that we use to approve the
24 QAP, which requires that we get it to the Governor's
25 Office so that they approve it by December 1st so that we

1 can implement the program beginning on January 1st is what
2 determines our scheduling on that. It could just as
3 easily have been we get it to the Governor on January 1st
4 so it can be done by December -- or January 31st and apply
5 it to the rest of that actual calendar year.

6 So when we say the 2015 QAP it applies to
7 projects that are approved in 2015 or taken up or
8 considered or evaluated or scored or whatever you want to
9 call it. But 2015 applies to 2015, not late 2014. That's
10 at least my position. Anybody else got a different
11 position, you're welcome to present it. But that said,
12 the clarity of your recommendation, staff recommendation
13 is a little "un" as it turns out.

14 MS. LATSHA: Perhaps, maybe perhaps just to
15 instigate some further discussion.

16 MR. IRVINE: Well, I would say that it is not
17 as neat and clean as we would like for it to be. I mean
18 the simple reality is that although the physical return
19 did occur in 2014, it occurred too late for any action
20 under the 2014 rules to be taken.

21 MS. LATSHA: That is true.

22 MR. OXER: Well, and we're also constantly
23 aware that in large part the contribution this Board makes
24 is in defining or developing and creating a policy under
25 which we operate. And as we've identified before in

1 resolving those issues in the QAP, there were a lot of
2 quirks in them. I mean quirks kind of got to be a sport
3 around the building for a couple years while we
4 straightened all that out.

5 So rather than try to create something that
6 applies completely to everything that's done, I still see
7 that there's room for a generalized policy that makes
8 sense and where there needs to be latitude applied, that's
9 here the best efforts of this Board come into play. That
10 said, that latitude is best applied lightly and rarely,
11 and certainly having an application's project burned down
12 might be one of those -- we hope it's rare anyway.

13 So the -- while I think we will never iron out
14 all the kinks in those particularly, or quirks, we'll be
15 able to create something that lives in perpetuity without
16 a continuing evolution on it, we've still got to come up
17 with something and then be prepared to make decisions that
18 make the most sense for the State in terms of the program.

19 With that comment, do you want to restate your
20 recommendation? Or did you think --

21 MS. LATSHA: I don't think so.

22 MR. OXER: -- I was doing that?

23 MS. LATSHA: I think staff's recommendation
24 will stand, and that way we can -- I'm sure -- I know that
25 these folks have some -- a few words to say about it.

1 MR. OXER: The staff recommendation is -- let's
2 quantity this -- is not subject to the 2015 QAP but would
3 be -- and being not subject to 2015, then do not come
4 under the force majeure components of the 2015. Is that
5 what you're saying?

6 MS. LATSHA: That's correct.

7 MR. OXER: Okay. So essentially when they
8 return these credits from this particular project,
9 thinking it was going to be applicable for 2015, they
10 essentially lost them.

11 MS. LATSHA: Yes, sir.

12 MR. OXER: So those -- and those -- they lost
13 them, the project credits are not lost to the State, they
14 were reapplied --

15 MS. LATSHA: That's correct.

16 MR. OXER: -- to another -- to whatever's in
17 line in --

18 MS. LATSHA: In 2015.

19 MR. OXER: Correct.

20 MS. LATSHA: Because we were unable to
21 reallocate those credits at the end of 2014. Due to the
22 late date of the return.

23 MR. OXER: Right. So you were unable to
24 reallocate those -- say that again, Jean. You were unable
25 to -- because of the late date on the return, voluntary

1 though it was, on December 31st, 2014, you were unable to
2 reallocate those during the last round? Do they --

3 MS. LATSHA: But they're still not lost to the
4 State. They're simply --

5 MR. OXER: Still not lost to the State,
6 they're --

7 MS. LATSHA: They simply will be allocated in
8 2015. And the question --

9 MR. OXER: So this is part -- so the ones that
10 potentially get returned to us are just dumped back into
11 the pool.

12 MS. LATSHA: That's right.

13 MR. OXER: Okay. Does that pool go statewide
14 or is it back into their --

15 MS. LATSHA: Goes back into the region.

16 MR. OXER: Back into the region. So that
17 region this year would have a little bit more than they
18 would have under this year's pure allocation.

19 MS. LATSHA: Yes, sir.

20 MR. OXER: Yeah. All right. That's clear to
21 the Board?

22 (No response.)

23 MR. OXER: Okay. All right. Then we'll need a
24 motion to consider by the Board to have consideration for
25 public comment.

1 MR. CHISUM: So moved.

2 MR. OXER: Okay, motion by Mr. Chisum to
3 approve staff recommendation as listed in the Board book.

4 MR. GOODWIN: Second.

5 MR. OXER: Second by Mr. Goodwin.

6 Okay, Claire, jump on it.

7 MS. PALMER: Claire Palmer, Law Offices of
8 Claire Palmer, representing --

9 MR. OXER: And I'll give you three minutes
10 because we're --

11 MS. PALMER: Right, representing the ownership
12 of Mineral Wells. I'm going to start with Barbara Deane's
13 comments about what is the public policy here. Well, the
14 public policy here is to get affordable housing into
15 places that need it.

16 This project was clearly an affordable housing
17 project that was needed. It was granted credits in 2012.

18 The project was constructed. The City of Mineral Wells
19 clearly supported it. If it was possible to file a new
20 application and start over we would have done that. But
21 because the QAP changes year to year, this project no
22 longer is point scoring competitive.

23 So everyone knows -- we worked on this for a
24 year. The force majeure language that was added to the
25 2015 QAP was added specifically to deal with this

1 particular set of circumstances and this project. And
2 what this says is "for purposes of this paragraph credits
3 returned after September 30 of the preceding year," which
4 would be 2014, "may be considered to have been returned on
5 January 1 of the current year in accordance with the
6 federal law."

7 You all have already determined that the
8 credits were returned as of January 1. On January 1 the
9 2015 QAP was in effect. So clearly if the credits had
10 been considered to have been returned on January 1, then
11 those credits are subject to the 2015 QAP. You're saying
12 you would put them back into the pool for 2015. The fact
13 is they should be awarded in accordance with the force
14 majeure provision based on the fact that you have already
15 determined that they were returned in accordance with the
16 federal law on January 1.

17 To me it's a very simple issue at this point
18 and not a complex issue at all to say that for purposes of
19 the force majeure language the credits were returned,
20 you're considering the credits returned on December 31 but
21 for purposes of your own benefit, because you all would
22 have lost credits otherwise, they were returned on January
23 1 seems to me to be taking the law and parsing it into a
24 million parts and trying desperately not to reward these
25 credits to a project that is sitting there unable to be

1 reconstructed that desperately needs to be reconstructed.

2 And the fact is that most states have a
3 methodology of dealing with this. When the fire happened
4 we thought that Texas would have something that we could
5 do in order to have that done. When it was determined
6 there wasn't something in the QAP, we worked diligently
7 and for months with staff to come up with a plan so that
8 we could get a reissue of credits.

9 The language in the force majeure is what we
10 came up with. Everyone agreed initially in the summer
11 that it would apply. There's been a lot of conversation
12 since that says it doesn't. I think that now that the
13 Board has ruled the credits were returned on January 1,
14 clearly it applies, and we should be allowed to get the
15 reissue.

16 MR. OXER: Okay.

17 MS. PALMER: Thank you.

18 MR. OXER: Thanks for your comments.

19 Jean, you got a spot on that for the -- we'll
20 get to the rest of them. I want to hear something from
21 you on the date, the December 31st versus January 1st.

22 MS. LATSHA: Sure. So Claire is correct in her
23 reading of the rule. The problem is that she's still
24 reading from a 2015 rule. The real problem here is that
25 it's as if this rule didn't exist at all when that credit

1 return happened. And so it's difficult for us to look at
2 a 2015 rule and then apply it back in time.

3 So should this rule continue to exist, and it
4 doesn't get changed in 2016, then because this rule did
5 exist in 2015, if we had a similar situation, we had a
6 credit return late in 2015 that was returned with the
7 intention of exercising their right under this rule, then,
8 yes, we can consider it returned in 2016 because the rule
9 actually existed in 2015.

10 And that's where our struggle is. That's why
11 we're here. I don't know if you have any other questions
12 for me on that.

13 MR. OXER: That's all right. That's clear.

14 You guys clear on that?

15 (No response.)

16 MR. OXER: Okay, Claire, do you want -- that's
17 all right, we've got some other folks I want to hear from.

18 MS. PALMER: Claire Palmer. I just want to add
19 really quickly that this is such a important public
20 policy, I think, and an important policy that TDHCA has
21 the ability to reissue credits in a situation like this
22 and for this particular project. Equity providers around
23 the country are looking at this, lenders are looking at
24 this. Because this is a project that is -- if their
25 credits are not reissued to it it's never going to get

1 done.

2 I mean I think the policy is important in that
3 situation, and the fact that this was a policy that was
4 written by TDHCA to specifically deal with this project.
5 And the fact is the QAP by law and by statute, the 2015
6 QAP went into effect on December 21st by law.

7 So, you know, you can say you don't apply it or
8 you can't apply it or you don't want to apply it, but the
9 fact is it was in existence and was law as of December
10 21st before the credits were returned. So if you wanted
11 to grant this reissue, there is certainly legal grounds to
12 do that.

13 MR. OXER: Tim, you have a comment?

14 Thanks, Claire.

15 Or did you -- I'm sorry, did you want?

16 MR. IRVINE: I mean I think that the statement
17 Claire made that there's legal precedent is -- it's got
18 some truth to it. I mean, for example, when I go to my
19 bank and I deposit something at four o'clock it says
20 deposits made after four o'clock will be posted tomorrow.

21 And I think that there's no doubt that this physical
22 return of the credits occurred too late to do anything
23 under the 2014 rules.

24 I don't think staff acting alone has the
25 latitude to make a decision to apply something involving

1 those facts under the 2015 rules. And I think it really
2 comes down to largely a policy question whether in order
3 to, you know, achieve an equitable result you want to
4 treat this as being subject to the force majeure
5 provisions.

6 You know, when we put these force majeure
7 provisions together it's indisputed that these folks were,
8 you know, front and center and, you know, very engaged and
9 involved on this entire issue. The problem is that you
10 have to play the hand you're dealt, and the hand you were
11 dealt was, well, we didn't already have it in the rules so
12 we were developing it for the next QAP.

13 So there are those facts to consider. I also
14 want to underscore that if, for the sake of argument, it
15 were to be determined that the force majeure provision
16 should apply to this return, it still is incumbent upon
17 the applicant to prove up financial feasibility,
18 viability, and that they can in fact get this development
19 done as approved, which, you know, frankly is a challenge.

20 Simply reissuing the credits will not in and of itself
21 make everybody whole. There's going to need to be
22 significant financial --

23 MR. OXER: Issuing the credits won't make the
24 project work but not reissuing the credits will definitely
25 make it fail. Is that a statement?

1 MS. DEANE: Let me just provide a couple of
2 legal thoughts. And if you want more than this, I would
3 suggest an Executive Session --

4 MR. OXER: Want more opining?

5 MS. DEANE: Yes. If you want more opining. I
6 agree completely with the legal position that the issue of
7 when the QAP became effective, whether it became effective
8 on December 31st or December 25th or whenever that was
9 is -- I do not agree that then that 2015 QAP would become
10 applicable to anything that applies to the 2014 cycle. So
11 I would put -- in my mind that legal argument is put
12 aside.

13 What I do think makes this -- and, you know,
14 like Tim was saying, this is not exactly a super clear
15 issue -- is is this issue of finding that it was returned
16 on -- after January 1st or on January 1st for federal
17 purposes. Now, it was clearly said at that time that this
18 was -- that that finding was strictly with regard to the
19 federal return or the way we're going to treat the federal
20 return and for purposes of qualifying for the national
21 pool.

22 I do think, however, that legally if you wanted
23 to then say, well, we're going to -- okay, we're going to
24 go ahead and extend that to a general statement that it
25 was returned on X date and find that 2015, I think you

1 could probably do that. I don't think you are required to
2 do that. I think the other position would also be legally
3 supported that we are not going to make that extension of
4 the 2015 QAP. But I think that that alone is -- would be
5 the pathway if that was something you wanted to do.

6 I don't think under any circumstance you could
7 find that it was returned in 2014 and without any other
8 circumstances the 2015 QAP would apply. But because of
9 the national pool we have made that finding, and I think
10 you could, if you wanted to, extend that to the 2015 QAP.

11 I don't think you are required to do that.

12 And I won't tell you which one I think is the
13 better legal argument unless you want to go into Executive
14 Session. Have I made it worse?

15 MR. OXER: No.

16 MS. DEANE: Okay.

17 MR. OXER: The -- while we try to be sticklers
18 about rules and try to stick to those and maintain the
19 integrity of the rule and certainly the integrity and
20 transparency of the process, as I said before there are
21 times when execution or exercising the latitude, the Board
22 is appropriate, you know, in --

23 I have another question, Jean, so jump back in
24 here. These are 2012 credits, if I recall?

25 MS. LATSHA: Yes.

1 MR. OXER: Okay. And the project was
2 constructed at or near completion? Okay.

3 MS. LATSHA: Eighty percent.

4 MR. OXER: Okay, 80 percent complete. So they
5 were in pretty good shape, the thing went down. The
6 credits get returned. So then let's put the credits in
7 this year, let's just say that because of extenuating
8 circumstances that we as a Board choose to reassess that
9 and put those credits back into this project. Okay?

10 Let's assume that they can make their project
11 work and that works, what I want to make sure doesn't
12 happen is somebody late in the game starts burning down
13 projects here. Okay? Yeah, Project Arson is not going to
14 be looked on with favor, if you get my drift on this.
15 Okay? And irrespective of what sort of difficulty any
16 contractor gets into.

17 The other thing is too if they can't make it
18 work financially, if they can't make the -- if the
19 reemergence of that or the resurrection of that project
20 can't be made financially viable, so those credits --
21 assuming we issue those credits back to them again, you
22 know, we come back again here, we're at the end of 2017,
23 which gloriously will be the end of my tenure here, we
24 come to the end of 2017, the last thing I get to vote on,
25 Claire, is say, no, you don't get them back again. Okay?

1 So what -- not yet, I want her to respond
2 first.

3 MS. LATSHA: All right. So first we would have
4 to assume -- first of all, this action isn't about
5 actually reissuing the credits yet. There are several
6 items under the force majeure provision that would have to
7 be satisfied. So the question, like I said, was two-
8 pronged.

9 Number one, do we apply the provision at all.
10 If we were to apply it we have a lot of work to do. One
11 of the biggest pieces of this puzzle is whether or not in
12 fact that project would be financially viable should we
13 reissue these credits later this year. So there --

14 MR. OXER: Brent and his crew get involved in
15 making it work?

16 MS. LATSHA: That's right. Our Real Estate
17 Analysis Division would be involved in that determination.

18 And so there's little chance there then that we would
19 reissue these credits in a few months to this development
20 and that it not work out again at the end of 2017. Did
21 that answer your question?

22 MR. OXER: So that would -- so essentially --
23 most of it. Okay. So essentially what we're saying is if
24 we allowed this opportunity, and we're not reissuing the
25 credits. Okay?

1 MS. LATSHA: Right.

2 MR. OXER: Because they're having to make a new
3 application.

4 MS. LATSHA: Well, no, not technically. They
5 simply have to prove up financial viability and a number
6 of other items.

7 MR. OXER: They have to get through Brent's
8 rodeo first and make sure that works.

9 MS. LATSHA: That's right.

10 MR. OXER: Okay.

11 MS. LATSHA: Which we would imagine would take
12 at least a few months. Part of the second part of this
13 recommendation is if there is a decision to apply this
14 2015 force majeure provision, then we would take the next
15 few months to see if the return actually met the
16 requirements of the rule. Which, like I said, a large
17 part of that is with them being -- settling their
18 insurance claim and presenting a financially viable
19 project.

20 The reason that we put a deadline on that date,
21 you'll see in your Board book, is because at some point
22 before we allocate the rest of the 2015 cycle we would
23 like to know if we have those credits to allocate to a
24 2015 active application or not. So this isn't, it's
25 not --

1 MR. OXER: So rather than reserve them for
2 then, we -- that's a resource that we have, we'd like to
3 know if it's not going to go, if you can't prove up the
4 financial viability of your project, then we get to assign
5 them someplace else.

6 MS. LATSHA: Right. And we'd like to know that
7 by July. Right.

8 MR. IRVINE: Just walking through the time
9 frame. If the Board gives them a green light, then we
10 would need to know by the time we award these credits at
11 the end of July if this deal has been proven up. And
12 they're probably going to have to go out and get their
13 insurance issues resolved and have a bunch of cash so that
14 they can get this deal done. And if they are
15 unsuccessful, then I would assume that the credits would
16 be available for allocation in their region under the 2015
17 round.

18 MR. OXER: Clear?

19 MS. DEANE: In fact, I think you could
20 specifically make that a condition of the finding, that if
21 they can't prove it by X date it's going to fall back into
22 the cycle.

23 MR. IRVINE: And likewise if they were awarded
24 at July 30th to this development, then they would get a
25 commitment notice like everybody else and they would have

1 to prove it up within the usual commitment time frame.
2 And if they couldn't prove it up, then it would go to
3 somebody on the wait list in the 1015 round.

4 MR. MUÑOZ: So what would that sound like in
5 the form of a motion?

6 MR. OXER: Well, that's -- hold on a second.
7 Because we'll have to unwind this, being sticklers for the
8 rule as we are. There's been a motion by Mr. Chisum and
9 second by Mr. Goodwin to approve the staff recommendation,
10 which is to deny the request.

11 MR. IRVINE: That was not the motion that was
12 formed. The motion that was formed specifically said to
13 take the recommendation, which was neutral. So I think
14 you have just a chance to --

15 MR. OXER: So the recommendation was neutral
16 and we didn't recommend --

17 MR. GOODWIN: I'll withdraw my second.

18 MR. OXER: Okay.

19 MR. CHISUM: I'll withdraw my motion.

20 MR. OXER: Okay. Now we got a clean slate.

21 Let's start over here, because I'm inclined -- this is one
22 of those things that, you know, the -- and not -- I
23 appreciate that the project team has taken the effort to
24 work through this, figure out a force majeure provision.
25 Okay?

1 And, yes, we can twist all this around and
2 figure out when the dates apply and that sort of thing,
3 but from a policy standpoint it seems to make sense to me
4 to try to make this work.

5 Now, I'm willing to give you till July to make
6 it work, but if you don't you're toast. Okay? So just --
7 and contrast to another item we took up -- we brought up
8 earlier today, is that clear?

9 MS. PALMER: Very clear.

10 MR. OXER: Okay.

11 MR. MUÑOZ: So then -- just a minute.

12 MR. OXER: Hold on a second.

13 MR. MUÑOZ: So then, Jean, with what you've
14 heard, what would -- I mean how can we craft a
15 recommendation from the staff that would provide that
16 additional time that we can make a motion to endorse?

17 MR. OXER: We need our best framer going on,
18 Leslie. I know.

19 MR. IRVINE: I would submit that you frame it
20 with a finding that with a policy reason of providing
21 certainty to the investment and lending community and
22 continuing with the objective of serving the persons who
23 would be served by the award already granted, that you
24 make a determination that it is appropriate to apply the
25 2015 force majeure provision to this situation. And in

1 doing so you remind them that this is not an award of the
2 credits but merely a finding that the provisions apply and
3 that they're required to prove up financial feasibility
4 and all the other requirements on or before some early
5 date.

6 MS. LATSHA: Sure. If we could get to the date
7 aspect of it. The Board writeup indicates --

8 MS. DEANE: Could I add something real quick
9 first?

10 MS. LATSHA: Sure.

11 MS. DEANE: I want it to be real clear that the
12 application of the force -- when you say the application
13 of the force majeure provision in the 2015 QAP you only
14 mean that the criteria that are related to the rule will
15 be applicable, not that they have met --

16 MS. LATSHA: No, right.

17 MR. IRVINE: Correct.

18 MS. DEANE: Okay. Just to be real clear.

19 MR. OXER: They have -- those criteria,
20 whichever they are, they have to meet that criteria to
21 qualify to get back in the game.

22 MS. LATSHA: Yes, sir.

23 MR. OXER: Right? Okay.

24 And, Brent, your team is going to have to make
25 sure that they're financially viable.

1 MS. LATSHA: Yes, sir.

2 MR. OXER: Still. I mean all that does is get
3 them back in to make sure that they're capable of doing
4 this. But you won't award the credits until he proves
5 that they're financially viable. And then you have the
6 capacity by them meeting the force majeure requirements of
7 2015 to award those credits that were sacrificed.

8 MR. CHISUM: With a sunset of July?

9 MR. OXER: With a sunset -- what's the date you
10 want to --

11 MS. LATSHA: So that -- with respect to the
12 date. This is something that still would need Board
13 approval anyway. And what we would like to do, there's a
14 mid -- there's a June 16th meeting. We would like to be
15 able to bring a recommendation to the Board with respect
16 to the reissuance of the credits by that meeting at the
17 latest. So we have requested that the applicant provide
18 all necessary documentation for us to review compliance
19 with the rule by May 1st.

20 MR. OXER: Claire, get up there and tell us you
21 can do that.

22 MS. PALMER: Claire Palmer representing the
23 applicant. We have mediation with our insurance on the
24 insurance issue on April 12. I don't see any reason in
25 the rule that this has to come back to the Board. I mean

1 I think July 1 is a good date because this is going to
2 simply be -- if we meet all the criteria and get through
3 underwriting analysis, this will just be a reissue or a
4 issue just like it would be --

5 MR. OXER: Well, let me --

6 MS. PALMER: -- with any normal applicant.

7 MR. OXER: Well, let me tell you why it's going
8 to come back to the Board. Because this isn't one of
9 those applications with the latitude that the Board has
10 that I'd like to see applied lightly and rarely --

11 MS. PALMER: Okay.

12 MR. OXER: -- and we want to know when it's
13 going to happen. So that's why it's going to --

14 MS. PALMER: Okay.

15 MR. OXER: -- come back.

16 MS. PALMER: Okay.

17 MR. OXER: Now, does May 1st work?

18 MS. PALMER: Could I have May 30?

19 MR. OXER: Jean? That gets you past May 16th
20 or May -- or earlier than that, it's a week before.

21 MS. PALMER: June 16th is the Board meeting, so
22 you have three weeks after that.

23 MR. OXER: Jean?

24 MS. LATSHA: If you'll allow me. The reason we
25 thought June 16th should be the last date that we should

1 bring it before you if staff determination is actually
2 that we should not be reissuing those credits and we wind
3 up in a discussion about that with the application and
4 then -- and need to come back and revisit the Board, that
5 would give us time to visit it twice, if you will. If the
6 Board, let's say, at the June meeting said, staff, will
7 you please go out and get some additional information and
8 then we'll decide on this, it allows for one set of
9 tabling, if you will.

10 MR. OXER: Okay. All right.

11 MS. LATSHA: If it's a favorable
12 recommendation, it winds up probably on consent, then
13 we're all fine --

14 MR. OXER: Okay. Hold your --

15 MS. LATSHA: -- in the middle of June.

16 MR. OXER: Stand there and hold your fire for a
17 second.

18 Claire?

19 MS. PALMER: I don't disagree with that --

20 MR. OXER: Wait, hold on.

21 MS. PALMER: Claire Palmer --

22 MR. OXER: Hold on, I'm talking to you.

23 MS. PALMER: Oh.

24 MR. OXER: No, no. You come back, it's going
25 to be one shot.

1 MS. PALMER: Right. And that's why I'd like
2 until May 30th to submit. This is just --

3 MR. OXER: If there's any discussion and the
4 staff says we don't like what you're -- it's not enough,
5 it's not going to be, because we're going to delegate to
6 them, you get to do it, guys, and make sure it's right.

7 MS. PALMER: Right. And that's why I want
8 enough time so that if we submit it is always back and
9 forth with Real Estate Analysis, we don't control how fast
10 they look at our documents.

11 MR. OXER: Especially if we have some influence
12 over that, okay.

13 MS. PALMER: But that's not something I can
14 control at all. No matter how fast we submit, we're still
15 -- have to -- we will still go back and forth a number of
16 times with staff in Real Estate Analysis.

17 MR. OXER: It's a very important item with
18 respect to maintaining the integrity of the agency and the
19 rule, so.

20 MS. PALMER: Absolutely. And I -- you know --

21 MR. OXER: Brent, come here.

22 MS. PALMER: -- we will do anything in our
23 power to work with them. We have through this whole
24 process. I think staff would agree that we have done
25 everything that we possibly could to work with staff on --

1 MR. OXER: And I'm sure you have. And I recall
2 making -- trying to make this work and get some discussion
3 going and working through this last year and coming up
4 with a new provision in the rule and making it apply to
5 2015. Yes, I understand all of that. But we're getting
6 down to the sharp edges here --

7 MS. PALMER: Right.

8 MR. OXER: -- and it's going to come down to it
9 is what Jean's talking about is we make a recommendation
10 and we have to table it to wait for more information,
11 we're not.

12 MS. PALMER: And that --

13 MR. OXER: If you got one shot at it. You
14 know, coming on March 1st gives you two shots. Not March,
15 May 1st gives you two shots. If you want to wait till
16 May 30th or June 1st, you get one shot.

17 MS. PALMER: That's right.

18 MR. OXER: You good with that, Jean?

19 MS. LATSHA: I think we could probably do that.

20 I imagine that Brent would need 30 to 45 days to probably
21 review whatever it is that they submitted by May 30th,
22 which will put us at mid-June.

23 MR. OXER: Perilously close perhaps.

24 MS. LATSHA: Right. Or would put us at mid-
25 July.

1 MR. OXER: Yeah, mid-July.

2 MS. LATSHA: So we would -- we could still make
3 it to the July 31st at the latest Board meeting, so we
4 might be -- we might have two separate 2015 allocation
5 recommendations, depending on how this would play out.

6 MR. OXER: Megan, did you have something you
7 want -- okay.

8 MS. LATSHA: We can split it and say May 15th.

9 MR. OXER: May 15th?

10 MR. IRVINE: When=s the May meeting?

11 MR. OXER: It's the week before that. Because
12 the 15th and 16th is a Friday, so it would be the 6th.

13 MS. LATSHA: And May 1 is what we're talking
14 about as initial, an initial submission by the applicant.

15 As Claire alluded to, the reason that it does take
16 usually 30 to 45 days is because there is a lot of back
17 and forth. We anticipate there will be. So it wouldn't
18 be as if they could make one submission and then Brent
19 would say, well, I'm not going to take another piece of
20 paper from you. Because I=m already --

21 MR. OXER: Well, and this is one of those
22 things, I know, Brent, I know you got a thousand things to
23 do on these applications. There's a lot of them. This is
24 one that's a unique circumstance and, you know, personally
25 amongst the Board it's my position is to allow

1 considerable perspective on this and latitude to help try
2 to make this work. But in the end there's a drop dead
3 date. Okay? And what I want to know is can you guys
4 agree on that drop dead date. May 1.

5 MS. LATSHA: May 1 it is.

6 MR. OXER: Is that the right answer? Brent,
7 Kathryn, Jean? Everybody okay with that?

8 Did Dr. Muñoz vaporize?

9 MR. CHISUM: Yeah, he had to leave.

10 MR. OXER: Okay. Well, at least there's four
11 of us still here. Okay.

12 Okay, with respect to the way -- no, wait,
13 the -- let's see, I guess -- let's see if I can summarize
14 this motion here. Is to allow the applicant restore this
15 process, to apply the 2015 force majeure criteria and
16 qualifications to this project for the purpose of seeing
17 if they can be financially viable for the return of those
18 credits. That's staff recommendation. Right?

19 Right. That's what we're moving anyway. We're
20 moving that. Make it the Chair's motion to do so. Okay?

21

22 MS. BINGHAM: Second.

23 MR. OXER: And a second by Ms. Bingham.
24 Anybody else want to say anything?

25 (No response.)

1 MR. OXER: Right answer. All right. Motion by
2 me, second by Ms. Bingham. All in favor.

3 MS. DEANE: Did that May 1 date get in there?

4 MR. OXER: With the condition that it's the May
5 1st date of course.

6 MS. DEANE: May 1st is the date in which the
7 conditions must be met or the credits will be considered
8 as falling back into the regular cycle.

9 MR. OXER: Into the pool. Right.

10 MS. DEANE: Into the pool.

11 MR. OXER: So you guys got to satisfy this by
12 May 1st. Which means you got to get all the information
13 to them, they've got to go through -- because if you don't
14 produce that, the credits go back into the pool and we
15 allocate them through this program for this year's
16 allocation process. Right?

17 MS. LATSHA: Yes, sir.

18 MR. OXER: Okay. All right. Back to the vote.
19 Motion by me, second by Ms. Bingham to which I just
20 alluded. All in favor.

21 (A chorus of ayes.)

22 MR. OXER: Those opposed?

23 (No response.)

24 MR. OXER: And there are none. It's unanimous.
25 Thank you for the Board. And thank you for that. Good

1 luck, folks.

2 Okay, Tom. Tom? One more item. And you're
3 standing in the way of these people and their tuna fish
4 sandwich, so I warn you.

5 MR. DORSEY: Good afternoon now. Sorry, I was
6 a little bit distracted because there was actually a bill
7 filed that does very -- just in the last few minutes that
8 does very similar things to what I'm about to talk about
9 here.

10 This item is a set of proposed amendments to
11 our Subchapter D of Chapter 10, which is the Uniform
12 Multifamily Rules. That subchapter is our real estate
13 analysis and underwriting rules. It's also the rules we
14 underwrite transactions. We use these rules at cost
15 certification as well.

16 In accordance with Section 42, the Department
17 is required to underwrite tax credit deals at three key
18 points in time. At the time of application before we
19 award tax credits, at the time of carryover, which is
20 generally later in the year that we award those credits,
21 and then at the time of cost certification.

22 Cost certification occurs once the development
23 has been constructed. They submit a package that includes
24 their actual development costs. Everything that we were
25 working off of that was kind of pro forma at the beginning

1 of the process at application, working off of conceptual
2 architectural plans, pro forma rent schedule, and
3 operating pro forma, all of that information should be
4 much more settled and solidified. Then to the closing
5 process, constructed, done constructing, got COs. So
6 we're a lot further down the road.

7 Historically we have applied the exact same
8 criteria at the time at all three stages. During the
9 rule-making process -- you all know this is a fairly
10 unusual thing for staff to be proposing at this point in
11 the year. Typically this would, these types of changes
12 would be proposed during our annual rule-making cycle for
13 our multifamily programs that occurs, you know, prior to
14 November 15th of each year. Then the QAP goes to the
15 Governor and the Governor decides whether or not to sign
16 off on it or make amendments or what have you. So this is
17 outside that time frame.

18 We did have a discussion with folks in the
19 development community that expressed some concerns about
20 the application of these rules at the cost certification
21 stage prior to approval of those rules in November, and we
22 committed, staff committed to them that we would work with
23 them in a little bit more of a deliberate manner, hold
24 some discussions with them. We held a roundtable in the
25 past couple months on these issues.

1 And so now we're bringing a set of proposed
2 very limited amendments that are -- that affect how we
3 underwrite at the cost certification stage.

4 The reason these are so limited and the reason
5 we wanted to keep these very limited is it's not part of
6 this annual rule-making process. We have 172
7 applications, 9 percent applications in-house right now.
8 We're reviewing those, we've already sent some over to
9 Underwriting so they're starting the process. We want to
10 keep these if we can to just changes that impact the cost
11 certification process so that we're not, during the
12 underwriting process for the 9 percent cycle, the current
13 9 percent cycle, you know, we don't want to be in the
14 business of making midstream changes while that
15 underwriting is occurring --

16 MR. OXER: You don't want to be moving the
17 goalpost.

18 MR. DORSEY: -- and a bunch of different --
19 right, exactly. So the proposed changes that I'm about to
20 lay out apply only to, materially only to the cost
21 certification stage of the underwriting process.

22 The proposed changes do a couple things. One
23 is that there are a few changes that codify much of what
24 we do now but that is not currently in a rule
25 specifically. I think as we've had folks come to the

1 State that haven't worked here for years and years and
2 years, you know, I think that there was a desire to have
3 clarity in terms of what our internal processes are, how
4 we utilize, for example, the actual rents being achieved
5 at a property during the cost certification underwriting.

6 Folks wanted clarity in the rules with respect to how
7 that's going to occur.

8 And so we're proposing a series of changes to
9 clarify some of those existing practices in the rules so
10 it's transparent so everyone can take a look at those and
11 see them. In addition, we're -- Brent frequently refers
12 to kind of the underwriting box. We create a series of
13 parameters and then we expect applicants to submit
14 applications that -- where the financing structure, the
15 debt coverage ratio, all these types of things fall within
16 this box.

17 On the one end of the box we have -- we want to
18 make sure we're awarding financially viable transactions.

19 On the other side of the box we want to make sure that
20 we're fiscally responsible with the resources we have
21 available to us. So, you know, we lay out this box in the
22 rules.

23 What we're proposing is moving a couple
24 components of that box or a couple of the sides of that
25 box at the time of cost certification to account for

1 changes that can occur between the point of initial
2 underwriting and when an actual development places in
3 service and starts operating.

4 One example would be the 65 percent expense-to-
5 income ratio. At the time of underwriting we want to make
6 sure that's a tool that we use to make sure there's enough
7 cushion in the deal so that a deal that's actually
8 constructed can survive a period of -- where, you know,
9 maybe rents don't go up that much, these properties are
10 subject to rent limits. They're not just subject to the
11 market, they're subject to sometimes both rent limits and
12 the market. So you might have flat rents, for example,
13 over a series of years.

14 Well, your expenses might be rising at the same
15 time. So the expense-to-income ratio is designed to help
16 ensure that there's sufficient buffer there so that a deal
17 can survive a period, a sustained period where conditions
18 aren't favorable for operations and you have this kind of
19 rising expenses and flat rents and what have you.

20 At the time of cost certification, however,
21 your expenses are what they are and your rents are what
22 they are. And hopefully we were prudent enough in the
23 beginning to underwrite the deal to, you know, reasonably
24 anticipate what rents and expenses would be such that it's
25 still below 65 percent. But in the event it is not, we're

1 creating kind of an alternative.

2 We're suggesting that we're proposing not to
3 apply a 65 percent expense-to-income ratio at cost
4 certification and we're raising the top end of the -- or
5 we're proposing to raise the top end of the debt coverage
6 ratio band from a 135 to 145. And so what that does is
7 there's -- you know, again moving pieces here, let's say
8 your expenses are -- your rent and expenses show that
9 you're above a 65 percent. One possible way to mitigate
10 that would be to start with a higher debt coverage ratio
11 than a 135.

12 And so we're -- again, we're doing a couple of
13 things. We're clarifying existing practice so that we're
14 transparent and everyone can see exactly how we're going
15 to underwrite these at cost cert. The lenders and
16 syndicators can gain a level of comfort without -- it's
17 going to be treated after they close. In addition, we're
18 looking at making some changes that recognize that
19 sometimes things change between application and cost
20 certification and there may be instances in which
21 different parameters, applying different parameters make
22 some sense.

23 So again we held some discussions, small group
24 and a roundtable in the past couple months, and these are
25 the set of changes that staff is comfortable recommending.

1 One thing I left out. In addition to those couple of
2 changes, in the event that we still reach a point where
3 let's say, for example, that when we originally underwrote
4 a transaction they were anticipating they were going to be
5 able to sell the credits at a price of, say, 90 cents on a
6 dollar, and they actually were able to achieve 95. We --
7 before we would go through the process of adjusting the
8 amount of credit that's allocated at cost certification we
9 would provide some options that could provide benefit to
10 tenants.

11 There are two options laid out in the proposed
12 rules. One is that they can use some of the additional
13 funding that they didn't originally anticipate to provide
14 additional amenities on site for use by the tenants. So
15 directly making sure that that additional funding accrues
16 to the benefit of the tenants. And then they could set up
17 a special reserve account that is also managed to the
18 benefit of tenants.

19 We do have already some provisions in another
20 portion of our rules that, you know, anytime a special
21 reserve account is set up they need to submit a plan for
22 exactly how those funds are going to be utilized to
23 benefit tenants. An example might be something like it
24 might provide the owner an ability to satisfy more costly
25 reasonable accommodations requests that they wouldn't

1 otherwise be able to satisfy because of financial
2 constraints, operating constraints on the property.

3 So that would be an example where a special
4 reserve account, funds in a special reserve account could
5 accrue to a person with a disability that's looking for a
6 reasonable accommodation and make that a viable option
7 where it might not otherwise be a viable option.

8 So that in whole are the set of changes that
9 are being recommended. And I see that there are several
10 folks who would like to speak on this.

11 MR. OXER: Okay. So staff recommendation is?

12 MR. DORSEY: To approve the publication of
13 these proposed changes in the *Texas Register*. They would
14 go out for public comment, and we would hopefully bring
15 back a final version in May.

16 MR. OXER: So this is not an approval of the
17 final version, this is a posting of the this is what we're
18 suggesting as a change?

19 MR. DORSEY: That's right. So to the extent,
20 for example, that there's suggestions that maybe this
21 should be tweaked or that should be tweaked, I'm probably
22 going to come back -- unless I know exactly what the
23 consequences of tweaking it in that way are, I'll probably
24 come back and say that's, you know, a valid public
25 comment, let folks make that during the public comment

1 period, and let's have an opportunity to evaluate the
2 effect.

3 MR. OXER: Okay. All right. We'll need a
4 motion to consider to take public comment.

5 MS. BINGHAM: I'll move to approve staff's
6 recommendation to print the -- to submit the proposed
7 amendments for public comment in the *Texas Register*.

8 MR. OXER: Okay. Motion by Ms. Bingham.

9 MR. CHISUM: Second.

10 MR. OXER: Second by Mr. Chisum. It appears we
11 have several requests for comment.

12 MR. AIYER: Good afternoon. Mahesh Aiyer on
13 behalf of the -- on behalf of TAAP [phonetic]. I just
14 wanted to say I think we're supportive of that dialogue
15 that it's gone through. And just simply appreciate the
16 willingness for consideration.

17 MR. OXER: Great. Thanks, Mahesh.

18 Okay.

19 MS. ANDERSON: Good afternoon. Terri Anderson,
20 Anderson Capital. I definitely wanted to congratulate
21 staff and thank them for listening to the development
22 community. It was a difficult process to get through a
23 cost certification on a particular transaction. I think
24 they've done a very good job in listening to the community
25 and listening to the concerns. So thank you all, and

1 definitely congratulate staff. Thank you.

2 MR. OXER: Great. Thanks, Terri.

3 Ms. Dula. Nice to see you back.

4 MS. DULA: Good afternoon. Thank you. It's
5 been a couple months.

6 MR. OXER: It has.

7 MS. DULA: Tamea Dula with Coats Rose law firm.

8 I am going to raise a question that I hope will flesh out
9 how something will be addressed, and maybe limit the
10 public comment accordingly.

11 In the first summary dealing with the gap and
12 debt coverage ratio methods of determining how many tax
13 credits should be allocated, there is an alteration being
14 made that says that "in making this determination and
15 based upon specific conditions set forth in the report,
16 the underwriter may assume adjustments to the financing
17 structure --" this is new language hereafter -- "including
18 treatment of cash-flowed loans as fully amortizing over
19 its term," and then original language, "or make
20 adjustments to any department financing such as the
21 cumulative DCR conforms to the standards -- such that the
22 cumulative DCR conforms to the standards described in this
23 section."

24 And my question is am I correct in thinking
25 that this means that the underwriter can theoretically

1 amortize a cash-flowed loan over the term of that loan if
2 the DCR, the debt coverage ratio, is too high based upon
3 the Department's standards? Clearly if the DCR is too low
4 this would be inappropriate because you'd be reducing the
5 amount of net operating income.

6 So I want to know if that's the sole purpose
7 for the reamortization and if it's theoretical for the
8 purpose of underwriting. Thank you.

9 MR. OXER: Okay. Thank you, ma'am.

10 Cameron, you got a shot at that?

11 MR. DORSEY: Yes. The point here is that in
12 instances in which a transaction might be over the top end
13 of the debt coverage ratio we would account for the cash
14 flow loan and we would assume that if this were a fully
15 amortizing loan, would that annual cumulative set of
16 payments put that transaction under the maximum debt
17 coverage ratio such that we would need -- we would not
18 need to make alternative adjustments.

19 We wouldn't do that in an instance in which,
20 say, a transaction is at 115 debt coverage ratio. We
21 wouldn't include the theoretical cash flow payment such
22 that it put them under a 115 and made the transaction
23 infeasible.

24 MR. OXER: Okay. Bobby, you got a thought?

25 MR. BOLDING: Yes, Bobby Bolding, builder/

1 developer from El Paso representing Tropicana Building. I
2 was pretty loud at the roundtable, so I thought it
3 appropriate I be pretty loud here to say that this is a
4 very good compromise, it's a very good balance. It helps
5 both the applicant community and the citizens of Texas,
6 and I wanted to also thank staff and commend them for
7 their work.

8 And as with -- I missed the 811 thing this
9 morning, the same thing with that. It was really a good
10 process having the roundtables, listening to feedback from
11 the community. And on that I also want to thank and
12 commend staff.

13 MR. OXER: Great. Thanks, Bobby.

14 Yeah, Cameron and Patricia said they had a
15 wonderful time at the roundtable, so I don't know what
16 your problem was.

17 Okay, no other comments? Okay, we had -- yeah,
18 Bobby, did you need -- or all of you make sure to sign in
19 up there. Okay?

20 Okay. Any other questions?

21 MS. BINGHAM: Just a question back to Ms.
22 Dula's comment and Cameron's response. So are you
23 suggesting that we change any of our language or just be
24 ready to clarify when there comes public comment about the
25 DCR?

1 MS. DULA: Tamea Dula. I just wanted it
2 reflected on the record what the intent was so that we
3 don't have to send you a dozen letters with regard to that
4 intent.

5 MS. BINGHAM: Great. Thank you. That=s my
6 question.

7 MR. OXER: Okay. Thanks for your comment.
8 Okay, any other questions of the Board?

9 MR. CHISUM: Yes.

10 MR. OXER: Mr. Chisum.

11 MR. CHISUM: Talk about the cash flow
12 amortization. What would be the amortization? What time
13 frame?

14 MR. DORSEY: We would generally use the -- we
15 would look at the actual terms of the cash flow loan. So,
16 for example, a loan that's subject to cash flow might be,
17 you know, let's say it's a million-dollar loan with a 30-
18 year term and they'll pay 80 percent of the cash flow
19 toward that loan on an annual basis. So we would instead
20 of calculating the 80 percent amount of cash flow that
21 would be paid toward that principal, we would instead just
22 amortize it over that term that's stated in the loan
23 documents and look at the effect on the debt coverage
24 ratio.

25 MR. CHISUM: Thank you.

1 MR. OXER: Okay. Any other questions?

2 (No response.)

3 MR. OXER: Okay. All right. There's a motion
4 by Ms. Bingham, second by Mr. Chisum to approve staff
5 recommendation on item 6. Those in favor?

6 (A chorus of ayes.)

7 MR. OXER: Opposed?

8 (No response.)

9 MR. OXER: There are none. So it's unanimous.

10 Okay. By the way, with respect to this last
11 item, we're always glad to hear that the staff get kudos.

12 We give them kudos all the time because they keep us out
13 of trouble most days. We really appreciate that the
14 community that works with the programs that we're involved
15 with appreciate the effort that the staff puts forth.

16 All right. We are at the end of our posted
17 agenda. We'll accept public comment for items other than
18 for which we had posted agenda items. Is there anybody
19 here wish to make a comment? Ms. Dula, please step up.

20 MS. DULA: And thank you again. Tamea Dula
21 with Coats Rose. And now I'm appearing on behalf of the
22 Housing Authority of El Paso. Unfortunately, the rules
23 that we just talked about were very, very specifically
24 posted and so I could not bring this up during the
25 discussion of those rules with any hope of it being heard.

1 But I wanted to point out to you all that there
2 is a little known or recognized provision under the
3 identity of interest rules. Identity of interest is when
4 the seller of the land is also a player in the
5 development.

6 And that rule, which you can see on page 12 of
7 the provisions that were provided in the rules we were
8 just passing, that states that "in the case of a
9 transaction requesting that position housing tax credits,
10 no developer fee attributable to an identity of interest
11 acquisition of the development will be included."

12 Now, there may be some very real and
13 appropriate reasons for doing this in a 9 percent
14 transaction where everything is very competitive. The
15 agency does get those in an appraisal and is entitled to
16 see all of the closing costs for the land as held by the
17 seller so that they can ascertain if the payments being
18 made for the land and the improvements, which is what I am
19 concerned about, is an appropriate one.

20 However, it works a hardship in a certain kind
21 of situation. My firm represents lots of Housing
22 Authorities. And they are currently in the midst of doing
23 a lot of RAD conversions. These are changes in the status
24 of various housing projects from being public housing
25 projects, which are subsidized with HUD money under

1 Section 9 of the National Housing Act, to being project-
2 based voucher subsidized projects, which comes under
3 Section 8 of that same Act. And basically what you are
4 doing is changing the funding because the Government is
5 trying to get out of the public housing business and
6 instead will provide subsidization for housing.

7 Recently a whole lot of money was made
8 available by HUD for these RAD conversions, and the
9 Housing Authority of El Paso received a huge chunk, about
10 25 percent of what was available for the entire country.
11 They have a lot of rehabilitation to do. Because of this
12 one provision here they would not be able to receive \$3.9
13 million in equity financing. Because they cannot consider
14 the acquisition developer fee as part of the eligible
15 basis.

16 Now, this is -- when you have a competitive
17 scenario I can understand that. But when you have a
18 4 percent transaction and you're not competing for the
19 number of tax credits there, and the State has more tax
20 credits that it can give away, more volume cap than it can
21 give away currently, why are we giving this up? It
22 doesn't make sense.

23 And so I would ask that as soon as possible,
24 and definitely before the 2016 rules are adopted, that we
25 make a change to provide that that one provision does not

1 apply to developments using 4 percent housing tax credits
2 that is sponsored by a public housing authority.

3 And the reason for this in particular is the
4 public housing authorities are dealing with HUD-related
5 property. When you bring HUD into the deal you have huge
6 costs that other developers do not have. You have to go
7 through a mixed finance proposal provision, you have to
8 deal with declarations of trust that are already on the
9 property, and all of this creates much more expense than
10 you would have with the regular project.

11 So here you have money lying on the ground in
12 the form of 4 percent equity and why should our public
13 housing authorities not take advantage of it. It doesn't
14 hurt anybody else.

15 MR. OXER: Thanks for your comments, Tamea.

16 MS. DULA: Thank you.

17 MR. OXER: And, everybody, I recognize that at
18 this point in the agenda we're accepting items for
19 consideration in the future. We will not be able to
20 respond or comment or question, we're simply taking those
21 for the agenda in the future.

22 Cameron?

23 MR. DORSEY: Sure. I just wanted to note that,
24 as I mentioned before, these are really targeted changes.

25 Brent and Tom and Raquel and their teams are going

1 through the real estate analysis rules in effect kind of
2 on a line-by-line basis and looking at different things
3 that might be warranted for the next rule-making cycle.

4 Given the volume of comment there, though, I
5 just wanted to note that whether it's a competitive tax
6 credit or 4 percent tax credit, it's taxpayer money. So
7 we, you know, don't want to provide more developer fee on
8 a transaction just because we can, we want to make sure
9 we're providing a developer fee that's appropriately sized
10 for the transaction and the particulars of the
11 transaction.

12 And so that's the rationale for its existence
13 as well as for its application to both the 9 percent and
14 4 percent tax credit programs. Although we are happy to
15 look at the specifics of Ms. Dula's kind of writeup, we do
16 have that in-house and we're happy to look through the
17 specifics and see if there are any reasons therein that
18 would warrant us re-looking at that particular issue and
19 proposing any staff change or have any staff-recommended
20 change to that provision.

21 Whether that occurs or not, the Board would in
22 the next rule-making cycle be able to consider that type
23 of change.

24 MR. OXER: Okay. Thank you.

25 All right. No other requests for comment? Any

1 other requests from staff? Any other requests from the
2 Board or from members here?

3 (No response.)

4 MR. OXER: All right. Entertain a motion to
5 adjourn.

6 MR. CHISUM: So moved.

7 MR. OXER: Okay, motion by Mr. Chisum.

8 MR. GOODWIN: Second.

9 MR. OXER: Second by Mr. Goodwin to adjourn.

10 All in favor?

11 (A chorus of ayes.)

12 MR. OXER: Opposed?

13 (No response.)

14 MR. OXER: There are none. We'll see you in
15 five weeks, folks.

16 (Whereupon, at 1:10 p.m. the meeting was
17 adjourned.)

C E R T I F I C A T E

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2
3 MEETING OF: TDHCA Board
4 LOCATION: Austin, Texas
5 DATE: March 12, 2015

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 167, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Nancy H. King before the
10 Texas Department of Housing and Community Affairs.
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16
17 3/15/2015
(Transcriber) (Date)

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