

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AUDIT COMMITTEE MEETING

John H. Reagan Building
Room JHR 140
105 W. 15th Street
Austin, Texas

November 12, 2015
9:00 a.m.

MEMBERS:

LESLIE BINGHAM ESCAREÑO, Chair
T. TOLBERT CHISUM
TOM H. GANN

ON THE RECORD REPORTING
(512) 450-0342

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P R O C E E D I N G S

1
2 MS. BINGHAM ESCAREÑO: Good morning. Welcome
3 to the Audit Committee for the Texas Department of Housing
4 and Community Affairs.

5 We'll start with roll call. Mr. Chisum?

6 MR. CHISUM: Present.

7 MS. BINGHAM ESCAREÑO: Mr. Gann?

8 MR. GANN: Present.

9 MS. BINGHAM ESCAREÑO: Very good. I'm here, so
10 that's three members present, none absent. Thank you for
11 being here today.

12 We'll start with agenda item 1 which is the
13 presentation, discussion and possible action to approve
14 the Audit Committee meeting minutes from the last meeting
15 in July. Is there any discussion? Has everybody had a
16 chance to review the minutes? I'll entertain a motion to
17 approve.

18 MR. GANN: I so move.

19 MR. CHISUM: Second.

20 MS. BINGHAM ESCAREÑO: Mr. Gann moves, Mr.
21 Chisum seconds. All in favor, aye.

22 (A chorus of ayes.)

23 MS. BINGHAM ESCAREÑO: Opposed?

24 (No response.)

25 MS. BINGHAM ESCAREÑO: Motion carries. We'll

1 approve the minutes.

2 Al right. Moving on to agenda item 2,
3 presentation, discussion and possible action to approve
4 our 2016 internal audit plan. Good morning, Mark.

5 MR. SCOTT: Good morning.

6 MS. BINGHAM ESCAREÑO: Would you like to review
7 the plan with us.

8 MR. SCOTT: Yes, ma'am. My name is Mark Scott.
9 I'm the Internal Audit director.

10 The Texas Internal Auditing Act requires that
11 an annual audit plan be prepared using risk assessment
12 techniques. The audit plan was prepared based on a risk
13 assessment done in a standard matrix format. The function
14 that rated highest on the list was Fair Housing because of
15 the high public interest and the importance to the agency
16 mission. The real estate analysis function rated high on
17 the risk assessment because it has not been audited. The
18 review of this area may look at financial analysis
19 techniques such as discounted cash flow models.

20 The compliance monitoring section of the
21 Compliance Division was the next highest ranked unit.
22 This section of the Compliance Division is different from
23 the subrecipient monitoring which we have talked bout at
24 length during our other Audit Committee meetings. The
25 section of compliance we are proposing to audit this year

1 checks to make sure that low income properties are
2 actually used in accordance with affordable housing rules,
3 along with other monitoring compliance issues.

4 And then four and five, the next two items are
5 somewhat interrelated the Multifamily Finance Division
6 ranked high as an organizational unit, while the Tax
7 Credit Program is a program also rated high. Both of
8 these have a high level of interest from the development
9 community and intensive competition for resources that the
10 programs provide is evident from the discussions at most
11 Board meetings.

12 During the course of the year we can also
13 accommodate requests from management and the Board.
14 During the course of fiscal year 2015 there were requests
15 for Internal Audit to assist with subrecipient monitoring
16 and the new grant guidance, including the indirect cost
17 provisions. Also, the Board chair asked for a review of
18 audit and internal control activity for all of the various
19 functions of the agency.

20 There's one carryover project from the audit
21 plan that was approved last October, the program income
22 audit. We are trying to have that done by the end of
23 December.

24 So with that, I would like to ask for approval
25 of the 2016 internal audit plan that is included in the

1 Audit Committee materials.

2 MS. BINGHAM ESCAREÑO: Great. Thank you, Mark.

3 Did the committee have a chance to look at the
4 plan as presented, and do you have any questions or any
5 other thoughts?

6 MR. GANN: I thought it was very aggressive for
7 him to take on such a load, and I told him that earlier.
8 Also, each one of those is a lot of heavy weight for any
9 group, and so if you need some help, I want you to holler
10 quick and early because those are very aggressive
11 selections you've made.

12 MR. SCOTT: Okay. I appreciate that.

13 MR. CHISUM: Well, I concur. And also, getting
14 it done by the end of December, one of those items, that
15 too is aggressive.

16 MS. BINGHAM ESCAREÑO: Getting the program
17 income audit?

18 MR. CHISUM: Right.

19 MR. SCOTT: We'll have to be kind of selective
20 in what we dig into on that.

21 MR. CHISUM: That's important. I accept the
22 presentation and I make a motion that we approve.

23 MS. BINGHAM ESCAREÑO: Very good. Motion by
24 Mr. Chisum to approve the audit plan as presented.

25 MR. GANN: Can I have a question for you?

1 MS. BINGHAM ESCAREÑO: Absolutely.

2 MR. GANN: Do we approve it or do we agree to
3 pass it on to the Board for their approval? I think
4 that's the case, isn't it?

5 MS. BINGHAM ESCAREÑO: I think it is too, to
6 recommend approval to the full Board. Would you like to
7 amend your motion?

8 MR. CHISUM: Yes, I do.

9 MS. BINGHAM ESCAREÑO: Very good.

10 MR. GANN: And I second that.

11 MS. BINGHAM ESCAREÑO: Very good. So we have a
12 motion by Mr. Chisum to recommend approval to the Board,
13 and a second by Mr. Gann.

14 Any comments from management, Mr. Irvine?

15 MR. IRVINE: Thank you very much. Tim Irvine.

16 First of all, we really appreciate the academic
17 rigor of constructing and populating the matrix which was
18 done with input from me and my teammates. I think it's a
19 great way to approach this creation of a plan. We think
20 it is a well targeted plan, and as you've all
21 acknowledged, it's a pretty aggressive plan. These are a
22 lot of big meaty issues.

23 The only caution there a note that I would roll
24 out is with regard to activity on the Multifamily
25 programs. We are in the throes of recovering from a lot

1 of personnel loss, and we've got some great new people in
2 key positions but we still have some open positions.
3 Obviously, Marni Holloway is our new director of
4 Multifamily Finance, she's brand new in that area, and
5 she's up to her eyeballs in QAP at the moment. And we
6 have got some continuity, we've got a great strong lead
7 with Theresa Morales, but we currently do not have a 9
8 Percent Program administrator, and we have also lost some
9 key support on the side of housing finance programs.

10 So our ability to accommodate and work through
11 audit issues is going to be, at least for the near term,
12 limited, and I think that also, as Mark has established
13 he's very capable of doing with his fantastic team is
14 providing useful ideas on ways to make programs better and
15 to minimize risk and perhaps as we work through those
16 issues, at the appropriate stage in this cycle we can be
17 mindful of those kinds of objectives. I think that the
18 combination of Audit's insights and recommendations, along
19 with a brand new and very receptive leadership core, that
20 there can be some really great improvements to the
21 programs.

22 MS. BINGHAM ESCAREÑO: Great. Good comments.
23 Thank you, Tim.

24 So Mark, what do you think about that? So what
25 the committee hears the director saying is because of some

1 personnel transition, some people are juggling more than a
2 couple of balls, we have at least one key position that's
3 still vacant. Do you see an opportunity to try to
4 accommodate or modify either the order in which you do the
5 audits scheduled for next year, if the plan is approved,
6 or other opportunities to accommodate to make sure that
7 you get what you need but we're not putting unnecessary,
8 untimely strain due to just internal deliverables?

9 MR. SCOTT: Yes, I'll definitely work with
10 management on that. We, as Audit, also have to juggle
11 schedules, so we don't want to be doing something at a bad
12 time because that will put us behind schedule also.

13 MS. BINGHAM ESCAREÑO: Great, very good. And
14 just an individual note, I'm noticing great communication
15 and interaction between management and the audit function
16 which I think is so helpful, and I think what we're
17 seeing, and especially with Mr. Irvin's optimistic
18 comments about what can be accomplished through the audit
19 function in years to come, it sounds like there's a good
20 line of communication to ensure that you guys are doing
21 what you need to do as the audit function but being open
22 to the internal operational needs of the Department.

23 MR. SCOTT: Yes. And as far as me being the
24 director of Internal Audit, it helps to have input from
25 management on a continuous basis. That helps us to audit

1 the things that need attention.

2 MS. BINGHAM ESCAREÑO: Good, great. Any other
3 questions from the committee members?

4 (No response.)

5 MS. BINGHAM ESCAREÑO: So we have a motion and
6 a second to recommend approval of the 2016 audit plan to
7 the full Board. All those in favor, aye.

8 (A chorus of ayes.)

9 MS. BINGHAM ESCAREÑO: Opposed?

10 (No response.)

11 MS. BINGHAM ESCAREÑO: Motion carries
12 unanimously, so we'll make that recommendation.

13 MR. SCOTT: Thank you very much.

14 MS. BINGHAM ESCAREÑO: Thank you.

15 So agenda item number 3 would be the discussion
16 of our recent external audit activities. Mark, do you
17 want to update us?

18 MR. SCOTT: Yes. The external audits of TDHCA
19 underway now are the annual audit of the Housing Trust
20 Fund accounts and the KPMG audit of the HOME Program. HHS
21 is also going to come out to review the LIHEAP Program in
22 January.

23 The Trust Fund audits are performed by the
24 State Auditor's Office. They do this every year and the
25 audits are pretty routine. They audit the financial

1 statements and also audit for TDHCA's compliance with the
2 Public Funds Investment Act.

3 The KPMG audit, KPMG is auditing the HOME
4 Program as part of the statewide audit, and an issue has
5 arisen over whether KPMG is going to use the new grant
6 guidance as criteria or the old OMB circulars. And the
7 contracts that KPMG is auditing that TDHCA has with the
8 subrecipients were made under the old circulars, but KPMG
9 wants to use the new grant guidance as criteria which
10 would pretty much automatically result in numerous
11 findings of noncompliance. TDHCA's position is that the
12 new grant guidance does not apply for the current KPMG
13 audit and HUD has stated that they agree with TDHCA's
14 position. That situation is being monitored closely
15 because a bad audit report from KPMG could harm the
16 agency. And I'll answer any questions on that that there
17 may be.

18 MS. BINGHAM ESCAREÑO: Great. So does the
19 committee have any questions for Mark relative to that
20 external audit activity or specifically where we are with
21 KPMG?

22 (No response.)

23 MS. BINGHAM ESCAREÑO: So do you want to just
24 quickly, for our own clarification, where is that? So
25 we've gotten HUD's support for using the circulars. Where

1 are we, Mr. Irvin, in terms of that process and finalizing
2 it?

3 MR. IRVINE: Sure. Tim Irvine again.

4 It is not a situation that has been
5 definitively resolved one way or the other in my mind, and
6 because of the way that an independent auditor functions,
7 in effect, without definitive resolution one way or the
8 other, the tie goes to the auditor. I think that KPMG is
9 pretty locked in on its approach right now. The folks at
10 HUD with whom we've spoken, I believe are understanding of
11 and receptive of our position but the question is whether
12 this can be escalated to a level in HUD that can speak
13 definitively and clearly in a manner that KPMG would
14 accept.

15 Just for a little more in-depth understanding
16 of the issue -- and folks that are more knowledgeable are
17 welcome to come up and chime in -- in typical contractual
18 language there is often a provision that says this
19 includes these laws and rules as now in effect or as they
20 may hereafter exist. And when you have language like
21 that, KPMG is of the view, and apparently has spoken with
22 someone at HUD who was of the view that that meant that if
23 there was a midstream change in grant guidance, such as
24 there was when 2 CFR 200 was adopted, that that language
25 automatically pulls it into existing contracts.

1 So you had old HOME award contracts that were
2 created referencing the old A-133 provisions that predated
3 2 CFR 200, and it was always contemplated that that was
4 the way that they would be administered. To the best of
5 my knowledge, we've never received properly adopted
6 federally promulgated regulations from HUD creating new
7 requirements and specifying when they take effect and how
8 they take effect. In other words, we haven't received the
9 necessary HUD guidance to implement 2 CFR in the
10 administration of our HOME awards.

11 So for those old HOME awards, everybody agreed,
12 everybody thought, I believe our HUD local office thought
13 that they were going to be administered in accordance with
14 A-133, and that's the way they're playing out. And now
15 for a late-breaking retroactive application of 2 CFR 200
16 to those contracts, we would be in a position where even
17 though there is a lot of congruity between A-133
18 requirements and preexisting OMB requirements and 2 CFR
19 200, it's not a perfect match and we would be at risk of
20 findings.

21 MR. SCOTT: And I'll add in addition to the A-
22 133 there's the cost circulars that would be a problem if
23 they used the new grant guidance.

24 MS. BINGHAM ESCAREÑO: Okay. Thank you, Tim.

25 So Mark, let's say that KPMG does use the new

1 grant guidance and there are findings, what happens after
2 that?

3 MR. SCOTT: What happens after that, they issue
4 a report that has findings of noncompliance. With each
5 finding of noncompliance they have an associated
6 questioned cost, and in theory, by virtue of them putting
7 that in the audit report, there is a mechanism whereby the
8 federal funding agency would either say no, we don't agree
9 with that finding or that the agency has to pay back the
10 government for those questioned costs. So given the fact
11 that HUD seems to be on our side for the most part, I
12 would say that the net negative of it would just be having
13 a very bad looking audit report. Chances are they
14 wouldn't require any payback of questioned costs.

15 MS. BINGHAM ESCAREÑO: Okay. Thank you. That
16 would be my thought too. I'm assuming part of the
17 agency's response would be that under the new guidance
18 that there hasn't really been operational guidance from
19 HUD on how to go about making historical agreements comply
20 with new grant guidance.

21 MR. SCOTT: Correct. And the new guidance has
22 things like you have to put into the contracts the amount
23 and the indirect cost rates and things like that, so to
24 the extent that all of that stuff wasn't in all of the
25 existing contracts, those would be findings.

1 MS. BINGHAM ESCAREÑO: Understood.

2 Any questions from the committee or any other
3 comments from management?

4 (No response.)

5 MS. BINGHAM ESCAREÑO: So we'll accept that
6 report. Thanks for the clarification. And we'll move on
7 to report item 2, discussion of internal audits and
8 consulting activity.

9 MR. SCOTT: Yes. The audits on the 2015 TDHCA
10 Internal Audit plan, which was approved at the October
11 2014 Audit Committee included payroll, records retention,
12 process, the HOME Program audit, and the program income
13 audit. The payroll audit and the records retention
14 process audit were presented at the April Audit Committee
15 meeting. The audit of the HOME Program Single Family was
16 taken off the plan because KPMG is auditing that program,
17 and at the time that the 2015 Internal Audit plan was
18 prepared, it was not known that KPMG would be doing that
19 audit. And just by the way, dealing with KPMG has ended
20 up taking substantial time. The program income internal
21 audit is in progress and should be done by the end of
22 December.

23 So I'll answer any questions on that section.

24 MS. BINGHAM ESCAREÑO: Any questions from the
25 committee members on discussion of internal audits and

1 consulting activity this year? Any other comments from
2 management?

3 (No response.)

4 MS. BINGHAM ESCAREÑO: Great. Thanks, Mark.

5 MR. CHISUM: I've got a question.

6 MS. BINGHAM ESCAREÑO: Mr. Chisum.

7 MR. CHISUM: What happens if we don't make the
8 December deadline?

9 MR. SCOTT: I guess I miss my deadline.

10 MR. CHISUM: What are the repercussions?

11 MR. SCOTT: There really aren't any because the
12 Internal Audit Act says that you have to have an annual
13 audit plan. It doesn't even specify really the year you
14 have to use, so we use a fiscal year just because it's
15 kind of convenient and make sense, but the fact that an
16 audit takes a little longer than we thought, there's not
17 any repercussions really. The State Auditor, if there was
18 an audit on the plan that didn't get done, then there
19 would be repercussions, they'd be calling me saying
20 where's this audit. But on this audit we pretty much have
21 our arms wrapped around what the issues are at this point,
22 we're just going to do some more testing a little bit and
23 then get the report out.

24 MR. CHISUM: Okay. Well, I looked through the
25 material and I didn't see any penalties or anything that

1 were associated with it, and so that's why I asked that
2 question.

3 MR. SCOTT: Okay. Thank you.

4 MS. BINGHAM ESCAREÑO: Mr. Irvin.

5 MR. IRVINE: And I would like to chime in on
6 that subject that it's incredibly useful and valuable, not
7 only to management but to you in carrying out your
8 responsibilities, to have the independence and knowledge
9 and thoroughness of an independent process, but I want to
10 assure you that management is always looking at all of its
11 activities, all of its programs, all of its support
12 functions and so forth to identify ways that operations
13 may fall short of what they need to be or ways that they
14 can be improved, and that's a process that never stops.
15 So to the extent that we identify issues in our day-to-day
16 work, we generally sit down as a team, caucus on them,
17 incorporate Internal Audit so that they know what's going
18 on, and try to fix them.

19 MR. CHISUM: Thanks you, Tim.

20 MS. BINGHAM ESCAREÑO: Thank you.

21 Any other questions on Internal Audit activity?

22 (No response.)

23 MS. BINGHAM ESCAREÑO: Great. Thanks, Mark.

24 Would you like to update us then on fraud, waste and
25 abuse?

1 MR. SCOTT: Yes, ma'am. The Audit Committee
2 materials include an update on the fraud, waste and abuse
3 statistics. The numbers are high, and from what I
4 understand, there was recently issued a handbook to the
5 housing developments and that has some information in
6 there that may facilitate them making these calls, so that
7 could explain why the numbers are high, or partly. All
8 the allegations have been or are being addressed, and
9 there are regular meetings of the fraud, waste and abuse
10 task group, and this group includes audit, legal and
11 programmatic perspectives in deciding how to deal with the
12 various allegations.

13 And that concludes my presentation. I'll be
14 happy to answer any questions there may be.

15 MS. BINGHAM ESCAREÑO: Thank you, Mark. Does
16 the committee have any questions? In our committee packet
17 we had the table that shows the large number of complaints
18 that came in, how many were relevant and how many are
19 ongoing with investigation and research. Any questions
20 about those numbers? Anything that poses concern to the
21 committee members?

22 MR. CHISUM: I was just surprised that 93
23 percent were not related to the Department.

24 MR. SCOTT: Well, yes. The thing is out in
25 these housing developments they may have a complaint that

1 doesn't address a project that we funded. That's usually
2 the case. But the one entity they know to call is us.
3 I'm kind of two minds on that. One is that it's kind of
4 time-consuming to deal with them, but at least we kind of
5 a way -- it's kind of cheap monitoring.

6 MR. CHISUM: It's almost a clearinghouse.

7 MS. BINGHAM ESCAREÑO: Yes.

8 MR. SCOTT: So in a way it serves a useful
9 purpose to just know what people are saying.

10 MS. BINGHAM ESCAREÑO: Mark, would you remind
11 the committee members, so when we receive off the hotline
12 or any of the other means of communication complaints that
13 aren't directly relevant to the agency's work, what do we
14 do with those. Are the complainants, if they're not
15 anonymous, are they redirected back to the appropriate
16 source, or do you continue to trend?

17 MR. SCOTT: If they're not anonymous then -- a
18 lot of these have to do with law enforcement issues, so we
19 just inform them to contact local law enforcement. That's
20 probably the majority of the cases. We try not make too
21 much of an interpretation for them if it's not something
22 that's related to us, but if it's something that's
23 obviously law enforcement or if it's something that by law
24 we know has to be specifically directed to another agency,
25 we do that.

1 MS. BINGHAM ESCAREÑO: Good point. Great.
2 Thank you very much.

3 Any other questions relative to fraud, waste
4 and abuse activities?

5 (No response.)

6 MS. BINGHAM ESCAREÑO: Good. Then we will
7 accept that presentation.

8 That ends, I think, the formal agenda. Are
9 there any other items to be discussed from Audit Committee
10 or from management? Mr. Irvine.

11 MR. IRVINE: I think that while I've got a few
12 minutes here, I think it would be useful to give you sort
13 of a generalized view of how the fraud, waste and abuse
14 task force approach actually functions. The moment
15 somebody is aware of allegations of fraud, waste or abuse,
16 not necessarily proven, whatever, a group is convened that
17 includes Internal Audit, me, Legal, our ethics advisor,
18 our chief of external affairs, and the program leadership,
19 and we sit down and we say what do we have, what do we
20 need to know, what do we know, and how are we going to go
21 about addressing this, how are we going to flesh out the
22 story if the story is missing pieces, or how are we going
23 to go through an investigative process, or is this
24 something that is really within our purview.

25 Whenever these kinds of issues are identified,

1 the state law requires that if there is suspicion of
2 criminal wrongdoing or matters involving a loss of a
3 thousand dollars or more that required reports must be
4 generated and sent to the State Auditor's Office. So
5 often one of the first marching instructions from a
6 meeting like that is please generate that letter for my
7 signature right away and we get that over to the State
8 Auditor's Office.

9 While it's great that the State Auditor's
10 Office knows about those things, they're pretty busy too
11 and often it's just as important to make sure that the
12 cognizant federal funding agency knows what's going on,
13 and sometimes even that other law enforcement authorities
14 are brought into the loop.

15 So anyway, in a privileged setting where we're
16 talking through these issues with our counsel, a working
17 plan is devised and executed and tracked, and the handling
18 of the matter is documented, and we continue to follow up
19 on them until they're put to bed.

20 MS. BINGHAM ESCAREÑO: Good. Thank you, Tim.

21 MR. CHISUM: Thank you.

22 MS. BINGHAM ESCAREÑO: Any other questions? So
23 this will probably be our last Audit Committee meeting for
24 this year, this calendar year.

25 MR. SCOTT: Yes, ma'am.

1 MS. BINGHAM ESCAREÑO: Some transition in your
2 department. We're glad that you've joined us and your
3 team has done an excellent job. I just want to recognize,
4 Mark, your department and your team members for carrying
5 us through this year of transition. It sounds like it's a
6 good aggressive plan for next year, but doable. I think
7 I'll speak for the committee, and I'm sure you'll hear
8 from the Board later on this morning, about how grateful
9 we are. It's a good relationship. I think it's a good
10 accountable clean relationship. Audit's responsibilities
11 to the State are very clear, but I think we've noticed a
12 real impact that being collaborative and working well
13 together, respecting and honoring responsibilities has
14 really been noticeable this year, so we appreciate you and
15 your team's efforts.

16 MR. SCOTT: Well, thank you very much.

17 MS. BINGHAM ESCAREÑO: Good. That will
18 conclude the Audit Committee meeting. Thank you all for
19 your attendance. We stand adjourned.

20 (Whereupon, at 9:25 a.m., the meeting was
21 adjourned.)

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MEETING OF: TDHCA Board Audit Committee

LOCATION: Austin, Texas

DATE: November 12, 2015

I do hereby certify that the foregoing pages, numbers 1 through 23, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

(Transcriber) 11/16/2015
(Date)

On the Record Reporting
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