

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
An Internal Audit of the Enforcement Committee
Audit Report # 19-009

Executive Summary

The Office of Internal Audit (OIA) reviewed TDHCA's Enforcement Committee and its policies, procedures, and controls that are currently in place. Based on our reviews and testing, the Enforcement Committee is functioning effectively in pursuing compliance to appropriate rules and regulations for the state and federal programs under its purview. We've identified some areas for improvement, as described in the detailed report.

Observations and Recommendations

- OIA recommends that the Enforcement Committee establish Standard Operating Procedures to address internal procedures that would ensure consistency and reliability of the operation for the Committee.
- OIA recommends that the Department establish a procedure in which a secondary individual will be cross trained and assigned as the backup for the Secretary.

Response:

Management agreed with our recommendations, and detailed responses are included in the body of the audit report.

Responsible Area:

Enforcement Committee

Objective, Scope and Methodology

Our scope included a review of the Texas Administrative Code (TAC) Rules §2.101 – 2.104, Rule §2.201 – 2.204, Rule §2.301, 2.301, Rule §2.401, TX Gov Code 2306.041 – 0504, and Department's internal policy and procedures. We also reviewed the Committee's goals, processes, and roles and responsibilities related to enforcing applicable rules and regulations.



Mark Scott, CPA, CIA, CISA, CFE, MBA
Director, Internal Audit

11/8/19
Date Signed



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Board Members of the Texas Department of Housing and Community Affairs ("TDHCA")

RE: INTERNAL AUDIT OF THE ENFORCEMENT COMMITTEE AT TDHCA

Dear Board Members:

This report presents the results of the Office of Internal Audit ("OIA") "*Review of the Enforcement Committee.*" This audit was conducted in accordance with applicable audit standards. It included the objectives to evaluate and explain the *Enforcement Committee* function and activities, and to evaluate its compliance with applicable rules.

The Enforcement Committee function was identified during the 2019 fiscal year risk assessment, and rated high on the risk assessment due to management's interest, and its role in enforcing Department's mission and program specific rules and regulations.

BACKGROUND

In 2001, the TX Gov't Code 2306.0504 enabled TDHCA to debar person from participation in department programs, and, in 2007 TX Gov't Code 2306.041 gave the Board the authority to assess administrative penalties for violation of statute or a rule or order adopted under the statute. As a result The Enforcement Committee was established in 2008, by rule §2.302, as a mechanism to facilitate the resolution of outstanding non-compliance issues related to federally funded programs that are administered by TDHCA. The focus and primary role of the committee has been to achieve and promote full compliance, and to deter future noncompliance, rather than to create a punitive process.

Administrative penalties and debarment are tools used by the Committee to achieve voluntary compliance.

SCOPE AND METHODOLOGY

Our scope included a review of the Texas Administrative Code (TAC) Rules §2.101 – 2.104, Rule §2.201 – 2.204, Rule §2.301, 2.301, Rule §2.401, TX Gov Code 2306.041 – 0504, and Department’s internal policy and procedures. We also reviewed the Committee’s goals, processes, and roles and responsibilities related to enforcing applicable rules and regulations.

ENFORCEMENT COMMITTEE’S ROLE AND RESPONSIBILITIES

The Committee’s role is to make recommendation to the Executive Director regarding administrative penalties and other enforcement actions. If a penalty or debarment is deemed appropriate, the Committee makes a recommendation to the Executive Director for his review and approval. Once the Committee’s recommendations are approved by the Executive Director they’re presented to the Board for approval. Depending on each case and level of violation the recommendations could be:

- A Final Order for debarment (TX Gov Code §2306.0504 and 10 TAC §2.41), or
- An Agreed Final Order to settle a penalty referral (TX Gov Code §2306.041-042 and 10 TAC §2.302(e)(4), or
- Issuance of a Report to the Board and issuance of a Notice of Violation to initiate the contested case hearing process.

The Committee consists of five voting members, including the Chair, who are appointed by the Executive Director. The Committee members represent different programs throughout TDHCA, and can provide program specific inputs. The Secretary, who is part of the Legal Division, and the Deputy General Counsel are the nonvoting members of the Committee. Compliance division and Asset Management are excluded from Committee membership by 10 TAC §2.102(2) to ensure impartiality of the process. Both can attend meeting and provide their input to the Committee, however they cannot be present during deliberations and have no voting rights. Additionally, there is one seat for non-program staff that is unaffiliated with any of the programs, and their comments may be considered by the Committee.

The enforcement mechanisms referenced above are not the exclusive mechanisms whereby compliance may be obtained in any particular case and circumstance. In addition to the Department action, enforcement mechanisms related to Department programs may include those required by other entities or agencies. For example; in cases related to Low Income Housing Tax Credit Program, if an identified instance of noncompliance is required by the Internal Revenue Service (IRS) to be reported to IRS, it will be reported directly by the Compliance Division and will not require Enforcement Committee’s recommendations. Enforcement mechanisms available to the Department include:

- Enforcement of contractual provisions, including the Department's right of suspension or termination, and placement on a cost reimbursement status
- Assessment of Administrative Penalties
- Debarment

COST REIMBURSEMENT

If deemed necessary the Committee may recommend placing a sub-recipient on cost reimbursement status. Cost reimbursement requires Sub-recipient to submit supporting documentation and back up for any expenditures or obligations prior to the Department releasing any funds. If approved by the Board the staff has to establish appropriate review protocols for each entity placed on cost reimbursement status. An entity can and will be removed from cost reimbursement status when the Department determines that the originally identified risks or concerns have been sufficiently mitigated and resolved.

ADMINISTRATIVE PENALTIES

The Compliance Division will recommend to the Committee, through an administrative referral process, the initiation of proceedings to assess administrative penalties where the responsible party / entity has violated the rules established under TX Gov Code 2306, and has failed to take appropriate and timely corrective actions despite written notices by Compliance staff. If the Committee determines that the administrative penalty is appropriate a recommendation, along with the proposed amount of penalty, will be submitted to Executive director for his review and submission to the Board.

Several factors are taken into consideration when determining the amount of administrative penalties. The Executive Director and the Committee should take into consideration whether the responsible party / entity has timely taken appropriate actions within their control, the amount of penalty necessary to deter future violations, and in some instances such as CSBG, CEAP, ESG, or HHSP, whether the assessment of the penalty will interfere with the uninterrupted delivery of services under these programs. The Committee and Executive Director should take into account whether the Department's purposes may be achieved or enhanced by the use of full or partial probation of penalties subject to adherence to specific requirements.

DEBARMENT

The Enforcement Committee may recommend to the Executive Director debarment of a responsible party / entity that has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. Prior to the recommendation the Committee is required to give written notice of the issue, including the facts and circumstances justifying debarment. The responsible party is then given the opportunity to attend an informal conference with the Committee to discuss resolution of the issue.

The committee's recommendation to the Executive Director regarding debarment should include a recommended period of debarment. The recommended period will be based on factors such as repeated occurrences, seriousness of underlying issues, and presence or absence of correction action.

Any person / entity that has been debarred is prohibited from participation in programs administered by the Department for the term of their debarment unless by its terms the order of debarment permits continuing activity in one of more specified programs.

STANDARD OPERATING PROCEDURES (SOP)

An SOP is a procedure specific to the operation of an entity or function that describes the activities necessary to complete tasks in accordance with applicable rules and regulations. It defines expected practices in a process where quality standards exist. SOPs play an important role in any organization and division. They are policies, procedures and standards needed to operate in a successful way. They can create efficiencies, consistency and reliability, fewer errors, and add value.

OBSERVATION

The Enforcement Committee does not have a SOP that it operates under at this time. The Committee follows the statutes and rules established under applicable Texas Administrative Codes and Texas Government Codes. State law requires that any requirement or procedures of a state agency that affect regulated persons must be adopted by formal notice and comment rulemaking. The rules permit flexibility to the Committee to address variety of cases with different wide range of circumstances. However, the rules do not address other aspects of the Committee and its operation, such as succession and cross training of staff for key positions within the Committee.

RECOMMENDATIONS

OIA recommends that the Enforcement Committee establish Standard Operating Procedures to address internal procedures that would ensure consistency and reliability of the operation for the Committee.

MANAGEMENT RESPONSE

Staff agrees with the recommendation and will create an SOP.

TESTING AND REVIEW

As part of our audit we reviewed two files from Administrative Referral phase to its final resolution and found no areas of non-compliance. Based on our reviews the function of Enforcement Committee is effective and shows no instances of non-compliance to the rules that it operates under.

OBSERVATION

During our review we noted that the Committee Secretary plays an essential role in how the Committee functions and carries out its responsibilities. The Secretary is the primary contact between the Department and the individual / entity that has been referred to the Committee through administrative referral process, and is responsible for the record keeping of all the communications, recommendations, and Committee meeting notes. Currently the Department doesn't have a back up for this position for continuity of the operation and functions of the Enforcement Committee.

RECOMMENDATION

OIA recommends that the Department establish a procedure in which a secondary individual will be cross trained and assigned as the backup for the Secretary.

MANAGEMENT RESPONSE

Staff agrees that there is no backup for the Committee Secretary – a vital and critical resource necessary for the Committee's continued effectiveness. The Committee, through its legal advisor, will raise this issue with appropriate management.

OIA extends our appreciation to management and Enforcement Committee's members for their cooperation and assistance during the course of this audit.

Sincerely,



Mark Scott, CPA, CIA, CISA, CFE, MBA
Internal Audit Director